

2012 No. 1976

CLIMATE CHANGE LEVY

**The Climate Change Agreements (Administration)
Regulations 2012**

<i>Made</i>	- - - -	<i>25th July 2012</i>
<i>Laid before the House of Commons</i>		<i>30th July 2012</i>
<i>Coming into force</i>	- -	<i>1st October 2012</i>

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

Citation and commencement

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

Interpretation

2. In these Regulations—

- “account” means the account in the Register of a sector association or operator;
- “account holder” means a sector association or operator which holds an account;
- “the administrator” has the meaning given by Regulation 3;
- “agreement” means an umbrella agreement or an underlying agreement;
- “base year” means a 12 month period agreed between an operator and the administrator, ending prior to the date of an underlying agreement, for which data is supplied by an operator to the administrator prior to the operator entering into the underlying agreement;
- “certification period” means a period specified in an agreement as a certification period for the facility to which the agreement applies;
- “emissions” means the total emissions in tCO₂ for a target unit;
- “facility” means a facility to which an agreement applies;
- “operator” means a party to an underlying agreement other than the administrator;
- “personal information” means—
 - (a) the address of the registered office of the sector association or operator; and
 - (b) the name, address, and email address of a person who can be contacted in respect of—
 - (i) the sector association or operator; and

(a) 2000 c. 17; paragraphs 52A to 52F were inserted by paragraph 9 of Schedule 31 to the Finance Act 2012 (c.14), which also amended paragraphs 44, 45, 45B, 47, 48 and 49 of that Schedule.

- (ii) the facility or, if more than one, each facility covered by the agreement;
- “publish” means to publish on any part of a website maintained by the administrator which is accessible to the public;
- “the Register” has the meaning given by regulation 4;
- “Schedule 6” means Schedule 6 to the Finance Act 2000^(a);
- “sector association” means a party to an umbrella agreement other than the administrator;
- “sector commitment” means a commitment notified to the administrator by the Secretary of State applicable to the facilities to which an umbrella agreement applies;
- “surplus” means the amount by which the emissions have fallen below the target for any target period as recorded on an account;
- “target” means the target applicable to a target unit set out in an underlying agreement;
- “target period” means any of the following periods—
 - (a) 1st January 2013 to 31st December 2014;
 - (b) 1st January 2015 to 31st December 2016;
 - (c) 1st January 2017 to 31st December 2018; or
 - (d) 1st January 2019 to 31st December 2020;
- “target unit” means the facility or group of facilities to which an underlying agreement applies;
- “tCO₂” means tonnes of carbon dioxide;
- “umbrella agreement” means an agreement that is an umbrella agreement for the purposes of paragraph 48 of Schedule 6;
- “underlying agreement” means an agreement that is an underlying agreement for the purposes of paragraph 48 of Schedule 6 or if there is no umbrella agreement, an agreement falling within paragraph 47 of Schedule 6;
- “working day” means any day other than—
 - (a) a Saturday, Sunday, Good Friday or Christmas Day; or
 - (b) a day which is a bank holiday under the Banking and Financial Dealings Act 1971^(b).

The administrator

3. The Environment Agency (“the administrator”) is the body appointed as the administrator for the purposes of paragraph 52A(1) of Schedule 6.

The Register

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

(2) Subject to paragraph (3), the administrator must take reasonable steps to ensure that the Register is accessible at all times to persons who are entitled to use it.

(3) The administrator may restrict access to the Register at such times as the administrator considers reasonable to conduct planned downtime or maintenance (including updates and reconfigurations) on the Register.

(4) The persons who are entitled to use the Register are current and prospective account holders and any person appointed on behalf of an account holder to operate an account.

(a) 2000 c. 17.

(b) 1971 c. 80; see section 1 and Schedule 1 (which was amended by section 1 of the St Andrew’s Day Bank Holiday (Scotland) Act 2007 (2007 asp 2)).

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

Set up and operation of an account

5.—(1) The administrator must ensure that—

- (a) prospective sector associations are able to apply to enter into umbrella agreements using the Register; and
- (b) sector associations are able to apply on behalf of prospective operators for the prospective operators to enter into underlying agreements.

(2) The administrator must, in relation to each agreement, set up an account for each sector association or operator as soon as reasonably practicable after the sector association or operator has entered into an agreement.

(3) Subject to paragraph (5), the administrator must ensure that each account contains the agreement to which the account relates.

(4) Subject to paragraph (5), the administrator must ensure that each account of an operator—

- (a) records sufficient information to demonstrate whether the target has been met; and
- (b) records any surplus.

(5) The administrator is not under any obligation to ensure that an account records the information in paragraph (3) or (4) if the account holder fails to supply sufficient information to the administrator to enable the administrator to comply with its obligations under paragraph (3) or (4).

(6) The administrator must take reasonable steps to ensure that from, at the latest, 1st April 2013—

- (a) so far as reasonably practicable, communications between the administrator and a sector association take place using the Register;
- (b) a sector association is able to access its account to update its personal information and input any information to meet its obligations under its agreement; and
- (c) a sector association is able to access the account of an operator on behalf of the operator to update the personal information of the operator and input any information to meet the obligations of the operator under its agreement.

(7) The administrator must take reasonable steps to ensure that from, at the latest, 1st December 2014, if requested by an operator—

- (a) so far as reasonably practicable, communications between the administrator and an operator take place using the Register; and
- (b) an operator is able to access its account to update its personal information and input any information to meet its obligations under its agreement.

(8) The administrator may record any information on the Register which it considers reasonable so to record.

Security of the Register

6.—(1) The administrator must take reasonable steps to ensure that—

- (a) the Register is secure from misuse; and
- (b) the Register is only accessible to persons who are entitled to use it.

(2) Subject to paragraph (3), the administrator must ensure that information which relates to an account holder is not accessible by another account holder.

(3) The administrator must ensure that information that relates to an operator is accessible by the sector association in respect of the umbrella agreement to which the underlying agreement of the operator relates.

Suspension or restriction of use of the Register

7.—(1) The administrator may suspend or restrict the use of the Register by an account holder or a person (“appointed person”) appointed on behalf of an account holder to operate the account if—

- (a) the account holder or appointed person is in breach of any administrative rules concerning the operation of the Register; or
- (b) the administrator believes that the account holder or appointed person has been, is using or intends to use the Register for or in connection with a criminal offence.

(2) The administrator may suspend the operation of the Register or any account where it believes that the security of the Register may be at risk.

Closure of an account

8. As soon as reasonably practicable after an agreement has been terminated, the administrator must—

- (a) close the account of the account holder for that agreement;
- (b) give notice in writing of the closure of the account to the account holder; and
- (c) cancel any surplus recorded in the account of the account holder for that agreement.

Publication

9.—(1) Subject to paragraph (4), as soon as reasonably practicable after the first day of a certification period, the administrator must publish a list containing the name and address of each facility which is to be taken as being covered by an agreement and the period for which the facility is taken to be so covered as mentioned in paragraph 44 of Schedule 6.

(2) Subject to paragraph (4), the administrator must publish a revised list containing the details in paragraph (1) on the last working day of each month if, since the last publication of the list—

- (a) a certificate has been given by the administrator to the Commissioners in accordance with paragraph 44 of Schedule 6; or
- (b) a variation certificate has been given by the administrator to the Commissioners in accordance with paragraph 45 of Schedule 6.

(3) Subject to paragraph (5), as soon as reasonably practicable after the end of each target period, the administrator must publish a report setting out energy efficiency improvements and emission reductions achieved under agreements for the target period, including—

- (a) for each sector association, details of whether the sector commitment has been met; and
- (b) for each target unit, details of the emissions recorded in the Register and details of whether the target has been met.

(4) The administrator is under no obligation to publish information under paragraphs (1) or (2) if paragraphs (6) and (8) apply.

(5) The administrator is under no obligation to publish information under paragraph (3) if paragraphs (7) and (8) apply.

(6) This paragraph applies if—

- (a) before 1st October 2012, an operator made a request to the Secretary of State that information relating to a facility is not published on the grounds that publishing the information would adversely affect the security of a facility and the Secretary of State decided not to publish the information;
- (b) an operator has made a request to the administrator that information relating to a facility is not published on the grounds that publishing the information would adversely affect the security of the facility and the administrator has decided that publishing the information would have such an effect; or
- (c) the Secretary of State has directed the administrator that publishing such information would adversely affect national security.

(7) This paragraph applies if—

- (a) a sector association or an operator has made a request to the administrator that the information is not published on the grounds that publication would adversely affect the confidentiality of commercial or industrial information; and
- (b) the administrator has decided that it is necessary, in order to protect a legitimate economic interest, to withhold publication of the information;

to the extent that the information is not information on emissions into the environment.

(8) This paragraph applies if the Secretary of State or the administrator (as the case may be) has—

- (a) prior to making any decision or direction, applied a presumption in favour of publishing the information; and
- (b) determined that, in all the circumstances of the case, the public interest in not publishing the information outweighs the public interest in publishing the information.

Requirements for administrator to be satisfied before entering into an agreement

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

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

- (a) of the identity of the operator;
- (b) that the facility to which the agreement applies is a facility within the meaning of paragraph 50 of Schedule 6; and
- (c) that the activities undertaken by the facility fall within the umbrella agreement, if any.

(3) The administrator may only enter into an underlying agreement which covers a facility to which a previous underlying agreement applied if it has taken reasonable steps to satisfy itself that—

- (a) progress made in the immediately preceding certification period towards meeting targets under the previous underlying agreement is, or is likely to be, satisfactory; and
- (b) there are no outstanding penalties or charges in respect of the previous underlying agreement.

Requirements of an agreement

11.—(1) An agreement must be in a form approved by the Secretary of State.

(2) An umbrella agreement must contain a sector commitment.

Terms to be included in an underlying agreement relating to the buy-out fee

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

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

- (a) if the administrator finds that the target unit has failed to meet its targets—
 - (i) at any time in the period beginning with 1st May in the year following the end of a target period and ending immediately before the first day of the next certification period; or
 - (ii) at any other time,

the obligation to make progress towards meeting targets may instead be satisfied by the payment to the administrator of a fee in accordance with sub-paragraph (b);

- (b) if sub-paragraph (a) applies, the administrator must serve a notice on the operator containing the following information—

- (i) that the target unit has failed to meet its target;
 - (ii) the fee to be paid, calculated in accordance with sub-paragraph (c) or (d);
 - (iii) the date by which the fee must be paid, determined in accordance with sub-paragraph (e) or (f);
 - (iv) to whom the fee must be paid;
 - (v) how the fee is to be paid; and
 - (vi) that failure to pay the fee in accordance with the notice will result in the issue of a variation certificate in accordance with paragraph 45 of Schedule 6;
- (c) if sub-paragraph (a)(i) applies, the amount of the fee is—
- $$£12 \times (W - S)$$
- where W in units of tCO₂ represents the amount by which the emissions for the target period exceed the target and S in units of tCO₂ represents any surplus;
- (d) if sub-paragraph (a)(ii) applies, the amount of the fee is—
- $$£12 \times W$$
- where W in units of tCO₂ represents the amount by which the emissions for the target period exceed the target;
- (e) if sub-paragraph (a)(i) applies, the fee must be paid on or before 1st July in the year in which the target unit is found to have failed to meet its targets;
 - (f) if sub-paragraph (a)(ii) applies, the fee must be paid within 30 working days beginning with the date of the notice; and
 - (g) payment of the fee is deemed to have been made when the person to whom the fee must be paid as specified in the notice receives full cleared funds.

Cancellation of surplus used to meet targets

13.—(1) The administrator must deduct any surplus recorded on an account as soon as reasonably practicable after it has served a notice as mentioned in regulation 12(2)(b).

(2) The deduction of the surplus does not affect the amount of any surplus used in the calculation of the fee under regulation 12(2)(c).

Terms to be included in an underlying agreement relating to the provision of information

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

(2) The terms referred to in paragraph (1) are that the operator must—

- (a) provide to the administrator on or before 1st May following the end of a target period such information as has been requested by the administrator in order to determine whether progress towards meeting the target is, or is likely to be, taken to be satisfactory; and
- (b) provide any other information requested at any time by the administrator by the date specified in the request to enable the administrator to determine that—
 - (i) the target has been met; or
 - (ii) the operator is complying with the terms of the underlying agreement.

Financial penalties

15.—(1) The administrator may impose a financial penalty on an operator if the operator—

- (a) fails to provide information in accordance with regulation 14(2)(a) or (b);
- (b) provides inaccurate information under regulation 14(2)(a);
- (c) provides inaccurate information under regulation 14(2)(b); or

(d) fails to make any other notification required under the terms of an underlying agreement.

(2) The amount of the financial penalty that may be imposed under paragraph (1)(a), (c) or (d) is the greater of—

(a) £250; or

(b) $0.1 \times (X - Y)$

where X represents the amount of levy that would have been payable on supplies of taxable commodities to the target unit during the base year if the supplies were not reduced rate supplies, and where Y represents the amount of levy that would have been payable on supplies of taxable commodities to the target unit during the base year if the supplies were reduced rate supplies.

(3) The amount of the financial penalty that may be imposed under paragraph (1)(b) is the greater of—

(a) £250; or

(b) £12 per tCO₂ of the difference between the actual emissions and the reported emissions for the target period.

(4) A financial penalty under this regulation is recoverable by the administrator as a civil debt if unpaid after the date for payment set out in the notice of financial penalty.

Notice of a financial penalty

16. If the administrator decides to impose a financial penalty on an operator under regulation 15, the administrator must serve a notice on the operator stating—

(a) the contravention that has led to the imposition of a penalty;

(b) the steps that must be taken to remedy the contravention and the date by which they must be taken;

(c) the amount of penalty due;

(d) the date by which the penalty must be paid;

(e) to whom the penalty must be paid; and

(f) that failure to pay the penalty in accordance with the notice by the date specified in the notice, or to take the steps specified in the notice by the date so specified, may result in the termination of the underlying agreement.

Obligation to terminate an agreement

17.—(1) The Secretary of State must notify the administrator as soon as reasonably practicable after becoming aware that the arrangements provided for in an agreement constitute aid incompatible with the internal market within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union.

(2) The administrator must terminate an agreement as soon as reasonably practicable after it receives a notification under paragraph (1).

(3) The administrator must terminate an underlying agreement if the umbrella agreement to which the underlying agreement relates is terminated.

(4) The administrator must terminate an agreement so far as it applies to an individual facility if it becomes aware that the facility has ceased to be eligible for inclusion in the agreement.

Power to terminate an agreement

18.—(1) The administrator may terminate an umbrella agreement if the sector association contravenes the agreement.

(2) The administrator may terminate an umbrella agreement if the sector association fails to agree a variation in a sector commitment proposed under the terms of the agreement.

(3) The administrator may terminate an underlying agreement if the operator contravenes the agreement unless the contravention has given rise to the imposition of a financial penalty.

(4) If the contravention of the agreement has given rise to the imposition of a financial penalty, the administrator may only terminate the underlying agreement if the operator fails to—

- (a) pay the financial penalty by the date specified in the notice under regulation 16; or
- (b) take the steps to remedy the contravention specified in that notice by the date so specified.

(5) The administrator may terminate an underlying agreement if the operator fails to agree a variation in a target proposed under the terms of the underlying agreement.

(6) For the purposes of this regulation, a failure to meet, or to make progress towards meeting, targets does not constitute a contravention of an agreement.

Notice of termination and date termination takes effect

19.—(1) If the administrator decides to terminate an umbrella agreement, it must serve a notice of termination on the sector association and on each operator in respect of an underlying agreement to which the umbrella agreement relates.

(2) If the administrator decides to terminate an underlying agreement, it must serve a notice of termination on the operator.

(3) A notice of termination must set out the date on which the termination takes effect.

(4) A termination under regulation 17(2) takes effect upon service of the notice of termination.

(5) A termination under regulation 17(3), 17(4) or 18 takes effect on the date set out in the notice of termination.

Right of appeal

20.—(1) Where a financial penalty is imposed under regulation 15, the operator may appeal to the First-tier Tribunal^(a) (“the Tribunal”) against the decision to impose the penalty.

(2) Subject to paragraph (4), where the administrator terminates an agreement under regulation 17(3), 17(4), or 18, a sector association or operator which has received a notice of termination may appeal to the Tribunal against the decision to terminate the agreement.

(3) Where an agreement provides for a right of appeal in respect of any other decision of the administrator, that appeal is an appeal to the Tribunal.

(4) There is no right of appeal for a sector association or an operator where the administrator terminates an agreement after receiving a notification under regulation 17(2).

Grounds of appeal

21. The grounds on which a person may appeal a decision under regulation 20 are—

- (a) that the decision was based on an error of fact;
- (b) that the decision was wrong in law;
- (c) that the decision was unreasonable;
- (d) any other reason.

Effect of an appeal

22. The bringing of an appeal suspends the effect of the decision pending the final determination by the Tribunal of the appeal or its withdrawal.

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

Determination of an appeal

23.—(1) On determining an appeal under regulation 20(1) against the imposition of a financial penalty the Tribunal must either—

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

(2) On determining such an appeal, the Tribunal may allow an extension of time for payment of the penalty.

(3) On determining an appeal under regulation 20(2) against the termination of the agreement the Tribunal must either—

- (a) confirm the termination;
- (b) permit an extension of time to remedy the failure that led to the termination; or
- (c) quash the termination.

(4) On determining an appeal under regulation 20(3) against a decision of the administrator the Tribunal must either—

- (a) affirm the decision;
- (b) quash the decision; or
- (c) vary the decision.

Service of notices

24. A notice may be served on a sector association or operator by first class post or by electronic communication to the address of the sector association or operator as notified to the administrator.

25th July 2012

Gregory Barker
Minister of State
Department of Energy and Climate Change

EXPLANATORY NOTE

(This note is not part of the Regulations)

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

Regulation 3 appoints the Environment Agency to administer the climate change agreements scheme.

Regulation 4 requires the administrator to establish an electronic register for administering climate change agreements and provides that the administrator may establish rules in relation to the operation of the register.

Regulation 5 makes provision as to the setting up of an account in the register for a party to a climate change agreement and makes provision as to the functions of the register.

Regulations 6 provides for security and access to the register.

Regulation 7 provides for preventing or suspending use of the register.

Regulation 8 sets out when an account must be closed and that any emissions recorded in the account at its closure shall be cancelled.

Regulation 9 sets out the information the administrator is required to publish and by which dates.

Regulation 10 sets out the checks that the administrator is required to undertake before entering into climate change agreement. It provides that in respect of both umbrella agreements and underlying agreements, the administrator must check that the facilities are all facilities as defined in Schedule 6. It also provides that, in respect of underlying agreements, the administrator must check the identity of the other party to the agreement and that the activities undertaken by the facility or facilities covered by the underlying agreement all fall within the umbrella agreement. If a facility was previously covered by another underlying agreement, the administrator must also check that the targets had been met under the previous underlying agreement and that there were no outstanding penalties or charges under the previous underlying agreement.

Regulation 11 provides that the administrator must obtain the approval of the Secretary of State to the form of a climate change agreement before entering into it and that an umbrella agreement must contain a sector commitment.

Regulation 12 sets out the terms to be included in an underlying agreement relating to failure to meet a target. These provisions enable a target unit which has failed to meet its target for a target period to pay a sum of money, calculated by reference to the difference between its emissions and its target for the target period, in order to retain its Climate Change Levy discount. If the administrator finds that the target unit has failed to meet its target at any time beginning with 1st May in the following the end of a target period and ending immediately before the next certification period, the calculation of the fee takes any surplus into account. If the administrator finds that the target unit has failed to meet its target at any other time, any surplus is not taken into account.

Regulation 13 provides that a surplus used in a calculation under regulation 12 to reduce the amount by which an account holder has exceeded its target must be deducted by the administrator after a notice that the target unit has failed to meet its target has been served.

Regulation 14 sets out the terms to be included in an underlying agreement regarding the provision of information.

Regulations 15 sets out the circumstances in which the administrator may impose a financial penalty on a party to an underlying agreement and sets out the calculation for determining the amount of the penalty.

Regulation 16 requires the administrator to give notice of the imposition of a financial penalty and details the information to be included in the notice.

Regulation 17 sets out the circumstances in which a climate change agreement must be terminated.

Regulation 18 sets out the circumstances in which a climate change agreement may be terminated.

Regulation 19 requires the administrator to give a notice of termination if it decides to terminate an agreement and details the date on which a termination takes effect.

Regulation 20 sets out the right of appeal to the First-tier Tribunal against a decision of the administrator to terminate an agreement, a decision to impose a financial penalty and against any decision of the administrator under a climate change agreement.

Regulation 21 sets out the grounds for an appeal.

Regulation 22 deals with the effect of an appeal in suspending the penalty, termination or decision pending outcome of the appeal.

Regulation 23 sets out the decisions that the First-tier Tribunal may make in determining an appeal.

Regulation 24 makes provision as to how a notice may be served on a sector association or an operator.

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

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