

DRAFT FOR CONSULTATION

Draft Order in Council laid before Parliament for approval by each House of Parliament, and before the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly, for their approval, under paragraph 11(2) of Schedule 3 to the Climate Change Act 2008

DRAFT STATUTORY INSTRUMENTS

2010 No.

CLIMATE CHANGE

The Carbon Reduction Commitment Order 2010

Made - - - - *****
Coming into force - - *1st April 2010*

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At the Court at Buckingham Palace, the *** day of ***

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred by paragraph 9(1) of Part 3 of Schedule 3 to the Climate Change Act 2008(a), is pleased, by and with the advice of Her Privy Council, to make the following Order.

(a) 2008 c.27.

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The Secretary of State, the Scottish Ministers, the Welsh Ministers and the Northern Ireland Department of the Environment have obtained, and taken into account, the advice of the Committee on Climate Change. They have consulted such persons as they consider appropriate in accordance with section 48(1) and (2) of that Act.

A draft of the statutory instrument containing this Order has been laid before, and approved by a resolution of, each House of Parliament, the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly.

PART 1

General

CHAPTER 1

Introductory

Citation, commencement and extent

1. This Order—

- (a) may be cited as the Carbon Reduction Commitment Order 2010;
- (b) comes into force on 1st April 2010; and
- (c) extends to the United Kingdom.

Interpretation

2.—(1) In this Order—

“administrator” means, except in article 49(6) and, as relevant, article 92, any person appointed as an administrator under article 4;

“business” means any business activity covered by article 29;

“climate change agreement” has the meaning in paragraph 46 of Schedule 6 to the Finance Act 2000(a);

“combined participant” means any combination of two or more persons required to participate together as the same participant;

“constituent person” means any person forming part of a combined participant;

“the Directive” means Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowance trading within the Community(b);

“emission” has the meaning in article 32, except where this Order refers to EU ETS emissions or to emissions in the context of a climate change agreement;

“energy” has the meaning in article 30(1), except in the context of paragraph 5(b) of Schedule 11 and paragraph 7(b) of Schedule 13;

“group” means the combination of a parent and its subsidiaries;

“principal subsidiary” has the meaning—

- (a) in paragraph 3 of Schedule 16; and
- (b) as applicable, in paragraphs 8 and 9 of Schedule 17;

“ROC” means a renewables obligation certificate—

(a) 2000 c.17.

(b) OJ No L 275, 25.10.2003, p 32.

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- (a) issued, as provided for by section 32B(1) of the Electricity Act 1989(a), by the Gas and Electricity Markets Authority by virtue of a renewables obligation order made under section 32(1)(b) of that Act; or
- (b) issued by virtue of an order made under article 52(1) of the Energy (Northern Ireland) Order 2003(c), in accordance with article 54(1) of that Order;

“scheme” means the trading scheme established by this Order;

“supplier” means, as relevant—

- (a) an authorised supplier within the meaning of—
 - (i) section 64(1) of the Electricity Act 1989(d); or
 - (ii) section 48(1) of the Gas Act 1996(e);
 - (b) a person who supplies electricity under article 8(1)(c) of the Electricity (Northern Ireland) Order 1992(f) and who—
 - (i) is authorised by a licence under article 10(1) or (2) of that Order; or
 - (ii) is exempted under article 9(1) of that Order;
- or
- (c) a person who supplies gas under article 6(1)(c) of the Gas (Northern Ireland) Order 1996(g) and who—
 - (i) is authorised by a licence granted, or extended, under article 8(1) or (2) of that Order; or
 - (ii) is exempted under article 7(1) of that Order;

“supply”—

- (a) in relation to electricity, has the meaning in—
 - (i) section 4(4) of the Electricity Act 1989(h); or
 - (ii) article 3 of the Electricity (Northern Ireland) Order 1992;
- and
- (b) in relation to supplied gas, means any supply of gas under—
 - (i) the Gas Act 1986(i); or
 - (ii) the Gas (Northern Ireland) Order 1996;

“working day” means 9am to 5pm on Mondays to Fridays, excluding: bank holidays, within the meaning of section 1 of the Banking and Financial Dealings Act 1971(j); Good Friday; and, when it falls on a day that would otherwise be a working day, Christmas Day; and

“writing” includes electronic communications.

(2) The following are the definitions of measurement units used within this Order—

“kWh” means a kilowatt hour;

“MWh” means a megawatt hour; and

“tCO₂” means a tonne of carbon dioxide.

-
- (a) 1989 c.29; section 32B, as previously amended, substituted by section 37 of the Energy Act 2008 (c.32).
 - (b) Section 32 substituted by section 37 of the Energy Act 2008 (c.32).
 - (c) S.I. 2003/419 (N.I. 6); articles 52 and 54 inserted by article 2 of the Energy (Amendment) Order (Northern Ireland) S.R. 2009/35.
 - (d) The definition of “authorised supplier” in section 64(1) inserted by section 108, and paragraphs 24 and 38(1) and (2) of Part II of Schedule 6 to, the Utilities Act 2000 (c.27).
 - (e) 1986 c.44, as amended; the definition of “authorised supplier” inserted by section 108, and paragraphs 1 and 19(a) of Part I of Schedule 6 to, the Utilities Act 2000 (c.27).
 - (f) S.I. 1992/231 (N.I.1).
 - (g) S.I. 1996/275 (N.I.2).
 - (h) The definition of “supply” in section 4(4), as previously amended, substituted by section 179(1) of the Energy Act 2004 (c.20).
 - (i) 1986 c.44, as amended.
 - (j) 1971 c.80.

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(3) Schedule 1 (defined terms) contains a full list of terms defined in this Order and those terms have the meaning given by the provision of this Order referred to in that Schedule.

Definition of “participant” and principal requirements

3.—(1) A person is a participant where that person meets the requirements under Part 2 or article 47 of this Order.

(2) Participants must comply with the requirements of Part 3 of this Order, subject to the provisions of Part 4.

(3) A person to whom Chapter 1 of Part 5 of this Order applies must comply with the requirements of that Chapter.

(4) Electricity suppliers, electricity distributors and gas suppliers must comply with the requirements under Chapter 2 of Part 5 of this Order.

(5) Persons who hold, cancel, trade or transfer allowances must comply with Part 7 of this Order.

CHAPTER 2

General administrative provisions

Administrator

4.—(1) Subject to paragraph (2), the following are appointed as the administrator—

- (a) in relation to England and Wales, the Environment Agency (Asiantaeth yr Amgylchedd);
- (b) in relation to Scotland, the Scottish Environment Protection Agency; and
- (c) in relation to Northern Ireland, the Department of the Environment.

(2) The functions of the administrator must be performed by the Environment Agency, on a United Kingdom wide basis, in the cases provided for by articles 43(4), 64(3), 72(5) and 83(2).

(3) References in this Order to the administrator may, unless the context indicates the contrary, be taken as a reference to any, or any combination, of the persons specified in paragraph (1).

Phases and scheme years

5.—(1) The scheme operates by references to phases.

(2) Each phase is comprised by scheme years, in accordance with paragraphs (3) to (5).

(3) Scheme years run from 1st April to the following 31st March (including both those days).

(4) The first phase consists of the three consecutive scheme years between, and including, 1st April 2010 and 31st March 2013.

(5) Subsequent phases—

- (a) consist of seven consecutive scheme years; and
- (b) commence—
 - (i) in the case of the second phase, on 1st April 2011; and
 - (ii) thereafter, at five yearly intervals (the next phase commencing on 1st April 2016).

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PART 2

Requirement to participate

CHAPTER 1

General

Requirement to participate: general

- 6.—(1) The following persons are required to participate in the scheme—
- (a) government participants, in accordance with Chapter 2 of this Part; and
 - (b) other persons, in accordance with Chapter 3.
- (2) This Part has effect subject to the further provisions contained in Part 4.

Subsidiaries and associated persons

- 7.—(1) Schedule 2 (parents and subsidiaries) defines a parent and a subsidiary for the purpose of this Order, and deals with references to subsidiaries within this Order.
- (2) Schedule 3 (associated persons) defines an associated person.
- (3) The administrator may determine whether a person is a parent, subsidiary or associated person in accordance with this article and its related Schedules, but, if it does, the administrator must have regard to—
- (a) any publicly available information, including material made available for public inspection by the Registrar of Companies; and
 - (b) any representations from the persons potentially affected by that determination.

CHAPTER 2

Government participants

Government participants: general

8. The following are required to participate, as government participants—
- (a) each government department (other than Northern Ireland departments);
 - (b) the Scottish Executive; and
 - (c) the Welsh Assembly Government (Llywodraeth Cynulliad Cymru).

Government participants: government departments and the Scottish Executive

- 9.—(1) Subject to paragraph (3), and provided that all government departments in existence at the beginning of the relevant phase form part of one government participant or another, the Secretary of State may provide for government departments to participate by means of the number, and identity, of government participants that the Secretary of State considers appropriate (whether or not these correspond to the number and identity of the government departments in existence at that time).
- (2) Subject to paragraph (3), the Scottish Ministers may, if they consider it appropriate, provide for the Scottish Executive to participate by means of two or more government participants.
- (3) The Secretary of State or the Scottish Ministers (as relevant) must make the decisions referred to in paragraphs (1) and (2) prior to the registration deadline for the relevant phase.

Government participants: duration

- 10.—(1) Government participants must participate during each phase of the scheme.

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(2) A government department established after the coming into force of this Order is required to participate, from, and including, the first scheme year following its establishment whether as—

- (a) a new government participant; or
- (b) as a constituent person of an existing government participant,

(as the Secretary of State determines).

Government participants: subsidiaries etc

11.—(1) This article applies subject to article 12.

(2) Each government participant must participate together with any subsidiary, as a combined participant, in accordance with paragraph (3).

(3) The subsidiary forms part of the government participant for as long as that person remains the subsidiary of that government participant.

Government participants: determination

12.—(1) This article applies where any person is, or, at any stage, becomes, a subsidiary of a government participant.

(2) The relevant person may make a determination that the government participant is not to be treated as the parent of—

- (a) that subsidiary; and
- (b) any subsidiary of that subsidiary.

(3) Such a determination must be—

- (a) recorded in writing by the relevant person; and
- (b) notified to the administrator by that person as soon as practicable.

(4) A subsidiary in relation to which a determination has been made—

- (a) must participate, subject to article 47, as a separate participant for—
 - (i) the duration of the phase during which that determination is made; or
 - (ii) if that determination is made during a scheme year falling within two phases, for the duration of the later of those two phases;

and

- (b) is treated, under this Order, as if it were a qualifying undertaking for the relevant phase.

(5) The determination has effect—

- (a) for all purposes relating to the scheme year during which the determination is made; and
- (b) beginning with, and including, any earlier date or period if the relevant person so decides.

(6) In this article, the relevant person is—

- (a) in relation to subsidiaries of the Treasury, the Treasury;
- (b) in relation to subsidiaries of any other government department, the Secretary of State;
- (c) in relation to subsidiaries of the Scottish Executive, the Scottish Ministers; or
- (d) in relation to subsidiaries of the Welsh Assembly Government, the Welsh Ministers.

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CHAPTER 3

Qualifying undertakings

SECTION 1

Application of Chapter

Qualifying undertakings: general

- 13.**—(1) Eligible persons must participate in accordance with this Chapter.
- (2) In this Chapter—
- (a) articles 18 to 22 apply in the case of eligible persons covered by article 17; and
 - (b) articles 23 to 27 require the participation of two or more connected eligible persons as a combined participant.

Qualifying undertakings: eligible persons

- 14.**—(1) For the purpose of this Chapter, an eligible person is a person who, on a qualification day for a phase, is a person—
- (a) to whom article 15 applies; and
 - (b) who is not excluded from the application of this Chapter by article 16.
- (2) The qualification day is—
- (a) in respect of the first phase, 31st December 2008; and
 - (b) in respect of subsequent phases, 31st March prior to the beginning of the relevant phase.

Qualifying undertakings: persons included

- 15.**—(1) This article applies to—
- (a) (i) a company or other incorporated body; and
(ii) a partnership or other unincorporated association, carrying on business in the United Kingdom; and
 - (b) a body established by or under any enactment.
- (2) This article also applies to—
- (a) any other person carrying on business in the United Kingdom, where that business is not the business of a person to whom paragraph (1) applies; and
 - (b) an overseas company which is the parent of a subsidiary to whom this article applies.
- (3) Schedule 4 (partnerships)—
- (a) makes further provisions in connection with partnerships for the purposes of this Order; and
 - (b) applies, as relevant, in the case of other unincorporated associations,
- and, in this Order, a reference to a partnership is taken to include other unincorporated associations, as relevant.
- (4) “Overseas company” has the meaning in section 1044 of the Companies Act 2006^(a).

Qualifying undertakings: exclusions

- 16.** The following persons are excluded from the application of this Chapter—
- (a) a government participant;

(a) 2006 c.46.

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- (b) any Minister or other office holder within a government participant; and
- (c) a person who, on the qualification day, is a subsidiary of a government participant.

SECTION 2

Qualification as a single participant and subsequent participation

Single entities: application

17. Articles 18 to 22 apply in the case of an eligible person who, on the qualification day—

- (a) does not have any subsidiary or associated person; and
- (b) is not itself a subsidiary or associated person.

Single entities: requirement to participate

18.—(1) An eligible person must participate where that person—

- (a) meets (or, in the case of the first phase, met) the qualification criteria during a qualification year; and
- (b) is not exempt by virtue of article 20.

(2) The qualification year is—

- (a) in the case of the first phase, the calendar year 2008; and
- (b) in the case of the second and subsequent phases, the scheme year prior to the first scheme year of the relevant phase.

(3) The qualification criteria are met where all of those criteria are met at any time during the course of the qualification year, even if they are not all met at the same time.

Single entities: qualification criteria

19.—(1) The qualification criteria are as follows—

- (a) the eligible person consumes a supply of electricity;
- (b) the quantity of any part of that supply is ascertained by a settled half hourly meter; and
- (c) that person meets the qualification threshold.

(2) For the purpose of paragraph (1)—

- (a) (i) article 31(1)(a) applies for the purpose of determining whether or not a person consumes a supply of electricity; but
- (ii) without the application of article 31(2);
- and
- (b) the qualification threshold is a supply, to that person, or a representative, of at least 6,000 MWh of electricity across any, or any combination, of the following categories of supplies—
 - (i) supply by settled half hourly meter;
 - (ii) supply by reference to a settled half hourly meter; or
 - (iii) remotely read supply.

Single entities: exemption relating to transport

20. An eligible person is exempted from the requirement to participate where, during the qualification year—

- (a) that person consumes some or all of the supplies referred to in article 19(2)(b) for the purpose of transport; and

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- (b) the quantity of those supplies which are consumed for any other purpose is lower than 1,000 MWh.

Single entities: duration of participation

- 21.** An eligible person required to participate in accordance with article 18(1)—
- (a) must participate for the duration of any phase following a qualification year in respect of which it has been required to participate by virtue of article 18(1); and
 - (b) is referred to in this Order as a “qualifying undertaking”.

Single entities: subsequent subsidiaries etc

22.—(1) Subject to article 47, paragraphs (2) and (3) apply where, at any stage after the relevant qualification day, a person becomes a subsidiary or associated person of the qualifying undertaking (otherwise than in the case of a merger to which article 47(1)(b) refers).

(2) Those persons must participate together, as a combined participant, for as much of any period during which the qualifying undertaking is required to participate as the subsidiary or associated person remains a subsidiary or associated person of that qualifying undertaking.

(3) Paragraph (2) does not affect the continued requirement on the qualifying undertaking to participate, on its own, or in combination with any other person, for as much of that period as remains after that subsidiary or associated person ceases to be its subsidiary or associated person.

SECTION 3

Qualification as a combined participant and subsequent participation

Combined entities: application

- 23.** Articles 24 to 27 apply in the case of an eligible person who, on the qualification day, is—
- (a) a parent;
 - (b) a subsidiary;
 - (c) a principal within the meaning of Schedule 3; or
 - (d) an associated person.

Combined entities: requirement to participate

- 24.** Where there are two or more eligible persons who, on a qualification day—
- (a) fall within two or more of the categories of eligible person listed in article 23; and
 - (b) do so by reason of their legal relationship with each other,

those persons must participate, together, as a combined participant, where article 25 applies.

Combined entities: qualification criteria

25.—(1) This article applies to the combination of eligible persons identified in accordance with article 24 who together—

- (a) meet the qualification criteria in accordance with articles 18 and 19; and
- (b) do not fall within the criteria provided for the exemption under article 20.

(2) For the purpose of assessing whether or not that combination of eligible persons meets the qualification criteria, or is exempt, in accordance with paragraph (1), the combination of those eligible persons is assessed throughout the entire period of the qualification year irrespective of whether or not those persons had any relationship with each other prior to the qualification day.

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Combined entities: duration of participation

26.—(1) In this article, the qualifying undertaking is the eligible person who is—

- (a) in the case of an associated person, where sub-paragraph (b) does not apply, the principal;
or
- (b) in any case involving a group, the parent.

(2) The qualifying undertaking must participate for the duration of any phase following a qualification year in respect of which the relevant combination of eligible persons has met the qualification criteria and not fallen within the exemption.

(3) Subject to article 47, each of the other eligible persons must participate together with the qualifying undertaking, as a combined participant, for as much of the period during which the qualifying undertaking is required to participate as the other eligible person in question remains the subsidiary or associated person of that qualifying undertaking.

(4) Paragraph (3) does not affect the continued requirement on the qualifying undertaking to participate, on its own, or in combination with any other person, for as much of that period as remains after that subsidiary or associated person ceases to be its subsidiary or associated person.

Combined entities: subsequent changes etc

27.—(1) Subject to article 47, paragraph (2) applies where, at any stage after the relevant qualification day, any other person becomes a subsidiary or associated person of the qualifying undertaking (otherwise than in the case of a merger to which article 47(1)(b) refers).

(2) Those persons must participate together with—

- (a) the qualifying undertaking; and
- (b) any of the subsidiaries or associated persons constituted within the combined participant by virtue of article 26(3), so long as they continue to participate,

for the duration required in relation to subsidiaries or associated persons by article 26(3).

PART 3

Participation

CHAPTER 1

Coverage of the scheme

SECTION 1

General and activities

Participation: general

28.—(1) Participants must comply with the requirement of the scheme.

(2) For the purpose of paragraph (1), those requirements relate to the activities covered by the scheme, in relation to which Chapter 1 of this Part applies.

(3) The requirements are specified in Chapter 2 of this Part.

Activities

29.—(1) The scheme applies in respect of any business undertaken by a participant which involves, or contributes to, direct or indirect emissions from energy consumption.

(2) For the purpose of paragraph (1), “business” includes any activity undertaken for, or in connection with—

- (a) any business or charitable purpose; and

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- (b) the performance of functions of a public nature.

Meaning of “energy”

30.—(1) For the purpose of article 29(1), “energy” means each of the following—

- (a) electricity;
- (b) gas supplied by a supplier to a customer through pipes (“supplied gas”); and
- (c) any fuel.

(2) For the purpose of paragraph (1)(c), “fuel” means—

- (a) any fuel listed in Part 2 of Schedule 5 (fuels and measurement); or
- (b) any blend of those fuels.

Energy consumption

31.—(1) Subject to paragraph (2), a person—

- (a) consumes electricity or supplied gas (or both) in the circumstances specified in Part 1 of Schedule 6 (energy consumption: general); and
- (b) consumes fuels in the circumstances specified in Part 2 of that Schedule.

(2) Energy is deemed not to be consumed in the circumstances specified in Schedule 7 (energy consumption: exclusions).

(3) Energy consumption—

- (a) counts as “core consumption”—
 - (i) in the case of any supply of electricity, to the extent that it falls within Part 1 of Schedule 8 (energy consumption: core consumption); and
 - (ii) in the case of supplied gas, to the extent that it falls within Part 2 of that Schedule;and
- (b) counts as “residual consumption” in the case of
 - (i) any other consumption of electricity or supplied gas (or both); and
 - (ii) any consumption of fuels.

Emissions

32. Emissions are—

- (a) in the case of electricity, indirect emissions of carbon dioxide which—
 - (i) are attributable to the generation of grid electricity (taken as a national average); and
 - (ii) for the purpose of the scheme, are taken to have been emitted, indirectly, by the participant, by reason of that participant causing, or contributing to, those emissions in consequence of its consumption of, and demand for, grid electricity;and
- (b) in the case of supplied gas and fuels, direct emissions of carbon dioxide, which are taken to have been emitted by the participant itself as a result of its consumption of that supplied gas or fuel (as the case may be).

SECTION 2

Measurement of emissions

Calculating emissions

33.—(1) Emissions are measured in tCO₂.

(2) The quantity of a participant’s emissions is calculated by the following formula—

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emissions (tCO₂) = quantity of energy consumption x emission factor x 0.001.

(3) For the purpose of paragraph (2)—

- (a) the quantity of energy consumption is calculated in accordance with article 34; and
- (b) emissions factors are specified in Schedule 5 (fuels and measurement).

(4) Where a participant's total emissions are not a whole number, the participant must round that total to the next highest number.

Calculating energy consumption

34. Energy consumption is calculated separately for—

- (a) electricity;
- (b) supplied gas; and
- (c) each fuel (in so far as relevant),

in accordance with the relevant methodology specified in Schedule 9 (calculation of energy consumption).

CHAPTER 2

Requirements of the scheme

SECTION 1

General and preliminary requirements

Requirements on participants: general

35.—(1) Participants must comply with—

- (a) the preliminary requirements set out in articles 36 to 38;
- (b) the annual requirements set out in articles 39 to 43; and
- (c) the ongoing requirements set out in articles 44 and 45.

(2) The “reporting deadline” means, in relation to the scheme year in question, the final working day of July following the end of that scheme year.

(3) This Chapter has effect subject to the further provisions contained in Part 4 of this Order.

Registration

36.—(1) Participants must register for the scheme by providing the administrator with the information specified in Schedule 10 (registration).

(2) The requirement to register applies whether or not the relevant participant, or, in the case of a combined participant, any constituent person, has participated during a previous phase.

(3) The deadline for registration is—

- (a) for the first phase, 30th September 2010; and
- (b) for subsequent phases, the last working day of the first scheme year.

(4) The participant must notify the administrator as soon as possible where any of the information the participant has provided changes.

Footprint report

37.—(1) Participants must provide the administrator with a footprint report containing the information specified in Schedule 11 (footprint report) relating to the first scheme year of the relevant phase.

(2) The deadline for the provision of the footprint report is the reporting deadline relating to that year.

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Residual measurement list

38.—(1) Subject to paragraph (6), participants must compile a residual measurement list where their regulated emissions do not equal or exceed the applicable percentage of their footprint.

(2) A residual measurement list is a document specifying the residual consumption to be measured, and reported, by a participant for the purposes of its annual reports during a phase.

(3) For the purpose of paragraph (1)—

(a) (i) a participant's regulated emissions and a participant's footprint have the meaning specified in Part 1 of Schedule 12 (residual measurement list); and

(ii) the applicable percentage is the percentage provided for by that Part;

and

(b) a participant's regulated emissions do not equal or exceed the applicable percentage of the footprint where that percentage is not equalled or exceeded by the participant during the first scheme year of the relevant phase.

(4) The relevant residual measurement list—

(a) applies to any person being—

(i) the participant; or

(ii) a constituent person of that participant,

at the end of the first scheme year of the relevant phase, but not to other persons later becoming constituent persons of that participant;

(b) (i) must at least include the proportion of that participant's, or constituent person's, residual consumption as would have been sufficient, when added to that person's regulated emissions, to equal the applicable percentage during that year; but

(ii) may otherwise be framed as the participant determines;

and

(c) must be kept together with the records required to be kept by article 44.

(5) The deadline for the compilation of the residual measurement list is the reporting deadline relating to the first scheme year of the relevant phase.

(6) Part 2 of Schedule 12 modifies this article in the case of any participant whose constituent persons include an education authority and one or more schools being its associated persons.

(7) Participants may compile a residual measurement list where they are not required to do so; but if they do, they are thereafter in the same position as a participant who was required to compile such a list.

SECTION 2

Annual requirements

Annual report

39.—(1) Subject to paragraph (3), participants must provide the administrator with an annual report containing the information specified in Schedule 13 (annual report) in respect of each scheme year.

(2) The deadline for the provision of the annual report is the reporting deadline relating to the relevant scheme year.

(3) In the second and subsequent phases—

(a) the requirement to provide an annual report does not apply in respect of the first scheme year of the relevant phase; and

(b) where a participant is simultaneously participating in respect of the second scheme year of one phase and the final scheme year of the previous phase, that participant must submit an annual report in relation only to the final scheme year of that previous phase.

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Statement of records

40.—(1) Participants must ensure that, in relation to each scheme year—

- (a) where the participant is a company, one of its directors; or
- (b) in other cases, an office holder or employee of similar status or seniority,

signs a statement confirming that the participant has kept the records required by article 44 in relation to the relevant scheme year.

- (2) The deadline for the signing of the statement is the reporting deadline relating to that year.
- (3) That statement must then be kept together with the rest of the participant's records.

Performance commitment

41.—(1) Participants must comply with the performance commitment.

(2) The performance commitment applies in respect of—

- (a) each scheme year during the first phase; and
- (b) the third, fourth, fifth, sixth and seventh scheme years of subsequent phases.

(3) A participant complies with the performance commitment by—

- (a) voluntary cancellation of sufficient allowances in accordance with article 42;
- (b) holding sufficient allowances in accordance with article 43; or
- (c) a combination of the two.

(4) For the purpose of paragraph (3), sufficient allowances are the same number of allowances as the number of tCO₂ emitted during the relevant scheme year, where at least 1 tCO₂ has been emitted; and the number of tCO₂ emitted is the amount of tCO₂ from the total relevant energy consumption the participant is required to report to the administrator under Part 1 of Schedule 13 (annual report) in its annual report for that year.

(5) Allowances only count towards the total of sufficient allowances where—

- (a) they were valid in respect of the relevant scheme year; and
- (b) are held in the participant's compliance account when surrendered for cancellation.

Compliance by voluntary cancellation

42.—(1) Voluntary cancellation takes place where the relevant participant voluntarily cancels, or agrees to the cancellation of, allowances for the purpose of the performance commitment.

(2) Voluntary cancellations may take place during the period which—

- (a) begins on the first working day of August during the relevant scheme year; and
- (b) ends on the reporting deadline for that scheme year.

(3) Allowances are not taken to be voluntarily cancelled where the cancellation of those allowances is for any other purpose required by, or permitted under, this Order.

Compliance by holding allowances

43.—(1) For the purpose of article 41(3)(b), a participant must—

- (a) in accordance with this article, hold sufficient allowances in its compliance account on the reporting deadline; and
- (b) ensure that no further use is made of that number of allowances pending cancellation by the administrator.

(2) For the purpose of paragraph (1)(a)—

- (a) sufficient allowances are taken as the number of allowances required to comply with the performance commitment, taking into account any voluntary cancellation; and

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(b) those allowances may be taken to include any allowance which is not held in the participant's compliance account on that deadline but which will be held in that account at the conclusion of any trade which—

- (i) involves the intended transfer of allowances by that deadline; and
- (ii) is notified to the administrator under article 77(1) by that deadline.

(3) In the case of the final scheme year of the first phase, the allowances transferred under paragraph (2)(b), and which count for compliance, may include any allowance which ceases to be valid on the reporting deadline in accordance with article 73(3).

(4) The administrator must then cancel the relevant number of those allowances as soon as practicable, its function under this paragraph being performed by the Environment Agency.

SECTION 3

Ongoing requirements

Record keeping

44.—(1) Participants must—

- (a) keep sufficient records to demonstrate that any information provided to the administrator is true, accurate and complete; and
- (b) ensure that their records are up-to-date, comprehensive and comprehensible, so as to facilitate the administrator's conduct of an effective audit.

(2) Participants must—

- (a) subject to paragraph (3), keep the records specified in Part 1 of Schedule 14 (record keeping); and
- (b) ensure that records kept under this article are retained for the time period specified in Part 2 of that Schedule.

(3) Part 1 of Schedule 14 neither—

- (a) obliges a participant to retain any record which is irrelevant to its participation; nor
- (b) limits the generality of the record keeping requirement under paragraph (1).

General cooperation

45. Participants must—

- (a) provide the administrator with any information or evidence they consider materially important to their participation in the scheme, regardless of whether the provision of that information or evidence is otherwise required by this Order; and
- (b) at all times, cooperate fully with the administrator, in particular to facilitate the exercise of the administrator's functions under Part 6 of this Order.

PART 4

Further provisions relating to participation

Combined participants

46.—(1) This article applies to combined participants.

(2) One or more constituent persons within a combined participant are—

- (a) responsible for that combined participant's compliance with the requirements imposed by or under this Order; and
- (b) liable for, and required to comply with, any civil penalty under this Order,

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at the relevant time, with that responsibility, or liability, being joint and several where there is more than one responsible person (each such person being a “responsible person”).

(3) The identity of the responsible person is determined in accordance with Part 1 of Schedule 15 (combined participants).

(4) Other persons are required to provide the responsible person with reasonable assistance, in accordance with Part 2 of Schedule 15.

(5) Each combined participant must have a primary member.

(6) The identity of the primary member is determined in accordance with Part 3 of Schedule 15.

(7) The participant must deal with the administrator through the relevant primary member.

(8) The administrator may, at all times, take that primary member, and any of its employees or agents, as—

- (a) representing the relevant combined participant; and
- (b) acting on that participant’s authority and its behalf.

Takeovers, mergers and de-mergers

47.—(1) This article applies in the case of any—

- (a) takeover;
- (b) merger; or
- (c) de-merger.

(2) Takeovers, mergers and de-mergers are the relevant events specified in Part 2 of Schedule 16 (takeovers, mergers and de-mergers), where those events involve a relevant person within the meaning of Part 1 of that Schedule.

(3) After the relevant takeover, merger or de-merger—

- (a) a participant is constituted in accordance with Part 2 of Schedule 16; and
- (b) in the case of a takeover, a person who was not a participant, or a constituent person, prior to that takeover is required to participate in the scheme in accordance with that Part.

(4) In the case of the first phase—

- (a) takeovers, mergers and de-mergers include any such events which have taken place at any time between, and including, 1st January 2009 and 31st March 2010; and
- (b) a participant at the start of that phase is a participant as constituted in accordance with any takeover, merger or de-merger taking place between, and including, those dates.

(5) Schedule 17 (effect of takeovers, mergers and de-mergers) specifies the consequences of a takeover, merger or de-merger for the purpose of the participation of the relevant participant, and the requirements imposed on it and other persons, after the relevant event.

(6) Where a takeover, merger or de-merger takes place, any participant affected by the relevant event (including a participant as constituted as a result of that event) must notify the administrator of the following—

- (a) the date of the relevant takeover, merger or de-merger;
- (b) the identity of any other party involved in the relevant event;
- (c) the constitution of the participant following that event; and
- (d) any changes to the particulars provided by any relevant participant at registration.

(7) The notification required by paragraph (6) must be made—

- (a) within three months of the date of the relevant event; or
- (b) where paragraph (4)(a) applies, by the registration deadline for the first phase.

New departments and determinations under article 12

48.—(1) This article applies—

- (a) in the case of a government department is established—
 - (i) during a phase; but
 - (ii) not during the final scheme year of that phase;and
- (b) in the case of a subsidiary of a government department in relation to which the relevant person makes a determination in accordance with article 12.

(2) In this article—

- (a) “relevant date” means—
 - (i) the date the new government department is established; or
 - (ii) the date of the determination,as the case may be; and
- (b) “relevant participant” means the government department or subsidiary in question.

(3) The relevant participant must register for the scheme under article 36 within three months of the relevant date.

(4) Subject to paragraph (5), the relevant participant must comply with all the requirements of Chapter 2 of Part 3—

- (a) in the case of a new government department, from, and including, the scheme year following its establishment; or
- (b) in the case of a relevant subsidiary, from, and including, the scheme year during which the determination takes effect.

(5) Article 38 is taken to require the compilation of a residual measurement list on the basis of the scheme year to which paragraph 4(a) refers, where—

- (a) in the case of a relevant subsidiary, it is not already covered by a residual measurement list; or
- (b) in any other case, the relevant participant does not meet the applicable percentage prescribed under that article during that scheme year.

(6) Any residual measurement list compiled under paragraph (4) is used for the purpose of the annual reports for that scheme year, and for the annual reports for the rest of the relevant phase.

Cessation of business

49.—(1) Subject to—

- (a) paragraph (2); and
- (b) complying with the requirements of this article,

participants are no longer required to participate once they permanently cease business.

(2) Paragraph (1) does not affect—

- (a) any requirement for that person to participate in respect of future phases if that person commences any other business at any later date; or
- (b) the duty to comply with any requirement arising in respect of the period prior to the time that the relevant participant ceased business.

(3) Where the cessation of business occurs during a scheme year, the participant must, within one month of the cessation—

- (a) notify the administrator of that fact;
- (b) where that cessation takes place during a scheme year, provide an annual report in respect of any part of that scheme year preceding that cessation;

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- (c) at the date that the annual report is provided in accordance with sub-paragraph (b), comply with the performance commitment relating to that annual report; and
 - (d) comply with all other outstanding requirements under this Order.
- (4) Where the cessation occurs prior to the deadline for compiling a residual measurement list, the annual report required under paragraph (3)(b) is limited to that participant's core consumption.
- (5) Paragraph (6) applies where a participant is subject to—
- (a) in England and Wales, any proceedings under the Insolvency Act 1986(a);
 - (b) in Scotland—
 - (i) sequestration under the Bankruptcy (Scotland) Act 1985(b); or
 - (ii) a protected trust deed granted under the Protected Trust Deeds (Scotland) Regulations 2008(c);
- or
- (c) in Northern Ireland, any proceedings under the Insolvency (Northern Ireland) Order 1989(d).
- (6) Any person who is an administrator, administrative receiver or trustee in accordance with those enactments—
- (a) is, for the purpose of compliance with the requirements imposed by paragraph (3), treated as if it were a constituent member of the participant (with the status of group member); and
 - (b) must take all reasonable steps to ensure that the participant complies with the requirements of this Order, including, where the participant ceases business, any outstanding requirements under paragraph (3).

Climate Change Agreement exemption

50.—(1) Participants are exempt from the requirements referred to in paragraph (3) where at least 25% of their footprint is covered by a target under a climate change agreement.

(2) Participants fall within paragraph (1) where that percentage is met over the course of the first scheme year of a phase.

(3) The requirements are those imposed by—

- (a) article 38 (residual measurement list)
- (b) article 39 (annual report);
- (c) article 41 (performance commitment); and
- (d) article 44 (record keeping), except in relation to records relevant to the exemption.

(4) The exemption has effect for the duration of the relevant phase, provided that the participant continues to be covered by a climate change agreement (whether or not the same agreement).

(5) (a) Part 1 of Schedule 18 (climate change agreement exemption) applies in the case of a group; and

- (b) Part 2 of that Schedule contains other provisions relevant to the exemption, in particular regarding the constituent persons to whom any exemption under this article or that Schedule applies.

(6) For the purpose of paragraph (5)(a), a participant is a group where that participant is, or includes, a group at the end of the first scheme year of the relevant phase.

(a) 1986 c.45.
(b) 1985 c.66.
(c) S.S.I. 2008/143.
(d) S.I. 1989/2405 (N.I.19), as amended.

PART 5

Requirements on persons other than participants

CHAPTER 1

Disclosure by persons not qualifying

Non qualifiers' disclosure: application

51.—(1) This Chapter applies to—

- (a) an eligible person who meets the criteria under sub-paragraphs (a) and (b) of article 17; and
- (b) any combination of two or more eligible persons who fall within—
 - (i) article 23; and
 - (ii) sub-paragraphs (a) and (b) of article 24.

(2) In the remainder of this Chapter, “eligible person” means—

- (a) the person to whom paragraph (1)(a) refers; or
- (b) the combination of persons provided for by paragraph (1)(b).

Non qualifiers' disclosure: where the requirement arises

52.—(1) An eligible person must comply with article 53 where, at any time during a qualification year—

- (a) that person is the customer in respect of a supply of electricity; and
- (b) the quantity of any part of that supply is ascertained by a settled half hourly meter.

(2) In the case of an eligible person to whom article 51(1)(b) applies, for the purpose of assessing whether the criteria specified in paragraph (1) above are met by that person, each constituent person is assessed—

- (a) in respect of the entire period of the qualification year; and
- (b) irrespective of the legal relationship of those persons with each other, if any, at any point during that year prior to the qualification day,

and those criteria are met where they are met by any, or any combination, of those persons.

Non-qualifiers' disclosure: information to be provided

53.—(1) An eligible person must provide the administrator with the following particulars—

- (a) a list of all its settled half hourly meters;
- (b) any meter identification numbers for those meters;
- (c) a statement—
 - (i) confirming whether or not the quantity of electricity supplied in respect of the categories of supplies specified in paragraph (2) equals or exceeds 3,000 MWh during the qualification year; and
 - (ii) where that amount is equalled or exceeded, confirming the total quantity of those supplies;

and

- (d) where—
 - (i) those supplies exceed 6,000 MWh; but
 - (ii) the eligible person is not required to participate by virtue of article 20 (or that article as it applies in the context of article 25(1)(b)),a statement of that fact.

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- (2) The supplies referred to in paragraph (1)(c) are—
- (a) supplies by settled half hourly meters;
 - (b) supplies by reference to settled half hourly meters; and
 - (c) remotely read supplies.

Non-qualifiers' disclosure: further provisions

- 54.**—(1) The eligible person must provide the information required by article 53—
- (a) in the case of the qualification year for the first phase, by 30th September 2010; and
 - (b) in the case of the qualification year for subsequent phases, by the last working day of July during the second scheme year of the relevant phase.
- (2) In the case of an eligible person to whom article 51(1)(b) applies, responsibility for compliance with the requirements imposed by this Chapter, and any liability for non-compliance, is determined on the same basis as if that combination of persons were a combined participant.

CHAPTER 2

Requirements on suppliers etc

Electricity suppliers etc: qualification information for the administrator

55.—(1) Subject to paragraph (5), the administrator may, for the purpose of identifying potential participants, require an electricity supplier or an electricity distributor to provide it with information relating to any meter for which that supplier or distributor has responsibility.

(2) Where the administrator requires the provision of such information, the supplier or distributor must comply with that requirement by the relevant deadline.

(3) The information which may be required may, in particular, include the following—

- (a) the meter identification number of any meter;
- (b) the premises in which that meter is located;
- (c) the customer in respect of the relevant supply;
- (d) the address at which the supplier bills that customer for that supply; and
- (e) the quantity of electricity supplied to that customer as ascertained by that meter or, in the case of a settled half hourly meter, by reference to that meter.

(4) For the purpose of paragraph (1), an electricity distributor is—

- (a) an authorised distributor within the meaning of section 64(1) of the Electricity Act 1989(a); and
- (b) [] within the meaning of [] of the Electricity (Northern Ireland) Order 1992(b).

(5) This article applies in so far as that information cannot be obtained under the powers provided by Schedule 4 to Climate Change Act 2008.

(6) Any requirement to provide information imposed under this article must be imposed by notice; that notice must allow at least two months for the response.

Electricity suppliers: information for potential participants etc

56.—(1) The administrator may require electricity suppliers to provide any person, or any category of person, with information falling within the description in paragraph (2); and, if it does, the electricity supplier must comply with that requirement by the relevant deadline.

(2) The information covered by this paragraph is—

(a) 1989 c. 29; the definition of “authorised distributor” inserted by section 108 of, and paragraphs 24 and 38(1) and (2) of Part II of Schedule 6 to, the Utilities Act 2000 (c.27).

(b) S.I. 1992/231 (N.I.1).

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- (a) information indicating whether that person, or that person in combination with any other person, might, on the basis of information available to that supplier, be required to—
 - (i) participate in the scheme; or
 - (ii) provide information to the administrator under Chapter 1 of this Part;and
 - (b) any more general information of a category the administrator may specify in connection with the following requirements of this Order—
 - (i) registration; and
 - (ii) the provision of information under Chapter 1 of this Part.
- (3) Any requirement to provide information imposed under this article must be imposed by notice; that notice must allow at least two months for compliance.

Supply statements

- 57.**—(1) Where a participant requests it in accordance with paragraph (2), a supplier must provide a statement in accordance with Schedule 19 (supply statements) relating to a scheme year.
- (2) The request referred to in paragraph (1) must be made—
 - (a) in writing, unless the supplier agrees otherwise; and
 - (b) by the final working day of February of the relevant scheme year.
 - (3) The supplier must provide that statement within six weeks of the end of the relevant scheme year.

PART 6

Functions of the administrator relating to Parts 2 to 5

CHAPTER 1

General provisions

The administrator's powers and duties

- 58.**—(1) The administrator may or, where the relevant article so provides, must—
- (a) postpone deadlines in accordance with article 59;
 - (b) obtain information in accordance with Chapter 2 of this Part;
 - (c) publish information relating to participants in accordance with Chapter 3; and
 - (d) enforce the requirements of the scheme in accordance with Chapter 4.
- (2) The administrator's functions referred to under paragraph (1) relate to the requirements on participants, and other persons, imposed by, or under, Parts 2 to 5 of this Order.
- (3) Except in Chapter 3 of this Part, the persons appointed as administrator under article 4(1) must each carry out the functions of the administrator but must ensure that, between them, they—
- (a) exercise those functions in a way that ensures a coherent and effective performance of those functions—
 - (i) in relation to any person on whom requirements are imposed under this Order; and
 - (ii) across the United Kingdom as a whole;and
 - (b) publicise the relevant administrative arrangements for the exercise of those functions.

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Postponement of deadlines

- 59.**—(1) The administrator may postpone any deadline where—
- (a) technical problems relating to its website have prevented access to it, or its use for any purpose; and
 - (b) in all the circumstances, the administrator considers that, by reason of that lack of access, it would be unreasonable to require compliance with a deadline imposed by this Order.
- (2) Where the administrator is of the opinion in paragraph (1)(b), it may—
- (a) substitute a new deadline for the one postponed; and
 - (b) if it does so—
 - (i) set the new deadline by reference to a number of working days, beginning with the working day after the deadline being postponed, which it considers reasonable; and
 - (ii) use its best endeavours to give participants timely notice of the new deadline, by, where possible, notice to them on the Registry and by e-mail.

CHAPTER 2

Powers to obtain information

Information powers: general

- 60.**—(1) Subject to paragraph (2), the administrator may—
- (a) require the provision of information in accordance with articles 61 and 62; and
 - (b) exercise the powers of audit and verification conferred by article 63.
- (2) No requirement imposed by the administrator by virtue of paragraph (1) compels the production by any person of a document which—
- (a) except in relation to Scotland, that person would on grounds of legal professional privilege be entitled to withhold production on an order for discovery in an action in the County Court or High Court; or
 - (b) in relation to Scotland, contains confidential information made by or to an advocate or solicitor in that capacity and which that person would be entitled to withhold production on an order for the production of documents in an action in the Court of Session.
- (3) The administrator—
- (a) may delegate the exercise of its powers under this Chapter; and
 - (b) must delegate that exercise, in any case where, without that delegation, it would be exercising those powers in relation to itself as a participant.

Information regarding compliance

- 61.**—(1) The administrator may require any person to provide any information that it considers necessary to assess—
- (a) that person's compliance with any requirement of the scheme; or
 - (b) whether such a requirement applies in the case of that person.
- (2) A requirement to provide information imposed by virtue of paragraph (1) must be imposed by notice; that notice must specify a date by which the information is to be provided.

Information regarding a participant's business

- 62.**—(1) The administrator may require participants to provide any information relating to their activities or business, for the purposes of—
- (a) the publication of information under Chapter 3 of this Part;
 - (b) obtaining contextual information about the activities of participants; or

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(c) assessing the effect and functioning of the scheme.

(2) For the purpose of obtaining information under paragraph (1)(b), the administrator must prepare, maintain and review a list of categories of business activities and sectors.

(3) A requirement to provide information imposed by virtue of paragraph (1) must be imposed by notice; that notice must specify a date by which the information is to be provided.

Audit and verification of information

63.—(1) The administrator may, for the purpose of monitoring compliance with the requirements of this Order—

- (a) audit the records of any participant; and
- (b) take such steps as it considers necessary to verify—
 - (i) any information contained in those records; or
 - (ii) any other information provided to it by, or on behalf of, any person.

(2) The steps referred to in paragraph (1) may include an inspection of premises, in accordance with arrangements agreed between the administrator and the person concerned.

CHAPTER 3

Publication of information

Publication of information: requirements

64.—(1) The administrator must publish—

- (a) performance tables, in accordance with articles 65 and 66; and
- (b) other information relating to participants, in accordance with article 67.

(2) In publishing any information relating to a participant, the administrator—

- (a) may refer to a participant by a name with which it considers the public most readily associates that participant and its business; but
- (b) before doing so, must take into account any representation by that participant, in so far as that participant has not previously made the relevant representation.

(3) The requirements under this Chapter must be performed by the Environment Agency.

Performance tables: general

65.—(1) The performance tables—

- (a) must be published as soon as practicable after the reporting deadline relating to the relevant scheme year; and
- (b) must—
 - (i) score; and
 - (ii) rank participants, in comparison with one another,in respect of their performance in the relevant scheme year, where those participants have been required to submit an annual report for that year.

(2) For the purpose of paragraph (1)(b), the performance of participants is their performance in relation to the subject matter of the tables required for the relevant scheme year under article 66.

(3) The following are treated as separate participants for the purpose of the compilation of performance tables—

- (a) in the case of a determination under article 12—
 - (i) the relevant government participant; and
 - (ii) the relevant subsidiary,

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- including in respect of any period prior to that determination; and
- (b) in the case of a takeover occurring during a scheme year in respect of which a participant is required to provide an annual report for the purposes of a particular phase—
 - (i) the participant as constituted during that scheme year, as a result of the takeover; and
 - (ii) that participant as constituted during, and after, the first scheme year in respect of which it is required to provide an annual report for the purposes of the next phase,(in so far as that participant has remained in the scheme in accordance with this Order, and is not treated as a new participant further to a later takeover, merger or de-merger).

Performance tables: subject matter

- 66.**—(1) The subject matter of the performance tables is—
- (a) in respect of the first scheme year of the first phase, early action only;
 - (b) in respect of the second and the third scheme years of that phase—
 - (i) early action;
 - (ii) absolute emissions reductions;
 - (iii) relative emissions reductions; and
 - (iv) overall performance;and
 - (c) in respect each scheme year in a subsequent phase, for which a participant is required to provide an annual report under article 39—
 - (i) absolute emissions reductions;
 - (ii) relative emissions reductions; and
 - (iii) overall performance.
- (2) A separate performance table must be published in respect of each subject matter.
- (3) The content of each subject matter is specified in Part 1 of Schedule 20 (performance tables etc).
- (4) Part 2 of that Schedule contains further requirements relating to the relevant subject matter, and the publication of each performance table.

Publication of other particulars

- 67.** The information required to be published under this article is—
- (a) the information specified in Part 3 of Schedule 20 in relation to each participant, in so far as that information has been made available to the administrator; or
 - (b) in so far as no such information has been made available to the participant, that fact.

CHAPTER 4

Enforcement

Inspections etc

- 68.**—(1) Subject to paragraph (2), the administrator may—
- (a) enter premises in accordance with Part 1 of Schedule 21 (inspections); and
 - (b) exercise the related powers conferred by that Part.
- (2) The powers referred to in paragraph (1)(a) and (b) may only be exercised—
- (a) in the case of paragraph (1)(a), where the administrator obtains a warrant in accordance with Part 2 of Schedule 21; and

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- (b) in any event, where the administrator reasonably believes there has been a failure to comply with the requirements of this Order.

Enforcement notices

69.—(1) The administrator may serve a person with an enforcement notice where the administrator considers that a person has contravened, is contravening, or is likely to contravene, any requirement imposed by or under this Order.

(2) An enforcement notice must—

- (a) state that the administrator is of the opinion referred to in the preceding paragraph;
- (b) specify the matters constituting the contravention or the matters making it likely that the contravention will arise, as the case may be;
- (c) specify the steps that must be taken to remedy the contravention or to remedy the matters making it likely that the contravention will arise, as the case may be; and
- (d) specify the period within which those steps must be taken, or that they must be taken immediately where this is the case.

(3) An enforcement notice may be withdrawn at any time.

(4) Subject, in the case of civil penalties, to any provision in Schedule 22, neither the service of an enforcement notice, nor a decision by the administrator not to serve one, has any effect on—

- (a) any immediate, or ongoing, liability of the relevant person to a civil penalty; or
- (b) the taking of any decision to prosecute that person for any criminal offence,

in respect of any contravention which has taken, or is taking, place.

Determination of information

70.—(1) This article applies where a person is required to provide information and either—

- (a) that person does not do so; or
- (b) the administrator considers that the information provided is incomplete, inaccurate or unreliable.

(2) The administrator may, where it considers it necessary for the purpose of the scheme (or where it is required to do so in the context of the imposition of a civil penalty)—

- (a) make its own determination of the relevant information as best it can, having regard to—
 - (i) any other information or evidence known to it; and
 - (ii) any representation by the relevant person;
- and

- (b) treat that information as if it had been provided by that person.

(3) Paragraph (2)(b) does not affect a person's liability to a civil penalty or to prosecution for any criminal offence in respect of any information it has provided, or failed to provide.

Imposition of civil penalties

71.—(1) Subject to paragraph (2), the administrator must impose—

- (a) the civil penalties required by Part 1 of Schedule 22 (civil penalties) in respect of each failure to comply with this Order identified in that Part; and
- (b) each penalty specified for that failure, where more than one penalty is specified in that Part.

(2) The administrator may impose a lesser penalty, or waive that penalty (or any one of those penalties, as relevant) entirely, where the administrator is satisfied that—

- (a) a person's failure has occurred despite that person making every possible effort to comply with this Order, in relation to the relevant obligation, in so far as it was capable; and

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- (b) in all the circumstances, it is appropriate to lessen or waive that penalty, having regard to the effective and fair functioning of the scheme as a whole.
- (3) Further provisions as to civil penalties are contained in Part 2 of Schedule 22.

PART 7

Allowances and trading

CHAPTER 1

Allowances and accounts

Allowances and accounts: general

72.—(1) Participants and other persons (“third parties”) may, subject to paragraph (4), where they are account holders—

- (a) hold allowances;
- (b) cancel allowances, by request made to the administrator; or
- (c) in accordance with Chapter 2 of this Part—
 - (i) trade allowances with any other account holder; or
 - (ii) otherwise transfer allowances between accounts (whether those accounts are accounts held by the same or different account holders).

(2) An allowance means a tradeable allowance allocated and issued pursuant to regulations made by the Treasury under section 21 of the Finance Act 2008(a).

(3) An account holder is any person in whose name an account subsists.

(4) Paragraph (1) is subject to—

- (a) the requirements imposed on account holders by or under this Part; and
- (b) the exercise by the administrator of its powers and obligations under Chapter 3 of this Part; and
- (c) article 86.

(5) The functions imposed on the administrator under this Part must be performed by the Environment Agency.

Validity of allowances

73.—(1) Allowances are valid for use in accordance with this article.

(2) Subject to paragraph (3), an allowance is valid for any use permitted or required under this Order from the beginning of the scheme year for the purpose of which it is allocated.

(3) An allowance allocated for the purpose of a scheme year during the first phase—

- (a) is valid until, and including, the reporting deadline for the final scheme year of that phase; and
- (b) thereafter, subject to article 43(3), may not be used for any purpose.

Accounts

74.—(1) A participant may have one or more accounts; but if it has more than one, only one account has the status of a compliance account for the purpose of the performance commitment.

(2) Accounts are provided online on the Registry established under Part 8 of this Order.

(a) 2008 c.9.

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- (3) Paragraph (4) applies in the case of a combined participant.
- (4) Unless the participant and administrator agree alternative arrangements—
 - (a) the compliance account is opened in the name of the primary member; and
 - (b) that primary member is taken to have authority to access the account, and make use of allowances, on behalf of the participant as a whole,

but nothing precludes that person, or any other constituent person, from opening any other account (whether or not on behalf of, or in relation to, that participant).

- (5) Accounts may be accessed by a representative of an account holder.

CHAPTER 2

Trading of allowances

Meaning of “trade”

75. In this Chapter, a “trade”—

- (a) means a transaction involving the transfer of an allowance between account holders; and
- (b) includes any other transfer of allowances.

Persons entitled to trade

76. An account holder may trade with any other account holder—

- (a) in the case of a participant, subject to—
 - (i) the imposition of the civil penalty of blocking; and
 - (ii) that trade not involving any number of allowances in respect of which article 43(1)(b) requires that no further use be made;
- and
- (b) provided that—
 - (i) the account holder has access to the Registry in accordance with Part 8; and
 - (ii) the transferor has sufficient allowances in its account to enable that trade to take place.

Notification and conclusion of trades

77.—(1) Where a trade takes place, the transferor must notify the administrator of—

- (a) the identity of the transferee;
- (b) the account to which the allowances are to be transferred;
- (c) the number of allowances to be transferred; and
- (d) if the allowances to be transferred are of any particular description, that description.

(2) That notification must be made—

- (a) through the Registry; and
- (b) as near as possible to the time the parties agree for the transfer of the allowances between the relevant accounts (irrespective of whether the agreement to trade has been concluded at any different time).

(3) For the purpose of this Order, no trade is deemed to have occurred—

- (a) unless the notification required by paragraph (1) has taken place; and
- (b) until the relevant transfer of allowances is reflected in the relevant accounts in accordance with article 80(b).

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CHAPTER 3

Functions of the administrator

SECTION 1

Obligations of the administrator

Requirement to establish accounts

78.—(1) Subject to any other provision of this Part or of Part 8, and to the payment of any charge, the administrator must establish, and use its best endeavours to maintain, accounts.

(2) The accounts required to be established and maintained under paragraph (1) are—

- (a) accounts for persons wishing to become, or remain, account holders; and
- (b) any other account the administrator considers necessary in order to record—
 - (i) the allowances held by each account holder at any given time; and
 - (ii) collectively, the issue, trades and cancellation of allowances.

Identification of allowances

79. The administrator must identify each allowance with sufficient precision—

- (a) to allow it to be tracked through any trade or transfer; and
- (b) to record the following particulars in relation to its allocation—
 - (i) the scheme year in respect of which it was allocated;
 - (ii) the particular allocation at which it was allocated, and the date of the allocation; and
 - (iii) any category of that allocation, as may be provided for by the regulations referred to in article 72(2).

Updating of accounts

80. The administrator must—

- (a) where it is required to cancel allowances under this Order (or where it is empowered, and chooses, to do so), ensure that, as soon as practicable after that requirement arises (or the relevant decision is made), the balance of allowances in the relevant account reflects that cancellation; and
- (b) where it is notified of any trade or transfer, ensure that—
 - (i) as soon as practicable after that notification; but
 - (ii) in the case of a notification which is not made on a working day, not, in any event, before the next working day,

the balance of allowances in each of the relevant accounts is updated to reflect the transfer of allowances between those accounts.

SECTION 2

Powers of the administrator

General powers

81.—(1) The administrator may (or, where another provision of this Order so requires, must)—

- (a) cancel allowances—
 - (i) as required by this Order;
 - (ii) where allowances cease to be valid; or may no longer be used; or
 - (iii) where sub-paragraph (e)(ii) applies in the case of an account holder;

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- (b) block the transfer of allowances from one account to another, including in any case where a trade has been agreed between account holders, where—
 - (i) article 43(1)(b) applies;
 - (ii) the civil penalty of blocking is imposed; or
 - (iii) the administrator has reasonable grounds to suspect dishonesty or fraud;
- (c) move allowances from one account to another for the purpose of rectifying any errors or omissions arising from the conduct of its functions under this Part, provided that the administrator first informs the relevant account holders of any such intervention and the reasons for it, and considers any representation by those persons;
- (d) suspend an account holder's access to an account, or the access of account holders generally, in so far as necessary to maintain the security, and adequate functioning, of the Registry;
- (e) close accounts where an account holder does not use the relevant account and—
 - (i) does not wish to use that account; or
 - (ii) cannot, by reasonable effort, be traced;and
- (f) require account holders to—
 - (i) provide any information which the administrator considers necessary for the effective performance of its functions under this Part; or
 - (ii) pay any charge to cover its administrative costs under article 89.

(2) In the case of paragraphs (1)(a), (b) and (c), where the account holder holds a greater number of allowances than the number required to be cancelled, blocked or moved ("the required number"), the administrator may cancel, block or move allowances, up to the required number, of any identity or category as it considers appropriate.

Trading Platform

82. The administrator may—

- (a) for the purpose of developing a market in allowances, establish an online facility (a "trading platform") in which account holders can contact each other to facilitate allowance trading; and
- (b) where it does so, make access to that trading platform subject to—
 - (i) security provisions of the kind established by article 86 (in so far as that trading platform is not established on the Registry, to which that article applies); and
 - (ii) the payment by its users of a charge to cover its administrative costs under article 89.

PART 8

The Registry

Requirement to establish the Registry

- 83.—**(1) The administrator must establish and maintain a Registry in accordance with this Part.
(2) The requirement imposed by paragraph (1) must be performed by the Environment Agency.

Nature and functions of the Registry

- 84.—**(1) The Registry must be established on the administrator's website.
(2) The Registry must contain—
 - (a) facilities to enable communications between—

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- (i) the administrator; and
 - (ii) participants, or any other account holder;
- and
- (b) the accounts established under Part 7.

Registry access

85.—(1) Subject to paragraphs (2) and (3), and article 86, the administrator must use its best endeavours to ensure access to the Registry—

- (a) during each working day; and
- (b) as far as practicable, at other times.

(2) The administrator may impose any reasonable requirements, of an administrative nature, on participants and other account holders so as to enable the adequate functioning of the Registry.

(3) Where, for technical reasons, the administrator is not able to comply with paragraph 1(a), the administrator must, in so far as possible, put in place alternative methods of communication.

Security

86.—(1) The administrator must use its best endeavours to ensure the security of the Registry and, in particular—

- (a) the communication facilities and accounts; and
- (b) the information relating to participants and other persons,

held within it.

(2) In particular, the administrator must not grant a person access to the Registry unless—

- (a) (i) it has verified; and
- (ii) remains satisfied with regard to, the identity of any person to be given such access, or who is to be given it on behalf of a participant or other account holder; and
- (b) (i) it has agreed reasonable security safeguards for ongoing access; and
- (ii) the relevant person continues to comply with those safeguards.

(3) The administrator may, where it considers it necessary, suspend a person's access (in whole or in part) in accordance with paragraph (1), or access generally, in particular where—

- (a) security has been compromised by any person; or
- (b) a person has attempted to misuse the Registry, in particular, in cases where the administrator has reasonable grounds to suspect fraud or dishonesty.

Online information

87.—(1) The administrator must provide the following information within the Registry—

- (a) for each account holder—
 - (i) the number of allowances in their account;
 - (ii) a summary of trades and transfers, and of the cancellation of allowances, during the present and the previous five compliance years, or for as long as the participant has participated in the scheme where this is a shorter period;
- and
- (b) for participants, the following information, in addition to the information covered by sub-paragraph (a)—
 - (i) the participant's emissions as reported in that participant's most recent annual report;

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- (ii) between the end of a compliance year and the related reporting deadline, the number of allowances held in that participant's compliance account which are valid for use in that participant's performance commitment for that year; and
- (iii) any other relevant notifications about matters affecting the participant.

(2) The administrator must ensure that the information provided to an account holder or participant under paragraph (1) is not accessible to any other person.

PART 9

Other provisions

CHAPTER 1

Provisions relating to the administrator

Information sharing

88.—(1) The administrator may disclose any information held by it in connection with its functions, including information relating to any person, to any national authority.

(2) Any person appointed as administrator under this Order may also disclose such information to, and be provided with such information, by—

- (a) any other person so appointed; or
- (b) any person to whom the administrator has delegated the performance of its functions in accordance with article 60(3), where the information is relevant to that function.

Imposition of charges

89.—(1) The administrator may require participants and account holders to pay charges in accordance with that Schedule 23 (charges).

(2) The charges which may be imposed are—

- (a) those charges prescribed by Part 1 of that Schedule;
- (b) any charge imposed in accordance with Part 2 of that Schedule; or
- (c) a combination of both, provided that the same cost is only recovered once.

Notices and service of documents

90. Schedule 24 (notices and service of documents) applies in respect of—

- (a) the service of any notice, or any similar communication of information; and
- (b) the service of any document,

by the administrator to any other person.

Community allowances

91.—(1) The Environment Agency must, where regulations referred to in article 72(2) provide for it, and subject to paragraph (2), acquire one or more Community tradeable allowances (within the meaning of section 16(6) of the Finance Act 2007^(a)).

(2) The Environment Agency must—

- (a) not acquire such an allowance by taking part in any allocation of allowances conducted pursuant to regulations, or a Treasury scheme, made under section 16 of that Act; and

(a) 2007 c.11.

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- (b) take appropriate measures to ensure that those allowances are not thereafter used for any other purpose.

Administrator as participant

92.—(1) This article applies to—

- (a) the Environment Agency; and
- (b) the Scottish Environment Protection Agency (in this article, “SEPA”),

where either, or both, are participants (or constituent persons of a participant) in the scheme.

(2) The following are appointed as additional administrators—

- (a) the Secretary of State and the Welsh Ministers, in relation to the Environment Agency; and
- (b) the Scottish Ministers, in relation to SEPA.

(3) The additional administrators—

- (a) must ensure, by way of appropriate oversight, that the scheme is applied fairly in relation to the Environment Agency or SEPA (as relevant), in comparison with other participants; and
- (b) may exercise any power of the administrator for that purpose.

CHAPTER 2

Miscellaneous

Appeals

93.—(1) A person may appeal against any of the following decisions made by the administrator, where the decision in question has been made in relation to, and affects, that person—

- (a) a determination under articles 7(3) or 70(2);
- (b) (i) any refusal to provide a person with an account; or
(ii) any decision to close, or to suspend a person’s access to, an account;
- (c) a participant’s score in a league table; or
- (d) the imposition of any civil penalty.

(2) Appeals are determined by—

- (a) in the case of a decision made by the Environment Agency—
 - (i) where the person’s principal place of business is in Wales, the Welsh Ministers; or
 - (ii) in any other case, the Secretary of State;
- (b) in the case of a decision made by the Scottish Environment Protection Agency, the Scottish Ministers; and
- (c) in the case of a decision made by the Northern Ireland Department of the Environment, [

(each of which is referred to as the “determining person”).

(3) An appeal must be made within 20 working days of the decision.

(4) The determining person may affirm, revoke or vary the relevant decision.

(5) Schedule 25 (appeals)—

- (a) contains, in Part 1 of that Schedule, further general provisions; and
- (b) specifies, in Part 2 of that Schedule, the procedure for the hearing and determination of appeals; but that Part does not prevent the determining person and the parties to the appeal agreeing any alternative, or expedited, procedures they consider appropriate.

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Offences

94. Schedule 26 (offences) has effect.

Communications

95.—(1) Participants and other account holders must, where possible, and unless agreed otherwise, communicate with the administrator—

- (a) where they are a participant or any other account holder, through the Registry (on the facility established for those persons under article 84(2)(a)); or
- (b) in other cases, through any facilities provided on the administrator’s website.

Periods of compliance

96.—(1) Where this Order requires an action to be taken within a specified period—

- (a) that period begins on—
 - (i) the day of the relevant event or circumstance in relation, and further, to which that action is required to be taken; or
 - (ii) where the period is expressed in terms of working days and that event or circumstance arises otherwise than during a working day, the following working day;
- (b) a person is taken to have complied within that period where that person completes the relevant action during the final day (or working day, where relevant) of that period; and
- (c) where that period is expressed in terms of months and—
 - (i) the first day of that period is the 29th, 30th or 31st day of a calendar month; and
 - (ii) the final calendar month of that period has fewer days,
the final day of that period is the final day of that final calendar month.

(2) Where this Order requires an action to be taken by any date, or day, that requirement is taken to have been complied with where a person completes that action on that date, or during that day (or, in the case of a working day, during that working day).

Application to the Crown

97. This Order applies to the Crown in accordance with, and subject to, Schedule 27 (application to the Crown).

Date

Clerk of the Privy Council

SCHEDULE 1

Article 2(3)

Defined terms

In this Order, the terms in the left hand column of the table below have the meaning set out or referred to in provision of this Order cited in the right hand column—

account	article 78
account holder	article 72(3)
administrator	article 2(1)
allowance	article 72(2)
annual report	article 39
associated person	article 7(2)
blocking	paragraph 1(a) of Schedule 22

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business	article 2(1)
civil penalty	article 71
climate change agreement	article 2(1)
combined participant	article 2(1)
compliance account	article 74(1), (3) and (4)
constituent person	article 2(1)
core consumption	article 31(3)(a)
de-merger	paragraph 10 of Schedule 16
the Directive	article 2(1)
education authority	paragraphs 2, 3 and 5 of Schedule 3
electricity credit	paragraphs 9 and 10 of Schedule 9
eligible person	article 14(1) in the context of Chapter 3 of Part 2; article 51(2) in the context of Part 5
emission	article 2(1)
EU ETS emissions	paragraph 1(b) of Schedule 7
energy	article 2(1)
energy consumption	article 31
enforcement notice	article 69
estimation adjustment	paragraphs 4 to 6 of Schedule 9
footprint	paragraph 2 of Schedule 12
footprint report	article 37
franchisee	paragraphs 1 and 6 to 8 of Schedule 3
franchisor	paragraphs 1 and 6 to 8 of Schedule 3
fuel	article 30(2)
government participant	article 8
group	article 2(1)
group member	article 2(1)
kWh	article 2(2)
merger	paragraphs 6 and 7 of Schedule 16
meter identification number	paragraph 4(b)(ii) of Schedule 10
MWh	article 2(2)
overseas company	article 15(4)
parent	article 7(1)
participant	article 3(1)
partnership	article 15(3)
performance commitment	article 41
phase	article 5
primary member	article 46(5) and (6)
principal subsidiary	article 2(1)
qualification criteria	article 19(1)
qualification day	article 14(2)
qualification year	article 18(2)
qualifying undertaking	article 21 or 26(1); references to a qualifying undertaking include any persons treated as a qualifying undertaking under article 12(4)(b), where relevant.
remotely read supply	paragraph 6 of Schedule 8
reporting deadline	article 35(2)
residual consumption	article 31(3)(b)
residual measurement list	article 38(2)
ROC	article 2(1)
scheme	article 2(1)
scheme year	article 5

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school	in the context of whether or not a school is an associated person of an education authority, paragraphs 4 and 5 of Schedule 3
settled half hourly meter	paragraph 2 of Schedule 8
subsidiary	article 7(1)
supplied gas	article 30(1)(b)
supplier	article 2(1)
supply	article 2(1)
supply by settled half hourly meter	paragraph 1 of Schedule 8
supply by reference to a settled half hourly meter	paragraph 5 of Schedule 8
takeover	paragraph 4 of Schedule 16
tCO ₂	article 2(2)
third party	article 72(1)
trading platform	article 82
transport	paragraphs 3 and 4 of Schedule 7
writing	article 2(1)
working day	article 2(1)

SCHEDULE 2

Article 7(1)

Parents and subsidiaries

General

1. A person is a parent and another person is its subsidiary where—
 - (a) (i) the former person is a person eligible to be a parent; and
(ii) the latter person is a person eligible to be a subsidiary;
and
 - (b) those persons have a relationship of parent and subsidiary in accordance with section 1162 of the Companies Act 2006^(a) (in this Schedule, “the Act”), including where a person is treated as the subsidiary of that parent in accordance with section 1162(5).

Persons eligible to be a parent

2. Subject to paragraph 3, a person eligible to be a parent is—
 - (a) an undertaking, in accordance with section 1161(1) of the Act; or
 - (b) any other person.
3. In this Order, the following are not eligible to be parents—
 - (a) (i) an individual other than a sole trader; or
(ii) a group of individuals, other than a partnership (or unincorporated association);
and
 - (b) any person—
 - (i) who is itself a subsidiary in accordance with this Schedule; or
 - (ii) who is an associated person of another person (but in the case of a franchisee, only to the extent that that person is a franchisee).

(a) 2006 c.46.

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Persons eligible to be a subsidiary

4. A person eligible to be a subsidiary is any person being an undertaking within the meaning of section 1161(1) of the Act, except for an undertaking excluded by paragraph 5.

5. The following undertakings are not persons eligible to be a subsidiary—

- (a) an undertaking to the extent that it is an associated person;
- (b) an undertaking in respect of which a determination has been made under article 12, but only in relation to the relevant government department;
- (c) a body established by or under any enactment;
- (d) an undertaking in which two or more persons eligible to be a parent—
 - (i) have equal voting rights in that undertaking, in accordance with paragraph 2 of Schedule 7 to the Act; and
 - (ii) between them, hold a majority of those voting rights.
- (e) an overseas company, where that company is the subsidiary of a parent but—
 - (i) continues the entirety of its business overseas; and
 - (ii) could not be construed under section 1162(5) of the Act as parent of an undertaking which carries on business in the United Kingdom.

References to subsidiaries

6. Where this Order—

- (a) refers to a subsidiary; and
- (b) in the context of that reference, that subsidiary is identified or referred to by reason of its subsidiary status in relation to another person which is itself a subsidiary (in this paragraph, a “parent subsidiary”) in accordance with this Schedule,

that parent subsidiary may be treated as if it were a parent for the purpose of the provision in question, irrespective of that person not constituting a parent for the general purpose of this Order.

SCHEDULE 3

Article 7(2)

Associated persons

General

1. In this Schedule, the principals and the corresponding associated persons are as follows—

<i>Principal</i>	<i>Associated person</i>
Education authority	School
Franchisor	Franchisee
Greater London Authority	Related bodies
University	College

Education authority and school

2. “Education authority” means—

- (a) in England, subject to paragraph 3, a local authority which is—
 - (i) a county council;
 - (ii) a metropolitan district council;

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- (iii) a non-metropolitan district council for an area for which there is no county council;
 - (iv) a London borough council;
 - (v) the Common Council of the City of London; or
 - (vi) the Council of the Isles of Scilly;
- (b) in Wales, [];
 - (c) in Scotland, []; and
 - (d) in Northern Ireland, the Education and Skills Authority.

3. For the purpose of paragraph 2(a) and (b), until an order under section 162 of the Education and Inspections Act 2006^(a) repealing section 12 of the Education Act 1996^(b) (in this Schedule, “the 1996 Act”) comes into force, “local authority” means a local education authority as defined in section 12 of the 1996 Act.

4. “School”—

- (a) in England and Wales, means any school—
 - (i) including an independent school (as defined in section 463 of the 1996 Act) in relation to which the Secretary of State has entered into an agreement under—
 - (aa) section 482 of the 1996 Act, as substituted by section 65(1) of the Education Act 2002^(c) (academies); or
 - (bb) that section as enacted at any time prior to the substitution referred to (city technology colleges, city colleges for the technology of the arts);

but

- (ii) excluding any other independent school;
- and
- (b) in Scotland, [].

5. A school is an associated person of an education authority—

- (a) in England and Wales where the school—
 - (i) is maintained by the local authority; or
 - (ii) is an independent school as described in paragraph 8(a)(i) situated in the area of the local authority concerned;
- and
- (b) in Scotland, [].

Franchisor and franchisees

6. A franchisor and a franchisee are parties to an agreement (“the franchise”) under or further to which the franchisee—

- (a) carries on business at any premises by way of—
 - (i) the sale or distribution of goods; or
 - (ii) the provision of a service,as provided for by that franchise; and
- (b) presents or equips that premises to a standard or specification which results in that premises having an internal appearance which is substantially uniform with premises belonging to other franchisees of that franchisor or of the franchisor itself.

(a) 2006 c.40.
(b) 1996 c.56.
(c) 2002 c.32.

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7. A person is not a franchisee in relation to any other premises in which that person carries on a business substantially unconnected with the business of the franchise.

8. References to a franchisee include—

- (a) that person, except where paragraph 7 applies; and
- (b) any other person to the extent that that person carries on the business of the franchisee under that franchise.

Greater London Authority and related bodies

9. The following bodies are associated persons of the Greater London Authority(a)—

- (a) the London Fire and Emergency Planning Authority(b);
- (b) the London Development Agency(c);
- (c) the Metropolitan Police Authority(d); and
- (d) Transport for London(e).

University and College

10. “College” means any college, or any institution in the nature of a college within one of the Universities specified in paragraph 11.

11. “University” means the Universities of Cambridge, Durham or Oxford.

SCHEDULE 4

Article 15(3)

Partnerships

Partnership changes

1. A partnership is deemed to continue regardless of changes to the identity, and number, of partners constituting that partnership.

Dissolution

2. Where a partnership is dissolved and its business is substantially carried on by a new partnership (“the successor partnership”), the successor partnership is treated as a continuation of the former partnership.

3. Where a partnership is dissolved and—

- (a) the former partnership consisted, at the time of its dissolution, of no more than two partners; and
- (b) one of those partners substantially carries on the business of the former partnership as a sole trader,

the sole trader is treated as if it were the same person as the partnership.

(a) see section 1(1) of the Greater London Authority Act 1999 (c. 29).

(b) see section 328(2) *ibid.*

(c) see section 1(1) of, and Schedule 1 to, the Regional Development Agencies Act 1998 (c. 45).

(d) see section 5B(1) of the Police Act 1996 (c. 16), inserted by section 310(1) of the Greater London Authority Act 1999.

(e) see section 154(1) of the Greater London Authority Act 1999.

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Change of business status

4. Where a person is a sole trader and—
- (a) enters into partnership with another person; and
 - (b) that partnership carries on that trader's business as the principal business of the partnership,

in this Order, the partnership is treated as if it were the same person as the sole trader.

SCHEDULE 5

Article 30(2)
Article 33(3)(b)

Fuels and measurement

PART 1

Electricity and supplied gas

Electricity

1. Electricity has—
- (a) a measurement unit of kWh; and
 - (b) an emission factor of 0.537.

Supplied gas

2. Supplied gas has—
- (a) a measurement unit of kWh; and
 - (b) an emission factor of 0.185.

PART 2

Fuels

	<i>Measurement unit</i>	<i>Emission factor</i>
Aviation spirit	tonnes	3128
Aviation turbine fuel	tonnes	3150
Blast furnace gas	kWh	0.97
Burning oil/kerosene/paraffin	litres	2.518
Coke oven gas	kWh	0.15
Coking coal	tonnes	2810
Colliery methane	kWh	0.18
Diesel	litres	2.630
Fuel oil	tonnes	3223
Gas oil	litres	2.674
Industrial coal	tonnes	2457
Liquid petroleum gas (LPG)	litres	1.495
Lubricants	tonnes	3171
Waste (see paragraph 3)	tonnes	275
Naphtha	tonnes	3131

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Natural gas	kWh	0.185
Other petroleum gas	kWh	0.21
Petrol	litres	2.315
Petroleum coke	tonnes	3410
Refinery miscellaneous	kWh	0.245
Scrap tyres	tonnes	2003
Solid smokeless fuel	tonnes	2810
Sour gas	kWh	0.24
Waste solvents	tonnes	1597

Meaning of “waste”

3. Subject to paragraph 4, “waste” has the meaning in—

- (a) section 75(2) of the Environmental Protection Act 1990(a); and
- (b) article 2(2) of the Waste and Contaminated Land (Northern Ireland) Order 1997(b).

4. Waste does not include—

- (a) gas which—
 - (i) is derived from landfill sites; or
 - (ii) is produced from the treatment of sewage;or
- (b) any part of that waste which is constituted by any other fuel included in the table above.

Blends of fuels

5. In a case where two or more fuels are blended together to form a single product which is, or may be, consumed for the purposes of a fuel—

- (a) that product is treated as a fuel; and
- (b) the emissions factor of that product is a factor determined on the basis of the proportion of its constituent fuels.

SCHEDULE 6

Article 31(1)

Energy consumption: general

PART 1

Consumption of electricity and supplied gas

The general rule

1. Subject to paragraphs 4 to 6 below, a person consumes electricity or supplied gas where that person is the customer in relation to a supply contract and receives a supply under that contract.

2. For the purpose of paragraph 1—

(a) 1990 c. 43. [The definition of “waste” in section 75(2) substituted by section 120(1) of, and paragraph 88(1) and (2) of Schedule 22 to, the Environment Act 1995 (c. 25)].

(b) S.I. 1997/2778 (N.I.19).

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- (a) a supply contract—
 - (i) is a contract under which a supplier supplies electricity or supplied gas; and
 - (ii) includes a deemed contract between a supplier and an occupier or owner of any premises, as provided for by—
 - (aa) paragraph 3(1) or (2) of Schedule 6 to the Electricity Act 1989(a); or
 - (bb) paragraph 8(1) or (2) of Schedule 2B to the Gas Act 1996(b);
- and
- (b) a person is taken to be a customer where that person—
 - (i) is a party to that supply contract; or
 - (ii) is the person with an obligation to pay for any supplies received under that contract, where there is more than one such party.
3. Consumption of electricity or supplied gas is taken to occur when the supply is made.

Exception for onward supply

4. Paragraph 5 applies where a person (in this Part of the Schedule, “person A”) is supplied electricity or supplied gas but that supply is received for the purpose of its use by another person (“person B”).

5. In a case falling within paragraph 4—

- (a) person B is taken to consume the electricity or supplied gas used by it; and
- (b) person A is taken to consume the remainder (if any).

6. For the purpose of paragraph 4, person B is not taken as the consumer of the relevant supply solely on the basis that person B is the tenant of person A in leasehold premises (or, in Scotland, premises subject to a lease).

PART 2

Consumption of fuels

Consumption of fuels

7. Subject to paragraph 9, a person consumes a fuel where that person purchases or otherwise obtains that fuel.

8. Consumption of a fuel is taken to occur—

- (a) at the time of purchase; or
- (b) if that person receives it later, at that time provided that such receipt is documented.

Exception for onward supply

9. Subject to paragraph 10, a person (“person A”) is not taken to consume a fuel—

- (a) where that fuel is purchased or obtained for the purpose of—
 - (i) its supply or delivery to another person (“person B”); or
 - (ii) its consumption on premises outside the United Kingdom;
- and

(a) 1989 c.29. Schedule 6 substituted by section 51(2) of, and Schedule 4 to, the Utilities Act 2000 (c. 27).

(b) 1986 c.44. Schedule 2B inserted by section 9(2) of, and Schedule 2 to, the Gas Act 1995 (c.45); paragraph 8(2) of Schedule 2B amended by section 108 of, and Schedule 8 to, the Utilities Act 2000 (c.27).

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- (b) to the extent that the fuel purchased or obtained in accordance with sub-paragraph (a) is not used, for the purpose of a fuel, by person A within the United Kingdom.

10. Person A is not taken to purchase or obtain a fuel for its supply or delivery to person B solely on the basis that person B is its tenant in leasehold premises (or, in Scotland, premises subject to a lease).

SCHEDULE 7

Article 31(2)

Energy consumption: exclusions

Energy use resulting in EU ETS emissions

- 1.** Energy is deemed not to be consumed where—
 - (a) that energy is used in an installation to which the Directive applies; and
 - (b) that use results in the release of emissions (“EU ETS emissions”)—
 - (i) being emissions within the meaning of article 3(b) of the Directive; and
 - (ii) in relation to which a participant (or a constituent person) surrenders, or is required to surrender, allowances by or under article 12(3) of the Directive.

Energy use covered by a climate change agreement

- 2.** Energy is deemed not to be consumed where—
 - (a) it is used in a facility covered by a climate change agreement; and
 - (b) that use is one in relation to which a target under that agreement applies.

Energy use in transport

- 3.** Subject to paragraph 4, energy is deemed not to be consumed where it is used in the transport of people or goods.
- 4.** The following are not deemed to constitute transport for the purpose of this Order—
 - (a) the transport of people within premises of—
 - (i) entertainment, recreation or amusement; or
 - (ii) cultural, scientific, historical or similar interest;and
 - (b) conveyor belts, lifts, escalators, and any other similar fixed mechanism or device which is used to move goods or people from one part of a premises to another.

SCHEDULE 8

Article 31(3)(a)

Energy consumption: core consumption

PART 1

Core electricity consumption: supplies for the purpose of article 31(3)(a)(i)

Supply by settled half hourly meter

1. A supply to any premises where that supply is taken through, and its quantity is ascertained by, a settled half hourly meter.

2. “Settled half hourly meter” means any meter which provides a supplier with both of the following—

- (a) measurements to ascertain the quantity of electricity supplied to its customer; and
- (b) measurements for the purpose of half hourly settlement.

3. For the purpose of paragraph 2(b), half hourly settlement means the taking of measurements on a half hourly, or more frequent, basis for the purpose of the calculation of charges payable between that supplier and any other licence holder which—

- (a) relate to the transmission, and trading, of wholesale electricity between those licence holders; and
- (b) are required to be calculated by, or under, the relevant licences (including any arrangements put in place in accordance with those licences).

4. For the purpose of paragraph 3—

- (a) licence holders are the holders, from time to time, of the relevant licences; and
- (b) the relevant licences are—
 - (i) in Great Britain, a licence under section 6(1) of the Electricity Act 1989(a); or
 - (ii) in Northern Ireland, a licence under article 10(1) or (2) of the Electricity (Northern Ireland) Order 1992(b).

Supply by reference to a settled half hourly meter

5. A supply where, or to the extent that, the quantity of that supply is ascertained by the application of a formula or multiple to a measurement taken by a settled half hourly meter (whether or not that measurement is a measurement of any part of that particular supply).

Remotely read supply

6. A supply to any premises where that supply is taken through, and its quantity is ascertained by measurements taken by, a meter which—

- (a) is capable of ascertaining that quantity on a half hourly, or more frequent, basis; and
- (b) is, or has been, read remotely by the customer at any time during—
 - (i) a qualification year; or
 - (ii) a scheme year, or any previous scheme year, during the relevant phase.

(a) Section 6(1) substituted by section 30 of the Utilities Act 2000 (c.27), and further amended by sections 136(1), 145(1) and (5) and 197(9) of, and Schedules 2 and 23 to, the Energy Act 2004 (c. 20).

(b) S.I. 1992/231 (N.I.1).

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Other non-domestic metered supply

7. A supply to any premises where that supply is taken through, and its quantity is ascertained by, a meter which—

- (a) does not fall within the descriptions in paragraphs 2 or 5; and
- (b) (i) is designed and installed for measuring non-domestic supplies of electricity; and
(ii) is capable of recording maximum electricity demand.

PART 2

Core gas consumption: supplies for the purpose of article 31(3)(a)(ii)

Daily read metered supply

8. A supply to any premises where that supply is taken through, and its quantity is ascertained by, a meter which—

- (a) is capable of ascertaining that quantity on a daily, or more frequent, basis; and
- (b) is read by—
 - (i) a supplier; or
 - (ii) an authorised transporter under section 48(1) of the Gas Act 1986(a).

Remotely read metered supply

9. A supply to any premises where the quantity of that supply is taken through, and its quantity is ascertained by, a meter which—

- (a) is capable of ascertaining that quantity on an hourly, or more frequent, basis; and
- (b) is, or has been, read remotely by the customer at any time during a scheme year, or any previous scheme year, during the relevant phase.

Large gas supply points

10. A supply to any premises where, and to the extent that—

- (a) the relevant supply is taken through, and its quantity is ascertained by, any meter; and
- (b) that quantity exceeds 73,200 kWh during the first scheme year of the relevant phase.

SCHEDULE 9

Article 34

Calculation of energy consumption

PART 1

Calculation methodologies

Net electricity consumption

1. Electricity consumption is calculated by—

(a) 1986 c. 44; the definition of “authorised transporter” inserted by section 108 of, and paragraphs 1 and 19(a) of Part I of Schedule 6 to, the Utilities Act 2000 (c. 27).

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- (a) taking the quantity of electricity consumed in the relevant scheme year;
- (b) adding to the amount under sub-paragraph (a)—
 - (i) any estimation adjustment; and
 - (ii) any certificate value;
- and
- (c) subtracting any electricity credit value.

Supplied gas consumption

2. The consumption of supplied gas is calculated by—
- (a) taking the quantity of gas consumed in the relevant scheme year; and
 - (b) adding any estimation adjustment.

Consumption of fuels

3. The consumption of any fuel is calculated by—
- (a) taking the quantity of that fuel which has been consumed during the relevant scheme year; and
 - (b) adding any estimation adjustment.

PART 2

Related provisions

Estimation adjustment

4. In the case of electricity and supplied gas, an estimation adjustment is required where, for at least half of the relevant scheme year, the quantity of that supply has been ascertained otherwise than—

- (a) by a meter reading; or
- (b) in the case of a settled half hourly meter, by reference to such a meter reading.

5. In the case of fuels, the estimation adjustment is required where the participant does not have any evidence of purchase or delivery demonstrating, in respect of the fuel consumed, the quantity purchased by it, or delivered to it (as the case may be), over the relevant scheme year.

6. The estimation adjustment is—
- (a) in the case of electricity and supplied gas, 10% of the quantity of electricity or gas supplied to the participant over the entire scheme year; or
 - (b) in the case of fuels, 10% of the quantity of fuel consumed for which the evidence referred to in paragraph 5 is lacking.

Certificate value

7. The certificate value is required to be added under paragraph 1(b)(ii) where a person is issued, during the relevant scheme year, with one or more ROCs.

8. The certificate value is the quantity of electricity covered by those ROCs.

Electricity credit

9. The electricity credit value is subtracted under paragraph 1(c) where a person—

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- (a) generates electricity in an electricity generating station, other than an electricity generating station excluded by paragraph 10; and
- (b) (i) supplies that electricity to a customer; or
(ii) enables another person to make such a supply.

10. The following kinds of electricity generating stations are excluded from paragraph 9(a)—

- (a) electricity generating stations to which Annex I of the Directive applies;
- (b) nuclear power stations; and
- (c) hydro generating stations (within the meaning of paragraph 11), in respect of any period during which the relevant generating station—
 - (i) carries on pumped storage operations; or
 - (ii) is ineligible for a ROC.

11. For the purpose of paragraph 10(c), “hydro generating station” has the meaning provided by—

- (a) in England and Wales, article 2(1) of the Renewables Obligation Order 2006(a);
- (b) in Scotland, article 2(1) of the Renewables Obligation (Scotland) Order 2007(b); and
- (c) in Northern Ireland, article 2(1) of the Renewables Obligation Order (Northern Ireland) 2007(c).

SCHEDULE 10

Article 36(1)

Registration

General information

1. The following details about the participant—

- (a) its name;
- (b) its principal place of business within the United Kingdom;
- (c) its e-mail and telephone contact points;
- (d) if it is a company—
 - (i) its registered number;
 - (ii) its company name, if different to the name given for (a); and
 - (iii) its registered address, if different to the address given for (b);and
- (e) if it is not a company, a description of its legal status.

Information in respect of groups

2. Where the participant is a group, the information required by paragraph 1 in respect of—

- (a) the parent (if not provided under paragraph 1); and
- (b) any principal subsidiary.

(a) S.I. 2006/1004.

(b) S.S.I. 2007/267.

(c) S.R. 2007/104, as amended by S.R. 207/440.

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Trading or recognised name

3. Any name—

- (a) under which that participant carries on its business, or a significant part of its business; and
- (b) by which the business of that participant is known to the public,

if that name is different to the names supplied under paragraphs 1 and (if relevant) 2.

Confirmation of qualification

4. In the case of a participant other than a government participant—

- (a) a statement that the participant has met the qualification criteria; and
- (b) (i) a full list of any settled half hourly meters on its premises; and
(ii) the meter identification numbers of those meters.

Confirmation of qualification supply

5. In the case of a participant to whom paragraph 4 applies, a statement of the total quantity of the supplies of electricity covered by paragraph 6 which have been supplied to each of the following persons (as relevant) during the year in which qualification is determined—

- (a) in all cases, that participant; and
- (b) where the participant is constituted by a group and one or more principal subsidiaries, each of the following—
 - (i) the parent; and
 - (ii) each principal subsidiary, together with—
 - (aa) any person which is a subsidiary of that principal subsidiary; and
 - (bb) any person who is an associated person of that principal subsidiary or who is an associated person one of the subsidiaries of that principal subsidiary.

6. The supplies of electricity covered by this paragraph are any—

- (a) supplies by settled half hourly meter;
- (b) supplies by reference to settled half hourly meters; and
- (c) remotely read supplies.

Takeovers, mergers and de-mergers

7. Details of any takeover, merger or de-merger which has taken place since the qualification day.

Contact details

8. Details, including contact details, of—

- (a) (i) a director; or
(ii) in cases other than a company, a person of equivalent status, who is responsible at senior management level for compliance with the scheme; and
- (b) two or more officers or employees who have authority to deal with the administrator on behalf of the participant on a day-to-day basis,

indicating, in the case of a combined participant, any of those persons who are not officers or employees of the primary member.

Category of business

9. Confirmation of the business activities undertaken by the participant, or the sectors in which it operates, against the categories set out in any list prepared by the administrator under article 62(2).

SCHEDULE 11

Article 37(1)

Footprint Report

PART 1

Information to be provided by all participants

Information relating to energy consumption covered by the scheme

1. Total core consumption of electricity.
2. The total of any electricity credit value, within the meaning of paragraph 9 of Schedule 9.
3. Total core consumption of supplied gas.
4. Total residual energy consumption by the following—
 - (a) that participant; or
 - (b) where a group member exemption applies to the participant under paragraph 1 of Schedule 18, the participant excluding the group member concerned.

Information relating to energy not covered by the scheme

5. The information specified in paragraph 6, relating to any substance (including a liquid or a gas) which—
 - (a) is not electricity, supplied gas or a fuel (within the meaning of this Order); but
 - (b) which the participant has used as a source of energy (in particular, but not only, by means of the combustion of that substance to release energy for that participant's use).
6. The information referred to in paragraph 5 is—
 - (a) the identity or nature of that substance; and
 - (b) the quantity which has been used, expressed in a suitable unit of measurement.

Confirmation of compilation of residual measurement list

7. A statement—
 - (a) confirming whether or not the participant has compiled a residual measurement list;
 - (b) confirming whether or not any such list complies with article 38;
 - (c) indicating the percentage of the participant's footprint which falls within the following categories of emissions—
 - (i) each of the categories provided for by paragraphs 1(a), (b) and (c) of Schedule 12; and
 - (ii) the residual consumption covered by the residual measurement list.

PART 2

Information to be provided by particular categories of participant

Information to be provided by education authorities

8. Where a participant is, or includes, an education authority, that participant must, in addition to providing the information required by paragraphs 1 to 7, also provide the following information in respect of the schools which are its associated persons, taking those schools as a whole—

- (a) the total—
 - (i) core consumption of electricity; and
 - (ii) core consumption of supplied gas, by those schools; and
- (b) the statement required to be provided by paragraph 7, in respect of those schools.

Information to be provided by climate change agreement exempted participants

9. Where a climate change agreement exemption applies to a participant under article 50—

- (a) the following information relating to the participant, or, in the case of a group member exemption under paragraph 1 of Schedule 18, the group member exempted—
 - (i) its total emissions under this scheme;
 - (ii) its EU ETS emissions, as calculated under the Directive; and
 - (iii) its emissions from energy consumption to which a target under a climate change agreement applies, excluding any such consumption resulting in EU ETS emissions;
- (b) in the case of a participant to whom a group member exemption applies, the emissions from energy consumption to which a target under a climate change agreement applies which are emitted by the combination of the following—
 - (i) those group members; and
 - (ii) any franchisee of those group members;and
- (c) where a residual exemption applies under paragraph 3 of Schedule 18, the total amount of electricity supplied to that participant across the following categories of supply—
 - (i) supplies by settled half hourly meter;
 - (ii) supplies by reference to settled half hourly meters; and
 - (iii) remotely read supplies.

Information to be provided by participants affected by a takeover, merger or de-merger

10. Where a participant has been affected by any takeover, merger or de-merger, full particulars and dates relating to the relevant event.

SCHEDULE 12

Article 38(3)(a) and (6)

Residual measurement list

PART 1

Meaning of terms used in article 38

Regulated emissions

1. A participant's regulated emissions are—
 - (a) emissions from core consumption;
 - (b) EU ETS emissions, calculated in accordance with the Directive; and
 - (c) emissions which—
 - (i) arise from the consumption of energy which is subject to a target under a climate change agreement applying to that participant; and
 - (ii) are not EU ETS emissions,calculated in accordance with that agreement, where it provides for such a calculation, or in accordance with this Order where the agreement does not make such provision.

The footprint

2. A participant's footprint is the total of the following—
 - (a) the participant's regulated emissions; and
 - (b) the participant's emissions from its residual consumption.

The applicable percentage

3. For the first phase the applicable percentage is 90%.
4. For subsequent phases the applicable percentage is—
 - (a) 90%; or
 - (b) a higher percentage under paragraph 7, where both paragraphs 5 and 6 apply.
5. This paragraph applies where a person is, at the same time—
 - (a) a participant for the purpose of the first scheme year of a new phase; and
 - (b) a participant for the purpose of the previous phase.
6. This paragraph applies where—
 - (a) there is a residual measurement list applicable to that participant, or to any constituent person being a group member, in respect of the previous phase; and
 - (b) a percentage equal to, or greater than, 90.5% of that participant's footprint is achieved by adding the following in respect of the first scheme year of the new phase—
 - (i) the residual consumption included on that list; and
 - (ii) that person's regulated emissions.
7. Where paragraphs 5 and 6 apply, the applicable percentage is—
 - (a) the percentage calculated under paragraph 6(b); or
 - (b) where that percentage is not a whole number, the next higher whole number.

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PART 2

Education authorities and schools

General

- 8.** A participant to whom this Part applies must compile separate residual measurement lists—
- (a) in respect of each school, where the school's regulated emissions do not equal or exceed the applicable percentage of the school's footprint; and
 - (b) in respect of the remainder of that participant, where the regulated emissions of that remainder do not equal or exceed the applicable percentage of the footprint of that remainder.

Requirement on schools

9. Each school must ensure that, by the final working day of June following the end of the first scheme year of the phase, it has—

- (a) (i) compiled the residual measurement list; and
(ii) provided a copy of that list to the education authority;
or
- (b) confirmed that no such list is required to be compiled in the case of that school, where this is the case.

10. Compliance with the requirements imposed on a school under paragraph 9 constitutes reasonable assistance for the purpose of paragraph 5 of Schedule 15.

Requirement on the education authority

11. The participant must compile any residual measurement list required in relation to the remainder of that participant by the deadline specified in article 38(5).

Overall compliance by the participant

12. Where a participant is unable to comply in accordance with this article as a result of non, or partial, compliance by the school, the education authority must use its best endeavours—

- (a) to secure compliance by that school; and
- (b) to ensure that the residual measurement list compiled in relation to the remainder of the participant covers a sufficient amount of residual consumption by the school to enable the participant as a whole to comply with article 38, in so far as the education authority is in a position to make a reasonable assessment of that amount.

13. Where a participant demonstrates that the education authority has used its best endeavours in accordance with paragraph 12, that participant is deemed to have complied with article 38.

SCHEDULE 13

Article 39(1)

Annual report

PART 1

Total relevant energy consumption

Energy consumption to be reported

1. Total relevant energy consumption, within the meaning of paragraph 2, denominated in the relevant measurement unit, in respect of the following categories of relevant energy consumption—

- (a) electricity consumption (calculated in accordance with paragraph 1 of Schedule 9);
- (b) supplied gas consumption (calculated in accordance with paragraph 2 of that Schedule); and
- (c) consumption of each fuel (calculated in accordance with paragraph 3 of that Schedule).

Meaning of “relevant energy consumption”

2. For the purpose of paragraph 1, relevant energy consumption is—

- (a) the participant’s core consumption; and
- (b) the residual consumption on—
 - (i) that participant’s residual measurement list; and
 - (ii) any such list applying to that participant as a result of a takeover or merger, or by the participant becoming the parent of a person previously being a subsidiary of another participant (in a case other than a takeover within the meaning of this Order).

PART 2

Other information

Principal subsidiaries

3. Emissions attributable to the total relevant energy consumption of any combination of the following—

- (a) any principal subsidiary; and
- (b) where applicable—
 - (i) any subsidiary of that principal subsidiary; and
 - (ii) any associated person of any of those subsidiaries.

Renewable electricity

4. The total amount of any electricity which the participant has generated from renewable sources, within the meaning of—

- (a) in respect of Great Britain—
 - (i) section 32M of the Electricity Act 1989(a); and

(a) 1989 c.29; section 32M inserted by section 37 of the Energy Act 2008 (c.32).

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- (ii) a renewables obligation order made under section 32(1)(a) of that Act;
- and
- (b) in respect of Northern Ireland—
 - (i) article 55F of the Energy (Northern Ireland) Order 2003(b) (“the 2003 Order”); and
 - (ii) any renewables obligation order made under article 52(1)(c) of the 2003 Order.

ROCs

- 5. In respect of ROCs—
 - (a) the total number of ROCs issued to that participant; and
 - (b) the quantity of electricity covered by those ROCs.

Climate Change Agreements

6. A statement confirming whether or not there have been any changes to the criteria relating to a participant’s eligibility for climate change agreements under, or in accordance with, Schedule 6 to the Finance Act 2000(d).

Information relating to energy not covered by the scheme

- 7. The information specified in paragraph 8, relating to any substance (including a liquid or a gas) which—
 - (a) is not electricity, supplied gas or a fuel (within the meaning of this Order); but
 - (b) which the participant has used as a source of energy (in particular, but not only, by means of the combustion of that substance to release energy for that participant’s use).
- 8. The information referred to in paragraph 7 is—
 - (a) the identity or nature of that substance; and
 - (b) the quantity which has been used, expressed in a suitable unit of measurement.

Statement of compliance

9. A statement that, to its best knowledge, the participant believes the information it has provided to be true.

SCHEDULE 14

Article 44(2)

Record Keeping

PART 1

Specific records

Identity of participant

- 1. Information provided for registration.
-

- (a) Section 32 substituted by section 37 of the Energy Act 2008 (c.32).
- (b) S.I. 2003/419 (N.I.6); article 55F inserted by article 2 of Energy (Amendment) Order (Northern Ireland) 2009 (S.R. 2009/35).
- (c) Article 52 substituted by article 2 of Energy (Amendment) Order (Northern Ireland) 2009 (S.R. 2009/35).
- (d) 2000 c.17, as amended.

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Combined participants

2. In the case of a combined participant, the identity of any person who is at any time a constituent person of that participant, together with the period during which this was the case.

Climate Change Agreement exemption

3. Evidence supporting the applicability to the participant of any climate change agreement exemption.

Personnel and systems

4. Particulars relating to—

- (a) the identity of the personnel with day-to-day responsibility for compliance with this Order, and the period for which those persons held that responsibility; and
- (b) any procedures followed in relation to the collection and collation of relevant information and energy consumption data, and the handling and aggregation of that data.

Suppliers of electricity and gas

5. In respect of suppliers of electricity or supplied gas—

- (a) the identity of those suppliers;
- (b) the premises supplied by each supplier;
- (c) the supplies which constitute core consumption; and
- (d) the period of the relevant supply.

Electricity and gas meters

6. Meters ascertaining the quantity of electricity or supplied gas supplied to a customer at any premises, including—

- (a) the type of meter; and
- (b) any meter identification number for those meters.

7. Any other meter, including any meter used to ascertain the value of an electricity credit.

Corroboration of meter readings

8. In respect of measurements taken by any automatic meter, sufficient statements from suppliers including, if they contain the relevant information, invoices, to corroborate the participant's total consumption from that metering system during the relevant period.

9. In respect of any manual metering system recording energy consumption—

- (a) meter readings at the beginning and at the end of each scheme year; and
- (b) evidence, including relevant invoices, to support those meter readings.

Other energy consumption

10. Records of—

- (a) any other consumption of electricity and supplied gas;
- (b) in the case of the consumption of fuels—
 - (i) the purchase or delivery of the relevant fuel;
 - (ii) the amount of that fuel stored at the beginning and end of the relevant period;
 - (iii) any onward supply of that fuel; and

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- (iv) where blends of fuels have been consumed, a record of those blends;
and
- (c) the method and assumptions used for the purpose of the measurement of the relevant energy consumption.

Disaggregating energy consumption

- 11. Any consumption of energy which—
 - (a) on the basis of it being excluded from; or
 - (b) for any other reason permitted by,

this Order, the participant seeks to disaggregate from any other category of energy consumption.

Estimation adjustment

- 12. Energy consumption in relation to which an estimation adjustment is required, including—
 - (a) the basis on which—
 - (i) the amount of the supply is calculated; and
 - (ii) any estimation is made, including the methods and assumptions used;
 - and
 - (b) the period in respect of which that consumption has been estimated.

Electricity credits

- 13. Any electricity credits claimed, and evidence of—
 - (a) the generation of electricity in relation to which the credit is claimed; and
 - (b) the basis on which the amount of the credit is calculated.

ROCs

- 14. In respect of ROCs—
 - (a) the total number of ROCs issued to that participant; and
 - (b) the quantity of electricity covered by those ROCs.

Special event records

- 15. Unusual or unexpected events which, in the participant's opinion, have had a significant effect on—
 - (a) its level of energy consumption; or
 - (b) the accuracy or consistency of measurement.
- 16. Breakdown of any meter, and, where this has happened, a record of—
 - (a) the last reading taken before the breakdown occurred; and
 - (b) the first reading taken after any repair.

Takeover, merger or de-merger

- 17. Any takeover, merger or de-merger.

Reporting and correspondence

- 18. Any information provided to, and correspondence with, the administrator.

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Mandatory documentation

19. A participant's residual measurement list and, in the case of an education authority, a copy of each school's list (where applicable), and the statement of records required by article 40.

PART 2

Retention of records

20. The participant must, where—

- (a) that participant; or
- (b) any constituent person,

participated during the foundation year, retain the records relating to that year for the duration of its participation in the scheme.

21. For the purpose of paragraph 20, the foundation year is the later of—

- (a) the 2010-2011 scheme year; or
- (b) the first scheme year for the purpose of which the participant is required to provide an annual report.

22. All records other than those relating to the foundation year must be retained—

- (a) for the duration of the phase to which those records relate; and
- (b) for the following additional period—
 - (i) five full scheme years following the final scheme year of the phase; and
 - (ii) in the case of any dispute with the administrator, until both parties agree that the relevant dispute has been resolved, where this is later,irrespective of whether the relevant person remains a participant after that phase.

SCHEDULE 15

Article 46(3), (4) and (6)

Combined participants

PART 1

The responsible person

Participants including an associated person

1. Where a participant includes an associated person, the responsible person is, subject to paragraph 2, the relevant principal in accordance with Schedule 3.

Participants comprised by, or including, a group

2. In any case where the participant is, or includes, a group—

- (a) the responsible person is the group at the relevant time; and
- (b) responsibility, and liability, is joint and several, including, in relation to any particular group member ("group member A"), in respect of requirements imposed on another group member before group member A became a group member within that group.

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The relevant time

3. “Relevant time” means—
- (a) in relation to a requirement, the time it is required to be discharged; and
 - (b) in relation to a civil penalty, the time the penalty is imposed.

PART 2

Reasonable assistance

Persons required to provide reasonable assistance

4. The requirement to provide reasonable assistance is imposed on—
- (a) persons who have been group members prior to the relevant time but are no longer group members at that time; and
 - (b) persons who are, or have been, a constituent person by virtue of being associated persons.

The requirement of reasonable assistance

5. A person within paragraph 4 must provide the responsible person with all such assistance, including the provision of information or records, as is necessary to enable the responsible person to identify fully, and discharge, the requirements imposed on the combined participant.

PART 3

The primary member

Designation of primary member

6. Subject to paragraphs 7 to 10, the primary member is—
- (a) in a case falling under paragraph 2, the responsible person identified under that paragraph; or
 - (b) in a case falling under paragraph 3, the parent.

Overseas companies

7. Where the primary member identified in accordance with paragraph 6 is an overseas company which does not carry on any business in the United Kingdom, the participant must nominate a substitute in accordance with paragraph 8.

8. The person nominated must be—
- (a) a group member which carries on significant business in the United Kingdom; or
 - (b) a representative carrying on such business, where there is no such group member.

Nomination of member

9. Subject to paragraph 10, in the case of a group, a participant may request that any other group member be its primary member.

Administrator’s reserve power

10. Where the administrator considers that, in all the circumstances, it is more appropriate to treat a person other than the person determined as such in accordance with paragraphs 6 to 9 as the primary member, it may, having regard to any representation by the participant, do so.

SCHEDULE 16

Article 47(2) and (3)

Takeovers, mergers and de-mergers

PART 1

Relevant persons

General

1. For the purpose of this Schedule, a relevant person is—
 - (a) a qualifying undertaking; or
 - (b) a principal subsidiary.
2. That person remains a relevant person—
 - (a) in the case of paragraph 1(a) and (b), for the duration of the phase in question; and
 - (b) in the case of a person who is treated as a qualifying undertaking by virtue of article 12(4)(b), for the period it is required to participate in accordance with article 12(4)(a),

including after the relevant takeover, merger or de-merger (and subsequent takeovers, mergers or de-mergers).

Meaning of “principal subsidiary”

3. For the purpose of paragraph 1(b), “principal subsidiary” means a person who—
 - (a) on the qualification day for the relevant phase, is a subsidiary of—
 - (i) a government participant; or
 - (ii) a qualifying undertaking;but
 - (b) would have met the qualification criteria on its own, or together with any person who, on the qualification day, was—
 - (i) any subsidiary of that subsidiary; or
 - (ii) any associated person of that subsidiary (or of any subsidiary of that subsidiary).

PART 2

The relevant events and participation

Takeover

4. A takeover occurs where a person (an “acquiring person”) who—
 - (a) is a person of a kind to whom article 15 applies; but
 - (b) is neither—
 - (i) a person to whom article 16 applies; nor

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(ii) an existing participant,

becomes the parent of a relevant person.

5. After the takeover, the following persons constitute a combined participant—

- (a) (i) the acquiring person; and
 - (ii) any subsidiary of the acquiring person, other than the persons to whom sub-paragraph (b) applies;
- and
- (b) (i) the relevant person; and
 - (ii) any subsidiary or associated person of the relevant person.

Merger

6. A merger occurs where a relevant person (“participant A”) becomes the parent of a second relevant person to whom paragraph 7 applies.

7. The relevant person to whom this paragraph applies is a relevant person being, prior to the relevant merger—

- (a) a participant other than participant A; or
- (b) a constituent person within such other participant,

(either person referred to in sub-paragraphs (a) or (b) being “participant B”).

8. Subject to paragraph 9, after the merger, the following persons constitute a combined participant—

- (a) participant A;
- (b) participant B; and
- (c) any associated person or subsidiary of either.

9. Paragraph 8 does not affect any requirement on any constituent person within participant A or participant B to continue to participate where that constituent person is not affected by the merger.

De-merger

10. A de-merger takes place where one relevant person ceases to be the subsidiary of another relevant person.

11. After the de-merger, the relevant person which has ceased to be such a subsidiary continues to participate—

- (a) on its own; or
- (b) where it has any subsidiary or associated person, as a combined participant with those persons.

SCHEDULE 17

Article 47(5)

Effect of takeovers, mergers and de-mergers

Interpretation

1. Words and expressions which are defined in Schedule 16, for the purpose of that Schedule, have the same meaning in this Schedule (except in the context of paragraph 9).

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Continuing and new participants

2. In paragraphs 3 and 4—
 - (a) “participant C” is a participant as constituted before the relevant takeover, merger or de-merger; and
 - (b) “participant D” is a participant as constituted after that event.
3. Where the parent of participants C and D is the same person, those participants are treated as a single, continuing, participant.
4. In any other case, participant D is treated as a new participant.

Duration of participation

5. After the relevant takeover, merger or de-merger, the constituent persons of the participant (as constituted as a result of that event) must participate for the following duration—
 - (a) in the case of a person who is an acquiring person, as a result of a takeover, for as long as—
 - (i) that acquiring person remains the parent of a relevant person; and
 - (ii) that relevant person is required to participate in accordance with sub-paragraph (c);
 - (b) any subsidiary of that acquiring person, other than the persons to whom sub-paragraph (c) or (d) apply, for as long as—
 - (i) any relevant person remains its subsidiary; and
 - (ii) that relevant person is required to participate in accordance with sub-paragraph (c);
 - (c) any relevant person, for the duration required of a qualifying undertaking under Chapter 3 of Part 2 (including in cases where that person did not become a participant by virtue of being such an undertaking); and
 - (d) any person who is—
 - (i) a subsidiary; or
 - (ii) an associated person,of any relevant person, for as much of the period during which that relevant person is required to participate as that subsidiary or associated person remains its subsidiary or associated person.

Application of the requirements of this Order

6. Unless the context of any provision indicates otherwise, the requirements placed on the participant by or under this Order, as they relate to the period after the takeover, merger or de-merger—
 - (a) apply in respect of, and in relation to, the energy consumption and emissions of—
 - (i) the relevant person; and
 - (ii) any subsidiary or associated person of that relevant person, for as long as that person remains its subsidiary or associated person,
(in the case of residual consumption, limited to the residual consumption required to be measured and reported by or under this Order); but
 - (b) do not apply—
 - (i) for the remainder of any phase during which the takeover, merger or de-merger takes place; or
 - (ii) where that event takes place at a time covered by the overlap between two phases, for the remainder of the earlier of those phases,

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in respect of, and in relation to, the energy consumption and emissions of the persons referred to in paragraph 5(a) or (b).

Calculation of energy consumption

7. For the purpose of calculating a participant's energy consumption and emissions—
- (a) subject to sub-paragraph (b), a takeover, merger or de-merger is deemed to take place at the beginning of the scheme year during which it occurs; and
 - (b) where there has been more than one such event affecting a participant during that scheme year, the changes deemed to have taken place at the beginning of that scheme year under sub-paragraph (a) are those changes which continue to have an effect on the participant's business at the end of that year.

Principal subsidiaries

8. Paragraph 9 applies in the case of a qualifying undertaking which, further to a takeover or a merger, becomes a subsidiary of another participant.

9. After that takeover or merger, for the purpose of—
- (a) the references to a principal subsidiary in this Order (other than such references in Schedule 16 and in this Schedule, excluding this paragraph); and
 - (b) the obligations imposed by this Order in relation to those subsidiaries,

that person is treated as a principal subsidiary.

Reasonable assistance

10. Paragraph 11 applies where the parties involved in any takeover, merger or de-merger involve two or more persons—

- (a) one (or more) of whom, after that change, is (or are) one participant; and
- (b) others of whom, after that change, are, or are constituted within, another participant.

11. After the relevant takeover, merger or de-merger, each of those participants must, where relevant, provide the other participant with—

- (a) any part of a residual measurement list applicable to the relevant participant, or to any constituent person, as a result of that change;
- (b) copies of all records kept in accordance with article 44 which are relevant to the relevant participant or to any constituent person; and
- (c) any other reasonable assistance so as to enable the relevant participant to comply with the requirements of this Order (as modified by this Schedule) after that change,

in accordance the principles set out in paragraph 5 of Schedule 15 (as applicable).

SCHEDULE 18

Article 50(5)

Climate change agreement exemption

PART 1

Groups

Group member exemption

1. Where the participant is a group, the assessment of the 25% threshold under article 50(1), and the application of any resulting exemption, applies separately in respect of—

- (a) each group member; and
- (b) where that group member is a franchisor, the combination of—
 - (i) that group member; and
 - (ii) the relevant franchisee, where the franchisor in relation to the relevant franchise is that group member rather than one of its subsidiaries.

(and, in this Schedule, an exemption under this paragraph is a “group member exemption”).

Residual exemption

2. Paragraph 3 applies where one or more of the group members qualifies for a group member exemption but other group members do not.

3. Where this paragraph applies—

- (a) the rest of the group (including, subject to paragraph 5 of this Schedule, persons becoming group members after the first scheme year of the relevant phase); and
- (b) any franchisee, from time to time, of those group members,

is exempted where, during the first scheme year of the relevant phase, those group members, and any of their franchisees, consume, between them, less than 1,000 MWh of electricity from electricity supplies to which paragraph 4 applies (and, in this Schedule, an exemption under this paragraph is a “residual exemption”).

4. The supplies to which this paragraph applies are—

- (a) supplies by settled half hourly meters;
- (b) supplies by reference to settled half hourly meters; and
- (c) remotely read supplies.

PART 2

Other provisions

Exclusions

5. Any exemption of a participant by or under article 50 and this Schedule does not apply to—

- (a) any relevant person within the meaning of paragraph 1 of Schedule 16, where such a person becomes a subsidiary of the participant following a takeover or merger unless, prior to that change, it was itself exempted under this Schedule; and
- (b) any person who is, or, after that change, becomes, a subsidiary or associated person of such a person.

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Termination: general

6. Subject to paragraph 7, where a participant ceases to be covered by a climate change agreement—

- (a) the exemption ceases to have effect at the end of the scheme year during which the participant ceases to be covered by a climate change agreement; and
- (b) providing there remains at least one further scheme year of that phase (the “relevant year”), the participant must comply with the requirements imposed by or under all the provisions referred to in article 50(3) by the reporting deadline to the relevant year.

Termination: group exemption

7. Paragraph 8 applies where—

- (a) a participant’s exemptions comprise—
 - (i) two or more group member exemptions; and
 - (ii) a residual exemption;and
- (b) one of the group member exemptions ceases to have effect by virtue of paragraph 6(a).

8. Where this paragraph applies—

- (a) any residual exemption applicable to that group terminates, in addition to the group member exemption in question; but
- (b) any other group member exemption applicable to that group continues to have effect in relation to the group member to which that exemption applies, in so far as that group member remains covered by a climate change agreement.

Termination: takeovers and mergers

9. Where, after—

- (a) the first scheme year of the relevant phase; and
- (b) any takeover or merger,

a participant includes two or more constituent persons who, at that time, became exempt in the context of them then being, or then being constituted within, different participants, paragraphs 5 to 8 apply to those persons as if they continued to be separate participants.

Information and evidence

10. The administrator may require any party to a climate change agreement—

- (a) to provide a copy of that agreement; or
- (b) to disclose any relevant information or evidence relating to that agreement,

whether or not that person is a participant or a constituent person.

SCHEDULE 19

Article 57(1)

Supply statements

Content of statement

1. A supply statement—

- (a) must, if the participant so requests, indicate—

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- (i) the total amount of electricity or gas, or both, that the supplier has supplied to that participant during the scheme year in respect of each supply contract identified by the participant;
 - (ii) the meter identification numbers of the meters which ascertain the quantity of that supply, or which provide any measurements for that purpose; and
 - (iii) the quantity of any supply which is ascertained on the basis of an estimate;
- and
- (b) may, in so far as reasonably practicable for the supplier in the time available, indicate the amount of electricity or gas, or both, that the supplier has supplied to the participant—
 - (i) at any particular premises, or any combination of premises; or
 - (ii) which has been calculated by reference to a settled half hourly meter.

Application to combined participants

- 2. In the case of a combined participant—
 - (a) the primary member is entitled to a supply statement which covers any supplies supplied to it or to any other constituent person; and
 - (b) those other constituent persons are entitled to a supply statement covering their own supplies in relation to any period during which—
 - (i) the relevant person is a constituent person of the participant; and
 - (ii) that person's energy consumption is required to be covered in that participant's annual report.

SCHEDULE 20

Article 66(3) and (4)
Article 67(a)

Performance tables etc

PART 1

Subject matter of tables

Early action

- 1. Early action is constituted by an equal weighting of—
 - (a) the score awarded to a participant under—
 - (i) paragraph 2; or
 - (ii) paragraph 3,as applicable; and
 - (b) the score awarded to a participant under paragraph 5.
- 2. The administrator must award a participant a score equating to 50% where—
 - (a) the totality of a participant's emissions from electricity and supplied gas over during the first scheme year arise from the consumption of relevant supplies; and
 - (b) all of its relevant meters are mandatory.
- 3. In any case other than one covered by paragraph 2, the administrator must award a participant a score reflecting the level of its emissions covered, during the first scheme year of the first phase,

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by sub-paragraph (a) below as a proportion of the level of its emissions covered by sub-paragraph (b) during the same period, where—

- (a) the emissions covered by this sub-paragraph are emissions from those relevant supplies the quantity of which are ascertained by a voluntary relevant meter, or, in the case of a settled half hourly meter, by reference to that meter; and
- (b) the emissions covered by this paragraph are a quantity of emissions calculated by—
 - (i) taking the participant's total emissions from electricity and supplied gas consumption, as measured in that participant's annual report for that year; and
 - (ii) subtracting from that total the emissions attributable to those relevant supplies the quantity of which are ascertained by a mandatory relevant meter, or, in the case of a settled half hourly meter, by reference to that meter.

4. For the purpose of paragraphs 2 and 3—

- (a) “relevant meters” means the meters referred to—
 - (i) in respect of electricity, in paragraphs 2 and 6 of Schedule 8; and
 - (ii) in respect of supplied gas, in paragraphs 8 and 9 of that Schedule;
- (b) “relevant supply” means a supply the quantity of which is ascertained—
 - (i) by those meters; or
 - (ii) in the case of a settled half hourly meter, by that meter or by reference to it;
- (c) those meters are mandatory where they are required to be installed, in relation to the supply during the first scheme year, by or under—
 - (i) the Electricity Act 1989(a);
 - (ii) the Gas Act 1996(b);
 - (iii) Electricity (Northern Ireland) Order 1992(c); or
 - (iv) Gas (Northern Ireland) Order 1996(d),including under any arrangements put in place under the licensing agreements provided for by those enactments; and
- (d) those meters are voluntary, in relation to the supply during the first scheme year, in circumstances where they would not have been required to be installed to ascertain the quantity of that supply by any rules provided for by those arrangements.

5. The administrator must award a participant a score relating to the proportion of a participant's emissions from its energy consumption which, at the end the most recent scheme year, is accredited under either, or both, of—

- (a) the Carbon Trust Standard(e); or
- (b) the Energy Efficiency Accreditation Scheme(f).

Absolute emissions reduction

6. The absolute emissions reduction is the extent of any absolute reduction of a participant's emissions, measured in percentage terms and established by comparing—

- (a) that participant's emissions in the most recent scheme year; and
- (b) that participant's historic average emissions (in accordance with paragraph 13).

(a) 1989 c.29, as amended.

(b) 1986 c.44, as amended.

(c) S.I. 1992/231 (N.I.1)

(d) S.I. 1996/275 (N.I.2).

(e) The Carbon Trust Standard is a scheme administered by the Carbon Trust Standard Company Ltd (company number 6547658), with a registered address at 8th Floor, 3 Clement's Inn, London WC2A 2AZ.

(f) The Scheme is administered on behalf of the Carbon Trust Standard Company Ltd.

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Relative emissions reduction

7. The relative emissions reduction is the extent of any reduction in a participant's relative emissions, measured in percentage terms and established in accordance with paragraphs 8 to 10.

8. For the purpose of paragraph 7—

- (a) relative emissions are calculated by dividing—
 - (i) the participant's emissions in its most recent scheme year; by
 - (ii) the participant's turnover;and
- (b) any reduction is established by the comparison provided for by paragraph 6, as if that paragraph applied to relative emissions.

9. For the purpose of paragraph 8(a)(ii)—

- (a) turnover has the meaning at section 474(1) of the Companies Act 2006^(a), as if that section also applied to business entities other than companies (as relevant); unless
- (b) the participant is, or includes, a public authority or a charity, in which case turnover may be taken, in relation to that public authority or charity, as its total relevant expenditure.

10. For the purpose of paragraph 9(b), total relevant expenditure may be framed as the participant chooses provided that the relevant figure—

- (a) is published in the relevant person's annual accounts;
- (b) does not include capital expenditure; and
- (c) follows a consistent definition, taking one year with another,

and where it is not possible to comply with each of these sub-paragraphs, the administrator must determine a suitable definition having regard to the representations of the participant.

Overall performance

11. Overall performance is the following weighted combination of that participant's scores in the other performance tables—

	Scores relating to the second and third scheme years of the first phase	Scores relating to scheme years in subsequent phases
Early action	20%	
Absolute reduction	60%	75%
Relative reduction	20%	25%

PART 2

Further provisions

Further provisions as to emissions

12. In Part 1—

- (a) the reference to a participant's emissions is to the emissions from the energy consumption that the participant is required to report to the administrator in its annual report; and
- (b) the reference to a reduction includes, where relevant, any increase in those emissions and must be expressed by way of a negative score.

(a) 2006 c. 46.

Calculation of historic average: general

- 13.** Subject to paragraphs 14 to 16, in Part 1 an historic average—
- (a) is a mean average, calculated on the basis of—
 - (i) the preceding five full scheme years, whether or not during the same phase; or
 - (ii) where the participant has participated for a shorter period, each preceding full scheme year,
during which it has been required to submit an annual report; or
 - (b) is the absolute or relative emissions (as the case may be) during the previous scheme year, where the participant has participated for only one full previous scheme year.

Climate Change Agreements

14. Where a participant ceases to be fully covered by a climate change agreement exemption, historic averages are only calculated by reference to scheme years after the exemption ends.

- 15.** Paragraph 16 applies where—
- (a) a participant is, or was, covered by a climate change agreement; and
 - (b) the energy consumption a participant is required to include in its annual report increases as a result of changes to the criteria relating to eligibility for climate change agreements under, or in accordance with, Schedule 6 to the Finance Act 2000(a).

16. The administrator must, in so far as the participant provides supporting information that the administrator considers reliable, in compiling performance tables relating to any participant to whom paragraph 15 refers, use an historic average which takes into account that participant's emissions from any energy consumption which has ceased to be covered by the relevant climate change agreement as a result of the changes referred to in paragraph 15(b).

Takeovers, mergers and de-mergers

17. Paragraph 18 applies where, during a phase, a takeover, merger or de-merger occurs.

18. The administrator must, in calculating the historic averages provided for by paragraph 13 in relation to the relevant participants (including any participant treated as a new participant under paragraph 4 of Schedule 17), make appropriate adjustments to those averages to enable the performance tables from that scheme year onwards to reflect that change.

Failure to provide information

- 19.** Paragraph 20 applies where—
- (a) the administrator requires the provision of information in accordance with Chapter 2 of Part 6; and
 - (b) (i) the participant does not provide that information by the reporting deadline for the relevant scheme year; and
 - (ii) as a result of that failure, the administrator is not able to calculate that participant's ranking and score in respect of one or more of the performance tables.

- 20.** Where this paragraph applies, the administrator must—
- (a) in respect of each relevant performance table other than the overall performance table, award that participant—
 - (i) a bottom place ranking, or, where there is more than one participant in an analogous situation, a joint bottom place ranking; and

(a) 2000 c. 17.

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- (ii) no score;
- and
- (b) in respect of the overall performance table—
 - (i) where the failure does not relate to all of the performance tables covered by sub-paragraph (a), reduce that participant's score and ranking in the overall performance table proportionately; or
 - (ii) where it relates to all of those performance tables, award a ranking and score for the overall performance table in accordance with that sub-paragraph.

PART 3

Information relating to article 67

Total emissions

- 21.** The total emissions of—
- (a) each participant; and
 - (b) in the case of a combined participant, the combination of—
 - (i) any principal subsidiary; and
 - (ii) any subsidiary or associated person of that principal subsidiary.

Principal subsidiaries

- 22.** The absolute reduction in emissions by—
- (a) any principal subsidiary; and
 - (b) any subsidiary or associated person of that principal subsidiary,

in the most recent scheme year, calculated in accordance with paragraph 6 (but without ranking).

Business sector

23. The sector, or sectors (if more than one), in which each participant undertakes its main business activities, against the list referred to in article 62(2).

Evidence of corporate action

24. A statement indicating whether a participant has published the information specified in paragraph 25 in the following public documentation—

- (a) if it is a company, its directors' report; or
- (b) if it is not a company, in an annual public document of equivalent status.

25. The particulars referred to in paragraph 24 are—

- (a) emissions reductions targets, covering—
 - (i) the majority of its emissions from its energy consumption; and
 - (ii) a period of at least five scheme years after the most recent reporting deadline;
- (b) information as to its progress in meeting those targets; and
- (c) the identification of—
 - (i) if the participant is a company, a director responsible for the meeting of those targets; or
 - (ii) if the participant is not a company, an officer or employee of equivalent seniority who has that responsibility.

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26. In the case of a combined participant, the administrator must be satisfied that the participant, taken as a whole, complies with paragraphs 24 and 25.

SCHEDULE 21

Article 68(1)(a) and (2)(a)

Inspections

PART 1

General

Powers of the administrator

1. The powers of the administrator are—
 - (a) to enter any premises any at any reasonable time and, if need be, by force;
 - (b) on entering any premises by virtue of sub-paragraph (a), to—
 - (i) be accompanied by any other person duly authorised by the administrator and, if the administrator has reasonable cause to apprehend any serious obstruction in the execution of its duty, a constable; and
 - (ii) take any equipment or materials required for any purpose for which the power of entry is being exercised;
 - (c) to make such examination and investigation as may in any circumstances be necessary;
 - (d) to direct that those premises or any part of them, or anything in them, must be left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purpose of any examination or investigation under sub-paragraph (c);
 - (e) to take such measurements and photographs and make such recordings as the administrator considers necessary for the purpose of any examination or investigation under sub-paragraph (c);
 - (f) to take samples, or cause samples to be taken, of any articles or substances found in or on any premises which the administrator has power to enter;
 - (g) to require any person whom the administrator has reasonable cause to believe to be able to give any information relevant to any examination or investigation under sub-paragraph (c) to answer (in the absence of persons other than a person nominated by that person to be present and any persons whom the administrator may allow to be present) such questions as the administrator thinks fit to ask and to sign a declaration of the truth of that person's answers;
 - (h) to require the production of, or where the information is recorded in computerised form, the furnishing of extracts from, any records which are required to be kept in accordance with article 44 which it is necessary for the administrator to see for the purposes of an examination or investigation under sub-paragraph (c) and to inspect and take copies of, or of any entry in, the records;
 - (i) to require any person to afford the administrator such facilities and assistance with respect to any matters or things within that person's control or in relation to which that person has responsibilities as are necessary to enable the administrator to exercise any of the powers conferred on it by Part 1 of this Schedule.

Related matters

2. Paragraph 3 applies in any case where the administrator proposes to enter any premises used for residential purposes, or to take heavy equipment on to any premises which are to be entered.

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3. In a case falling within paragraph 2, any entry by virtue of paragraph 1 may only be effected after the expiration of at least seven days' notice of the proposed entry given to a person who appears to the administrator to be in occupation of the premises in question.

4. In relation to any premises belonging to or used for the purposes of the United Kingdom Atomic Energy Authority, the powers under paragraph 1 have effect subject to section 6(3) of the Atomic Energy Authority Act 1954(a) (which restricts entry to such premises where they have been declared to be prohibited places for the purposes of the Official Secrets Act 1911(b)).

5. Where the administrator proposes to exercise the power conferred by paragraph 1 in the case of an article or substance found on any premises, the administrator must, if so requested by a person who at the time is present on and has responsibilities in relation to those premises, cause anything which is to be done by virtue of that power to be done in the presence of that person.

6. No answer given by a person in pursuance of a requirement imposed under paragraph 1(g) is admissible in evidence in England and Wales or Northern Ireland against that person in any proceedings, or in Scotland against that person in any criminal proceedings.

7. Nothing in paragraph 1 compels the production by any person of a document which—

- (a) except in relation to Scotland, that person would on grounds of legal professional privilege be entitled to withhold production on an order for discovery in an action in the County Court or High Court; or
- (b) in relation to Scotland, contains confidential information made by or to an advocate or solicitor in that capacity and which that person would be entitled to withhold production on an order for the production of documents in an action in the Court of Session.

PART 2

Warrants, evidence and compensation

Issue of warrants

8. If it is shown to the satisfaction, in England and Wales of a justice of the peace, in Scotland of the sheriff or a justice of the peace, or in Northern Ireland of a lay magistrate, on sworn information in writing—

- (a) that the administrator is of the belief in article 68(2)(b) in relation to the conduct of the person whose premises the administrator seeks to inspect; and
- (b) that one or more of the conditions specified in paragraph 9 is fulfilled in relation to those premises,

the justice, sheriff or lay magistrate may by warrant authorise the administrator to designate a person who is authorised to exercise the powers paragraph 1 of this Schedule in relation to those premises, in accordance with the warrant and, if need be, by force.

9. The conditions mentioned in paragraph 8(b) are—

- (a) that the person concerned has prevented the administrator from obtaining the relevant information or evidence in accordance with article 63;
 - (b) that the administrator reasonably apprehends that it is, or will be, so prevented;
 - (c) that the premises are unoccupied;
 - (d) that the occupier is temporarily absent from the premises and the case is one of urgency;
- or

(a) 1954 c.32.
(b) 1911 c.28.

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- (e) that an application for admission to the premises would defeat the object of the proposed entry.

10. In a case where paragraph 9 applies, a justice of the peace, sheriff or lay magistrate must not issue a warrant under paragraph 8 by virtue only of being satisfied in accordance with paragraph 9(a) or (b), unless the justice of the peace, sheriff or lay magistrate is also satisfied that—

- (a) the administrator has given the person concerned a reasonable opportunity, and timescale, to cooperate with the administrator to allow it to obtain the relevant information or evidence, or conduct appropriate investigations, in accordance with article 63; and
- (b) that person has not adequately cooperated with the administrator within that timescale.

11. Every warrant under paragraph 8 continues in force until the purposes for which the warrant was issued have been fulfilled.

12. A person designated as the person who may exercise a relevant power must produce evidence of that person's designation and other authority before that person exercises the power.

Information obtained to be admissible in evidence

13. Information obtained in consequence of the exercise of the powers in paragraph 1, with or without the consent of any person, is admissible in evidence against that or any other person.

14. Without prejudice to the generality of paragraph 13, information obtained by means of monitoring or other apparatus installed on any premises in the exercise of a relevant power, with or without the consent of any person in occupation of the premises, is admissible in evidence in any proceedings against that or any other person.

Duty to secure premises

15. A person who, in the exercise of a relevant power enters on any premises which are unoccupied or whose occupier is temporarily absent must leave the premises as effectively secured against trespassers as that person found them.

Compensation

16. Where any person exercises any power conferred by paragraph 1(a) or (b), the administrator must make full compensation to any person who has sustained loss or damage by reason of—

- (a) the exercise by the designated person of that power; or
- (b) the performance of, or failure of the designated person to perform, the duty imposed by paragraph 15.

17. Compensation is not be payable by virtue of paragraph 16 in respect of any loss or damage if the loss or damage—

- (a) is attributable to the default of the person who sustained it; or
- (b) is loss or damage in respect of which compensation is payable by virtue of any other enactment.

18. Any dispute as to a person's entitlement to compensation under paragraph 16, or as to the amount of any such compensation—

- (a) in England and Wales, must be referred to the arbitration of a single arbitrator appointed by agreement between the administrator and the person who claims to have sustained the loss or damage or, in default of agreement, appointed by the Secretary of State;
- (b) in Scotland, must be referred to the arbitration of an arbiter appointed by agreement between the enforcing authority in question and the person who claims to have sustained the loss or damage or, in default of agreement, appointed by the Scottish Ministers; or

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- (c) in Northern Ireland, must be referred to and determined by the Lands Tribunal for Northern Ireland.

19. The administrator is not liable in any civil or criminal proceedings for anything done in the purported exercise of any relevant power if the court is satisfied that the act was done in good faith and that there were reasonable grounds for doing it.

SCHEDULE 22

Article 69(4)
Article 71(1)(a) and (3)

Civil penalties

PART 1

The penalties

Interpretation

1. In this Schedule—

- (a) “blocking” means the blocking of a participant’s compliance account to prevent any transfer of allowances from that account; and
- (b) “publication” means the publication, on the administrator’s website, of—
 - (i) the identity of the relevant participant or other person, referring to that participant by an identity established in accordance with article 64(2); and
 - (ii) the nature of the failure to which the publication relates.

Failure to register

2. Paragraphs 3 and 4 apply in relation to article 36.

3. The failure is any failure to—

- (a) register in accordance with that article; or
- (b) provide the full information required by Schedule 10.

4. The penalty is—

- (a) a financial penalty of £5,000, subject to increase at a daily rate of £500—
 - (i) until such time as the failure is remedied; or
 - (ii) where it has not been remedied before, until the working day prior to the next reporting deadline; and
- (b) publication.

Failure to provide a footprint report

5. Paragraphs 6 and 7 apply in relation to article 37.

6. The failure is any failure to provide any of the information specified in Schedule 11 in accordance with that article.

7. The penalty is—

- (a) a financial penalty of £5,000, subject to increase as follows—
 - (i) for each of the first 40 working days during which the information remains unreported, beginning with the working day following the deadline for the provision

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of that information, an increase at a daily rate of £0.05 for each tCO₂ unreported (calculated by reference to the energy consumption to which paragraphs 1, 3 and 4 of Schedule 11 refer); and

- (ii) at the end of the final working day during that period, by the addition of a further, one off, sum equalling the increase already imposed under sub-paragraph (i);

and

- (b) publication.

Failure to provide an annual report

8. Paragraphs 9, 10 and 11 apply in relation to article 39.

9. The failure is any failure to provide the information specified in Schedule 13 in accordance with that article.

10. Where that information is not fully provided within a period of 40 working days from the reporting deadline, the penalty is—

- (a) a financial penalty of £5,000, subject to increase, in respect of each of those 40 working days, in accordance with paragraph 7(a)(i) above (but calculated by reference to the relevant energy consumption required to be reported under the annual report); and
- (b) publication.

11. Where that the failure continues for a period beyond 40 days, the penalty is as follows—

- (a) that participant's total emissions in relation to its relevant energy consumption for that scheme year, as should have been reported under paragraph 1 of Schedule 13, are deemed (for the purpose of a determination under article 70(2)(a)) to equal its total emissions reported for the most recent scheme year, multiplied by a factor of 2;
- (b) a financial penalty, the amount of which comprises the total of the following amounts—
 - (i) the original financial penalty under paragraph 10(a); and
 - (ii) the total increase imposed under that paragraph, multiplied by a factor of 2;
- (c) bottom ranking, or, where relevant, joint bottom ranking, in all performance league tables relating to that scheme year;
- (d) publication; and
- (e) blocking.

Incorrect reporting

12. Paragraphs 13 to 14 apply in relation to—

- (a) article 37 (footprint report); and
- (b) article 39 (annual report).

13. The failure is that—

- (a) (i) a participant reports an incorrect quantity of emissions or energy consumption (as relevant) in respect of the energy consumption it is required to report under the footprint report or annual report (as relevant); and
- (ii) the incorrect quantity, or any part of it, is not taken from a supply statement provided by a supplier under article 57;

and

- (b) the figure reported (or the part not taken from the supply statement, where relevant) is, ignoring any estimation adjustment, incorrect by a factor greater than 5%, by reference to the correct total of emissions from that energy consumption (without such an adjustment).

14. The penalty is—

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- (a) a financial penalty of £40 for each tCO₂ above the 5% margin in paragraph 13(b); and
- (b) publication.

Failure to comply with the performance commitment

15. Paragraphs 16 to 19 apply in relation to article 41.

16. Paragraph 17 applies in the case of a failure to comply with articles 41 to 43 where that failure is immediately apparent through the cancellation, or holding, of insufficient allowances against the participant's emissions from the total relevant energy consumption it has reported under Part 1 of Schedule 13.

17. Where this paragraph applies, the penalty is—

- (a) a requirement for the participant, without delay, to obtain, in its compliance account, the number of allowances necessary to remedy the shortfall;
- (b) cancellation of any allowances transferred to that account under sub-paragraph (a) as and when they are transferred to that account, up to the level required to remedy the shortfall;
- (c) a financial penalty of £40 in respect of each tCO₂ of the shortfall;
- (d) publication; and
- (e) blocking.

18. Paragraph 19 applies where—

- (a) a participant has apparently complied with the performance commitment at the time, but it is later discovered that—
 - (i) the participant under-reported its total relevant energy consumption for the scheme year in question; and
 - (ii) having regard to the administrator's records, the participant failed to comply with the articles referred to in paragraph 16 against the correct emissions total relating to the relevant energy consumption required to be reported for that year;and
- (b) the under-reporting is discovered within a period ending two years after the provision of the relevant annual report to the administrator.

19. Where this paragraph applies, the penalty is—

- (a) cancellation of the number of allowances representing the difference between—
 - (i) the participant's emissions from the total relevant energy consumption as under-reported; and
 - (ii) the participant's emissions from the total relevant energy consumption which should have been reported by that participant;and
- (b) blocking,

or if the participant is no longer a participant at the time the penalty is imposed, a financial penalty based on a reasonable market price for that number of allowances, as determined by the administrator at the time the penalty is imposed.

Failure to keep adequate records

20. Paragraphs 21 and 22 apply in relation to article 44.

21. The failure occurs where—

- (a) a participant has failed to keep adequate records in accordance with article 44;
- (b) the administrator has advised the participant by an enforcement notice—

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- (i) of the relevant failure; and
 - (ii) that the administrator considers the failure to be serious;
- and
- (c) the participant has failed, within a reasonable timescale, to comply with that notice.

22. The penalty is—

- (a) a financial penalty of £5 per tCO₂ emissions reported for the latest scheme year; and
- (b) publication.

Failure to provide a non-qualifiers' disclosure

23. Paragraphs 24 and 25 apply in relation to Chapter 1 of Part 5 of this Order.

24. The failure is any failure, without good reason, to provide the information required in accordance with article 53.

25. The penalty is a financial penalty of £1,000.

Failure by a supplier to provide qualification information

26. Paragraphs 27 and 28 apply in relation to articles 55 and 56.

27. The failure is constituted by—

- (a) (i) a serious failure to provide information where required under article 55; or
 - (ii) a serious and repeated failure to provide information where required under article 56;
- and
- (b) the ignoring by the relevant person of at least one enforcement notice.

28. The penalty is—

- (a) a financial penalty of—
 - (i) £500,000; or
 - (ii) 0.5% of the relevant person's turnover, if that is lower;
- and
- (b) publication.

PART 2

Other provisions

Penalties and appeals

29. The application of any penalty is subject to paragraphs 2 to 5 of Schedule 25 in the case of an appeal.

Financial penalties

30. A financial penalty—

- (a) must be paid within 20 working days of the date on which the administrator notifies the relevant person of the imposition of that penalty on that person; and
- (b) payment is deemed to have been made when the administrator receives the full amount of that charge, including any increase payable under this Schedule, in cleared funds.

31. Where the administrator does not receive full payment by the relevant deadline—

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- (a) the amount outstanding—
 - (i) may—
 - (aa) in so far as a higher increase is not provided for under Part 1 of this Schedule in the case of the relevant financial penalty (in which case that increase applies, for the period indicated in that Part); and
 - (bb) subject, in all cases, to any increase being proportionate in the case of partial payment,
be increased at a daily rate in respect of each full working day after that deadline during which that amount remains unpaid, or only partially paid, calculated by reference to a daily fraction of the retail prices index; and
 - (ii) is recoverable as a civil debt;
- and
- (b) in the case of a participant, the national authorities may recover the amount outstanding, including any increase under sub-paragraph (a)(i), by deducting that amount from any grant to that participant under section 53(1)(b) of the Climate Change Act 2008^(a).

32. Sums received by the administrator by way of payment of financial penalties must be treated as follows—

- (a) the Environment Agency must pay the sums it receives—
 - (i) in the case of a person whose principal place of business is located in Wales, to the Welsh Ministers; or
 - (ii) in all other cases, to the Secretary of State;
- (b) the Scottish Environment Protection Agency must be pay the sums it receives to the Scottish Ministers; and
- (c) the Northern Ireland Department of the Environment may retain the sums it receives.

Publication

33. The penalty of publication must be maintained—

- (a) for one year; and
- (b) where the administrator considers the failure to be of sufficient seriousness or public interest to warrant publicity for a further reasonable period.

34. The administrator, in imposing a penalty of publication—

- (a) may refer to a person by a name with which it considers the public most readily associates that person and its business; but
- (b) before doing so, must take into account any representation by that person (in so far as that person has not previously made the relevant representation).

Blocking

35. Where Part 1 of this Schedule refers to blocking, the administrator must maintain the block until—

- (a) the relevant failure is remedied; and
- (b) all connected penalties have been complied with.

(a) 2008 c.27.

SCHEDULE 23 Article 89(1) and (2)(a) and (b)

Charges

PART 1

Prescribed charges

General

1. The administrator may require the payment of charges—
 - (a) up to the amount, for each participant or third party, indicated in this Part; and
 - (b) (i) by the deadline indicated in this Part of this Schedule; or
(ii) by any later deadline specified in the charging notice.

Registration etc

2. The administrator may impose a charge of £950, in respect of the following—
 - (a) the cost incurred in the process of registration of participants; and
 - (b) the cost incurred in establishing the relevant facilities on the Registry, including a compliance account, for use by the participant.
3. The administrator may require the charge imposed under paragraph 2 to be paid prior to the establishment of a compliance account for the relevant participant.

Participants' subsistence

4. The administrator may impose a charge of £1,300, in respect of its annual costs in operating the scheme, including the exercise of its functions under Part 6 of this Order.
5. The administrator may require the charge imposed under paragraph 4 to be paid by the first working day of the relevant scheme year, and may require payment of that charge as a condition for the relevant participant's access to its compliance account during that year.

Opening of accounts

6. The administrator may impose a charge of £285 in respect of the opening of accounts, other than compliance accounts, under Part 7 of this Order.
7. The administrator may require the charge imposed under paragraph 6 to be paid prior to the opening of that account.

Subsistence of accounts

8. The administrator may impose an annual charge of £390 in respect of the cost of maintaining each account to which paragraph 6 applies.
9. The administrator may require the charge imposed under paragraph 8 to be paid prior to the beginning of a scheme year, as a condition for access to that account during that year.

Identity checks

10. The administrator may, where it considers it necessary to verify the identity of any person who has, or is to be given, authority to access the Registry for, or on behalf of, a participant or third party, impose a charge of £200 to cover the cost of the relevant identity check.

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11. The administrator may require the charge imposed under paragraph 10 to be paid—
- (a) prior to; and
 - (b) as a condition for undertaking,

the relevant check, and, where the administrator imposes such a charge, article 86(2)(a) is not deemed to have been satisfied until the relevant person has paid that charge.

PART 2

Other authority to charge

General

12. The administrator may, provided it complies with the requirements of this Part—
- (a) increase the maximum amounts that may be charged under Part 1 of this Schedule;
 - (b) impose other charges (including charges under paragraph 6 of Schedule 25); or
 - (c) both.

Basis of charges

13. Any charge under this Part—
- (a) must reflect the costs incurred by the administrator in operating the scheme; but
 - (b) may be calculated by reference to the overall cost incurred by the administrator in the exercise of its functions in relation to participants and third parties as a whole.

Variation

14. Paragraph 13(b) does not prevent the administrator from—
- (a) varying the amount charged between participants or third parties, to reflect different cases, or different categories of case, where—
 - (i) the variation reflects the differences in the costs incurred in relation to different, or different categories of, participants or third parties; and
 - (ii) the administrator considers the variation to be reasonable;
 - or
 - (b) increasing those amounts for particular participants or third parties where the administrator has incurred disproportionate costs in relation to that participant or third party, where that increased cost has been incurred as a result of that person's conduct.

Charging policy

15. Where the administrator wishes to impose charges under this Part of the Schedule it must—
- (a) adopt a policy in relation to—
 - (i) the matters in respect of which it may charge; and
 - (ii) the amounts it may charge, and the basis on which these are calculated;
 - (b) keep that policy under regular review; and
 - (c) publicise it, in accordance with paragraph 16.

Publicity

16. For the purpose of paragraph 15, the administrator's proposed policy must—

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- (a) be published, for the purpose of public consultation, on the website of each of the persons referred to in article 4(1)—
 - (i) at least annually;
 - (ii) for a period of at least four weeks; and
 - (iii) prior to the charging policy coming into effect;but
- (b) that consultation may be combined with a public consultation on the charges imposed by those persons for any other purpose by or under any other enactment.

PART 3

Miscellaneous

Charging notice

17. Any charge must be imposed by way of a charging notice specifying—

- (a) the matters in respect of which the charge is imposed; and
- (b) the amount payable,

and the charging notice may be produced in electronic form.

Payment deadline

18. Charges must be paid—

- (a) in the case of Part 1 of this Schedule, by the deadlines indicated in that Part;
- (b) in the case of Part 2 of this Schedule—
 - (i) by a reasonable deadline specified in the charging notice; or
 - (ii) where no deadline is specified, within 20 working days of receipt of that notice.

Receipt of payment

19. Charges are deemed to have been paid when the administrator receives the full amount of that charge, including any increase payable in accordance with paragraph 20(a)(i), in cleared funds.

Late or non-payment

20. Where the administrator does not receive full payment by the relevant deadline—

- (a) the amount outstanding—
 - (i) may be increased at a daily rate in respect of each full working day after that deadline during which that amount remains unpaid, or only partially paid, calculated by reference to a daily fraction of the retail prices index; and
 - (ii) is recoverable as a civil debt;and
- (b) in the case of a participant, the national authorities may recover the amount outstanding, including any increase under sub-paragraph (a)(i), by deducting that amount from any grant to that participant under section 53(1)(b) of the Climate Change Act 2008(a).

(a) 2008 c.27.

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Charging receipts

21. Sums received by way of charges must be paid to the Secretary of State, subject to the following exceptions—

- (a) the proportion of those sums covered by paragraph 22 must be paid to the Welsh Ministers;
- (b) the proportion of those sums representing the proportion of costs incurred by the Scottish Environment Protection Agency, must be paid to the Scottish Ministers; and
- (c) the Northern Ireland Department of the Environment may retain the proportion of those sums representing the proportion of costs incurred by that department.

22. The sums covered by this paragraph are sums to which represent the proportion of costs to which both of the following apply—

- (a) those costs are incurred by the Environment Agency in the exercise of the functions and powers of the administrator other than those to which article 4(2) applies; and
- (b) those costs are incurred in respect of—
 - (i) participants with a principal place of business; or
 - (ii) in the case of inspections, participants' premises, located in Wales.

SCHEDULE 24

Article 90

Notices and service of documents

1. Notices and documents must be in writing.

2. A notice or document may be served on, or given to, a person by—

- (a) delivering it to that person in person;
- (b) leaving it at that person's proper address;
- (c) sending it by post or electronic means to that person's proper address; or
- (d) in the case of a participant or third party, by posting it on the Registry (on the facility established for those persons pursuant to article 84(2)(a)).

3. For the purpose of paragraph 2(c), a person's proper address may be taken as—

- (a) the address and e-mail—
 - (i) supplied under paragraphs (1)(b) and (c) of Schedule 10; or
 - (ii) as subsequently changed, where the participant has notified the administrator;
- (b) in the case of a body corporate, the registered or principal office of that body; and
- (c) in the case of a partnership, or a partner or person having control or management of the partnership business, the principal office of the partnership, or the email address of a partner or a person having that control or management.

4. For the purpose of paragraph 3(b), the principal office of a company registered outside the United Kingdom or of a partnership established outside the United Kingdom is their principal office in the United Kingdom.

5. In the case of a body corporate a notice or document may be served on, or given to—

- (a) the secretary or clerk of that body; or
- (b) where that body corporate is a participant, the officers or employees in respect of which contact details have been provided under paragraph 8(b) of Schedule 10, by means of the service of that notice, or the giving of that document, to those persons in accordance with

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the contact details provided (and such service is deemed to be effective, unless the participant has notified the administrator of any changes to the particulars provided).

6. In the case of a partnership, a notice or document may be served on, or given to—
 - (a) a partner or a person having control or management of the partnership business; or
 - (b) where that partnership is a participant, any partners or employees in respect of which contact details have been provided, as referred to in paragraph 5(b) above.
7. In any other case, a notice or document may be served on, or given to—
 - (a) any person of equivalent status to a secretary or clerk of a body corporate; or
 - (b) where that person is a participant, an officers or employees in respect of which contact details have been provided, as referred to in paragraph 5(b) above.
8. Where a notice or document is served, or given, using electronic communications, the service is deemed to be effected, and the notice or document received, by properly addressing and transmitting the electronic communication.

SCHEDULE 25

Article 93(5)

Appeals

PART 1

General provisions

Delegation of hearing

1. The determining person—
 - (a) (i) may appoint any other person it considers suitable to hear any appeal; and
 - (ii) must do so where it considers there is any conflict of interest between its function as the determining person and any interest it has in the scheme as a participant;and
 - (b) must, where such a person has been appointed, have regard to any recommendation made by that appointee following the hearing of that appeal.

Status of decision prior to determination

2. Subject to paragraphs 3 and 4, the relevant decision remains binding until, and unless, it is varied or revoked by the determining person.

3. Subject to paragraph 5, where the appeal is against a determination of information under article 70, and the determination relates to the calculation or notification of any quantity of energy consumption or emissions—

- (a) the information so determined must not be used as the basis for imposing a penalty; and
- (b) if there is no other information available to it, the administrator must not impose any penalty in relation to the relevant failure,

until the appeal has been determined.

4. Subject to paragraph 5, where an appeal is made against the imposition of a penalty, the following penalties are suspended pending the determination of that appeal—

- (a) a financial penalty; and

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(b) publication (within the meaning of paragraph 1(b) of Schedule 22).

5. The suspensions provided for by paragraphs 3 and 4 do not have effect where the determining person has advised the participant under paragraph 6(a) that it considers that the appeal is brought on grounds which are frivolous or vexatious or which disclose no reasonable prospect of success.

Recovery of administrator's costs

6. The determining person may allow the administrator to recover its reasonable costs, up to an amount the determining person specifies, as a charge under Schedule 23 where—

- (a) the participant has continued an appeal in relation to which the determining person has advised the participant that, in its view, the appeal is brought on grounds which—
 - (i) are frivolous or vexatious; or
 - (ii) disclose no reasonable prospect of success;or
- (b) despite a warning by the determining person, the participant has conducted its appeal in a manner that the determining person considers is unreasonable or vexatious.

PART 2

Appeal procedures

General

7. The determining person must exercise its functions under this Schedule with a view to—

- (a) determining the appeal expeditiously and promptly; and
- (b) providing both parties with a fair opportunity to—
 - (i) present their case and their evidence; and
 - (ii) make relevant observations on the other party's case and evidence.

Deadlines

8. The determining person may extend time limits provided by this Part—

- (a) in so far as it considers this consonant with the principles in paragraph 7; and
- (b) having regard to any delay caused by the conduct of either party.

Bringing an appeal

9. The appellant must bring its case by way of a notice of appeal; the notice of appeal must be served on the relevant determining person, and must—

- (a) specify the grounds on which the appeal is brought; and
- (b) include—
 - (i) a copy of the notification of the relevant decision;
 - (ii) a statement confirming the identity of the administrator who made the decision;
 - (iii) any relevant evidence on which the appellant intends to rely; and
 - (iv) details of any person the appellant considers may have an interest in the case (an “interested party”) other than the administrator.

Service on the administrator

10. The determining person must—

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- (a) provide—
 - (i) the administrator; and
 - (ii) any interested party,with a copy of the notice of appeal; and
- (b) invite those persons to make any representations in accordance with paragraph 11.

Representations by the administrator

11. The administrator, and any interested party—

- (a) may make any representations concerning the appeal within a period of 15 working days of receipt of the copy of the notice of appeal; and
- (b) if they decide to do so—
 - (i) those representations must be made in writing; and
 - (ii) include any relevant evidence on which the administrator intends to rely.

12. The determining person must—

- (a) forward a copy of the representations received under paragraph 11 to the appellant; and
- (b) allow the appellant to make any response within a further period of 15 working days of the receipt of that copy.

Method of determination

13. Appeals may be determined by consideration of the relevant papers, unless—

- (a) (i) either party requests that the matter be determined by a hearing; and
 - (ii) the determining person considers the request to be reasonable;
- or

- (b) the determining person otherwise considers that a hearing is necessary,

and any hearing will, unless the determining person decides otherwise, be held in private.

Procedure for hearings

14. Where the appeal is to be determined by a hearing, the determining person must inform the parties of the relevant procedure, including in relation to the submission of any evidence.

Restriction on evidence

15. Evidence is restricted, as necessary, in the following cases—

- (a) where the appeal concerns a participant's ranking in a performance table, the administrator may refrain from producing evidence dealing with the comparative ranking of another participant, in so far as it considers that evidence commercially sensitive; and
- (b) in relation to the Crown, where national security considerations apply to any evidence.

Reasoning

16. The determining person must provide a written summary of the reasons for its decision, including any recommendations made by a person to whom the hearing has been delegated.

Withdrawal and settlement

17. Either party may withdraw from the appeal at any stage by notifying the determining person, and the appeal will be deemed to have been determined—

- (a) in favour of the other party; or
- (b) where the parties have agreed terms between them, on those terms.

SCHEDULE 26

Article 94

Offences

PART 1

The Offences

Falsification and deception

1. It is an offence for a person knowingly or recklessly to make a false or misleading statement on a material matter where that statement is made in purported compliance with this Order.
2. It is an offence for a person to falsify any record or evidence.

Non-compliance with enforcement

3. It is an offence for a person intentionally to obstruct the administrator in the exercise of its functions.
4. It is an offence for a person, without reasonable excuse—
 - (a) to fail to comply with—
 - (i) an enforcement notice; or
 - (ii) any requirement imposed under Schedule 21 (inspection);
 - (b) to fail or refuse to provide facilities or assistance or any information or to permit any inspection reasonably required by the administrator in the execution of its functions under that Schedule; or
 - (c) to prevent any other person from appearing before the administrator, or from answering any question to which the administrator may require an answer, pursuant to paragraph 1 of that Schedule.
5. It is an offence for a person to pretend falsely to be the administrator or to be acting on its behalf.

PART 2

Related matters

Punishment

6. An offence under Part 1 of this Schedule is triable either summarily or on indictment.
7. On summary conviction, an offence under Part 1 of this Schedule is punishable with—
 - (a) imprisonment for a term not exceeding three months;
 - (b) a financial penalty not exceeding the statutory maximum applicable in England, whether or not the financial penalty is imposed elsewhere in the United Kingdom; or
 - (c) both.
8. On indictment, an offence under Part 1 of this Schedule is punishable with—

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- (a) imprisonment for a term not exceeding two years;
- (b) a financial penalty; or
- (c) both.

Offences by a body corporate

9. In the case of a body corporate, where an offence has been committed—

- (a) with the consent or connivance of an officer; or
- (b) as a result of the neglect of that officer,

both the officer and the body corporate are guilty of the offence, and may be proceeded against, and punished, accordingly

10. For the purpose of paragraph 9—

- (a) a body corporate includes—
 - (i) a limited liability partnership (including one in Scotland); and
 - (ii) a partnership (other than a limited liability partnership) in Scotland;and
- (b) an officer includes—
 - (i) a director, member of a committee of management, chief executive, manager, partner, secretary, or any person purporting to act in such a capacity; and
 - (ii) where the affairs of the body corporate are managed by its members, its members.

Offences by a partnership

11. In the case of a partnership, proceedings must be brought in the name of the partnership (rather than the name of the partners), but where an offence has been committed—

- (a) with the consent or connivance of any particular partner;
- (b) as a result of the neglect of that partner,

both that partner and the partnership are guilty of the offence, and may be proceeded against, and punished, accordingly.

Combined participants

12. In the case of a combined participant, paragraphs 9 and 11 apply in respect of—

- (a) any group member; or
- (b) in so far as an offence has been committed by, or at the instigation, connivance or through the neglect of, an associated person, that person.

SCHEDULE 27

Article 97

Application to the Crown

Combined persons

1. In the case of a combined participant which consists of a combination of emanations of the Crown and other private persons, the participant as a whole is treated as part of the Crown.

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Criminal liability

2. The Crown is not liable for any offence under Schedule 26 but the High Court or the Court of Session may, on the application of the administrator, declare unlawful any act or omission of the Crown which contravenes Part 1 of that Schedule.

3. Notwithstanding paragraph 2, the provisions of this Order apply to persons in the service of the Crown as they apply to other persons.

National security

4. The Crown may limit its performance of the following requirements—

- (a) record keeping in accordance with article 44; and
- (b) any requirement imposed by the administrator in relation to the performance of the administrator's functions under Chapter 2 of Part 6,

where it considers such a limitation is required in the interests of national security.

5. The Secretary of State, the Welsh Ministers, the Scottish Ministers or the relevant Northern Ireland Department may certify, in relation to any premises used by or on behalf of the Crown, that the administrator's power of inspection under Schedule 21 is not, in the interests of national security, to be exercisable in relation to those premises.

6. Where the Secretary of State, the Welsh Ministers^(a) or the Scottish Ministers^(b) ("the relevant person") have certified any premises under section 115(5) of the Environment Act 1995^(c) but have not certified that premises under paragraph 5 above—

- (a) the administrator must, before it exercises its power of inspection, seek clarification from the relevant person as to whether the relevant person intends to make any certification in relation to that premises under that paragraph; and
- (b) until and unless the relevant person confirms that no such certification will be made, the administrator must not inspect that premises.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order establishes a trading scheme under Part 3 of the Climate Change Act 2008, relating to carbon dioxide which is deemed to be directly or indirectly emitted by the participants in the scheme as a result of their activities involving energy consumption. The scheme extends throughout the United Kingdom.

Participants are defined, and the principal requirements imposed by the scheme are set out, in article 3.

Part 1 of the Order contains other general provisions. Article 2 (and Schedule 1) provides for the definitions of terms used in the Order. The scheme administrator is appointed under article 4: that article provides for the exercise of some of the administrator's functions on a United Kingdom wide basis (by the Environment Agency); other functions are exercised on a devolved basis (by the Environment Agency, the Scottish Environment Protection Agency, and the Northern Ireland Department of the Environment). Article 5 establishes the phases and scheme years by reference to which the scheme operates and participants' obligations are framed.

Part 2 of the Order requires persons to become participants in the scheme. Chapter 2 of Part 2 requires the participation of government departments (other than Northern Ireland departments) and the devolved administrations of Scotland and Wales. Chapter 3 of that Part requires the

(a) The functions of the Secretary of State transferred in accordance with S.I. 1999/672.
(b) The functions of the Secretary of State transferred in accordance with S.I. 1999/1750.
(c) 1995 c.25.

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participation of other persons, where they meet qualification criteria based on their electricity consumption. Section 2 of that Chapter provides the general rules; Section 3 deals with the joint qualification, and participation, of entities which have a parent and subsidiary relationship (which is established in more detail in Schedule 2) or an entity which has an associated person status with another (the relevant legal relationships are identified in Schedule 3).

Part 3 of the Order contains the main provisions relating to the requirements imposed on participants in consequence of their participation. Chapter 1 of that Part identifies the activities covered by the scheme, these consisting of any business (including activities undertaken for charitable purposes, or the performance of functions of a public nature) which involves, or contributes to, direct or indirect emissions of carbon dioxide. Chapter 2 of that Part specifies the requirements imposed on participants, in relation to those activities. Those requirements include the following: the requirement to register for the scheme (article 36 and Schedule 10); the requirement to provide the administrator with a footprint report (article 37 and Schedule 11); the requirement to prepare a residual measurement list in certain cases (article 38 and Schedule 12). Those requirements also include the requirement to provide the administrator with annual reports (article 39 and Schedule 13), and the performance commitment itself (articles 41 to 43) under which participants must either voluntarily cancel, or, by the deadline imposed, hold sufficient allowances to match the quantity of emissions in their latest annual report. Participants are also required to keep records relating to their participation (article 44 and Schedule 14).

Part 4 contains provisions ancillary to, and qualifying, Parts 2 and 3. These include provisions relating to circumstances where two or more persons are required to participate as a single participant (a “combined participant”) (article 46 and Schedule 15). They also include provisions relating to: certain major changes in a participant’s corporate structure (takeovers, mergers and demergers), which are dealt with by article 47 and Schedules 16 and 17); cessation of business (article 49), and exemptions for participants with significant energy consumption covered by climate change agreements (article 50 and Schedule 18).

Chapter 1 of Part 5 imposes an obligation on certain persons (who are defined in the same way as for qualification under Chapter 3 of Part 2, but who are not required to participate under that Part) to provide the administrator, once during each phase, with information relating to their electricity consumption. Chapter 2 of Part 5 contains requirements on energy suppliers to assist the administrator in the identification of potential participants, through the provision of information to the administrator (article 55) and to potential participants (article 56), and also in assisting participants to comply with the requirements of the scheme through the provision to participants, on request, of supply statements containing information relating to their electricity and gas consumption (article 57).

Part 6 deals with the functions of the administrator in relation to Parts 2 to 5. The administrator may postpone deadlines in certain circumstances (article 59). Chapter 2 of Part 6 provides the administrator with powers to obtain information, and to audit or verify it. Chapter 3 of Part 6 requires the administrator to publish information about participants, in particular performance tables which score and rank participants on a comparative basis (article 65 and 66 and Schedule 20). Chapter 4 of Part 6 relates to enforcement and provides powers for inspections (article 68 and Schedule 21); for issuing enforcement notices (article 69); to determine information (article 70); and to impose civil penalties (article 71 and Schedule 22).

Part 7 deals with allowances and their trading. Participation in the allowance market is open to third parties as well as participants, subject to the provisions of both Part 7 and Part 8. Chapter 1 of Part 7 deals with the allowances: article 73 imposes limitations on their validity, and article 74 requires that allowances are held in various accounts located on the administrator’s Registry. Chapter 2 contains provisions relating to the trading of allowances, and the requirement for any trade to be notified to the administrator for it to have effect for the purpose of the scheme (article 77). Chapter 3 of Part 7 deals with the related powers of the administrator (article 81), and also empowers the administrator to establish a trading platform (article 82). Part 8 requires the administrator to establish an online Registry: that article contains provisions relating to the functions and access to the Registry; it also requires the administrator to provide specified information to participants and third parties within the Registry (article 87).

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Part 9 includes the administrator's power to impose administrative charges (article 89 and Schedule 23); and to purchase European Union emissions trading scheme allowances (article 91). The provisions in Part 9 also include provisions relating to notices and the service of documents (article 90 and Schedule 24); appeals (article 93 and Schedule 25); criminal offences (article 94 and Schedule 26); and the application of the Order to the Crown (article 97 and Schedule 27).

[A full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from [] and is annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website].