



Number 13 of 2010

**ELECTRICITY REGULATION (AMENDMENT) (CARBON
REVENUE LEVY) ACT 2010**

ARRANGEMENT OF SECTIONS

Section

1. Definition.
 2. Amendment of section 9 (functions of Commission) of Act of 1999.
 3. Carbon revenue levy.
 4. Short title.
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[No. 13.] *Electricity Regulation (Amendment) [2010.]
(Carbon Revenue Levy) Act 2010.*

ACTS REFERRED TO

Electricity (Supply) (Amendment) Act 2001

2001, No. 9

Electricity Regulation Act 1999

1999, No. 23



Number 13 of 2010

**ELECTRICITY REGULATION (AMENDMENT) (CARBON
REVENUE LEVY) ACT 2010**

AN ACT TO PROVIDE FOR THE IMPOSITION OF A LEVY TO BE KNOWN AS THE CARBON REVENUE LEVY ON SUCH AMOUNT OF THE REVENUES RECEIVED BY CERTAIN ELECTRICITY GENERATORS, THROUGH PARTICIPATION IN THE SINGLE ELECTRICITY MARKET, AS IS ATTRIBUTABLE TO THE EMISSIONS FROM EACH INSTALLATION OF WHICH AN ELECTRICITY GENERATOR IS THE OPERATOR; TO CONFER FUNCTIONS ON THE COMMISSION FOR ENERGY REGULATION IN RESPECT OF THE COLLECTION AND RECOVERY OF THE LEVY; TO PROVIDE FOR THE MANNER IN WHICH THE LEVY PROCEEDS SHALL BE ADMINISTERED; FOR THOSE PURPOSES TO AMEND AND EXTEND THE ELECTRICITY REGULATION ACT 1999 AND TO PROVIDE FOR RELATED MATTERS.

[30th June, 2010]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—In this Act “Act of 1999” means Electricity Regulation Act 1999. Definition.

2.—Section 9 of the Act of 1999 is amended in subsection (1)— Amendment of section 9 (functions of Commission) of Act of 1999.

(a) in paragraph (i) by deleting “and”,

(b) in paragraph (j) by inserting “and” after “suppliers,”, and

(c) by inserting the following after paragraph (j):

“(k) to collect and recover the carbon revenue levy (within the meaning of section 40D) under Part VIB.”.

3.—The Act of 1999 is amended by inserting the following Part Carbon revenue levy.
after Part VIA:

“PART VIB

CARBON REVENUE LEVY

Interpretation
(Part VIB).

40B.—In this Part—

‘allowance’ has the meaning given to it by the Regulations of 2004;

‘CADA’ has the same meaning as in the Electricity Regulation Act 1999 (Public Service Obligations) Order 2002 (S.I. No. 217 of 2002) (as amended by the Electricity Regulation Act 1999 (Public Service Obligations) (Amendment) (No. 2) Order 2007 (S.I. No. 583 of 2007));

‘carbon revenue levy’ has the meaning given to it by section 40D;

‘electricity generator’ means a person licensed under section 14(1)(a) to generate electricity;

‘emissions’ has the meaning given to it by the Regulations of 2004;

‘installation’ has the meaning given to it by the Regulations of 2004;

‘levy period’ means—

(a) a period of 3 months, and

(b) in the case where the final levy period is less than 3 months, that period;

‘operator’ has the meaning given to it by the Regulations of 2004;

‘qualifying generating station’ has the meaning given to it by section 40D;

‘Regulations of 2004’ means the European Communities (Greenhouse Gas Emissions Trading) Regulations 2004 (S.I. No. 437 of 2004);

‘relevant date’ means the date of the passing of the *Electricity Regulation (Amendment) (Carbon Revenue Levy) Act 2010*;

‘Single Electricity Market Trading and Settlement Code’ means the code of that name established pursuant to section 9BA(1) and designated by the Commission pursuant to the Electricity Regulation Act 1999 (Single Electricity Market) Regulations 2007 (S.I. No. 406 of 2007), as from time to time revised, amended, supplemented or replaced;

‘tonne of carbon dioxide equivalent’ has the meaning given to it by the Regulations of 2004.

Application of Part VIB to certain electricity generators. 40C.—This Part applies to every electricity generator who—

(a) is the operator of an installation that is in receipt of allowances issued by the Environmental Protection Agency pursuant to the Regulations of 2004, and

(b) is bound by the Single Electricity Market Trading and Settlement Code.

Carbon revenue levy. 40D.—(1) Each electricity generator shall, subject to and in accordance with this Part and any regulations made under this Part, pay to the Commission, in respect of the immediately preceding levy period, a levy (in this Part referred to as the ‘carbon revenue levy’) on such amount of the revenues received during that levy period by the electricity generator concerned, through participation in the Single Electricity Market, as is attributable to the emissions from each installation of which the electricity generator is the operator, which amount is calculated in accordance with the formula—

E x P

where—

E is the total of the emissions, during the levy period concerned, from each installation of which the electricity generator concerned is the operator, calculated in accordance with the formula for the calculation of emissions set out in Schedule 4 to the Regulations of 2004, expressed in tonnes of carbon dioxide equivalent, and

P is the simple arithmetic average of the daily price of allowances for the levy period concerned by reference to such index as may be determined by the Commission from time to time in accordance with subsection (2).

(2) When making a determination for the purposes of the construction of ‘P’ in the formula in subsection (1), the Commission shall have regard to such transparent and accessible pricing information relating to allowance trading, including the daily price thereof, as may be available and the Commission shall, as soon as practicable, publish the determination on its website.

(3) The first levy period begins on the first day of the month immediately following the relevant date.

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(4) The carbon revenue levy shall be payable in accordance with this Part in respect of all levy periods up to and including the final levy period which ends on 31 December 2012.

(5) Save in accordance with subsection (6), no carbon revenue levy is payable by an electricity generator in respect of a generating station which is the subject of an order under section 39.

(6) (a) This subsection applies to a generating station in respect of which the following conditions are complied with (in this Part referred to as a ‘qualifying generating station’)—

(i) the generating station is the subject of an order under section 39, and

(ii) the electricity generator who is the operator of the generating station concerned is a counterparty to a CADA.

(b) For the purposes of the construction of ‘E’ in the formula in subsection (1), the total of the emissions, during the levy period concerned, calculated in accordance with the formula for the calculation of emissions set out in Schedule 4 to the Regulations of 2004, shall, in the case of a qualifying generating station, include only such portion of the emissions as is attributable to the quantity of electricity produced by the qualifying generating station—

(i) in respect of which revenues are received during that levy period by the electricity generator concerned through participation in the Single Electricity Market, and

(ii) in respect of which the electricity generator does not receive payments from the Board in accordance with the CADA.

Calculation of amount of carbon revenue levy. 40E.—The amount of the carbon revenue levy payable by an electricity generator in respect of the immediately preceding levy period shall be calculated by reference to—

(a) the amount calculated in accordance with the formula in section 40D(1), and

(b) the percentage rate provided for by section 40F.

Percentage rate. 40F.—(1) For the purpose of calculating the amount of the carbon revenue levy under section

40E and taking account of the fact that electricity generators, for the purposes of compliance with the Regulations of 2004, may require to purchase a proportion of their allowances, the percentage rate referred to in section 40E(b) shall be—

- (a) such percentage rate as stands specified by order under subsection (2), or
 - (b) where no amount stands so specified, 65 per cent.
- (2) (a) The Minister may, from time to time, review the percentage rate provided for by subsection (1) and may, subject to this section, having considered any representations made under subsection (4)(a), by order provide for a percentage rate in lieu of the percentage rate provided for by subsection (1)(a) or the percentage rate specified in subsection (1)(b).
- (b) The Minister may revoke an order under this subsection without providing for a percentage rate, in which case the percentage rate specified in subsection (1)(b) shall apply.
- (3) For the purposes of a review under this section the Minister shall have regard to—
- (a) the effect of the carbon revenue levy on electricity generators, and
 - (b) such advice as the Commission may give to the Minister in relation to the competitiveness of electricity supplies and such other matters as the Commission considers appropriate or as the Minister may request.
- (4) (a) Before making an order under subsection (2), the Minister, following consultation with the persons specified in paragraph (b), shall publish a draft of the proposed order on the internet and by such other means as the Minister considers appropriate inviting persons to make representations in writing to the Minister in relation to the proposed order within 28 days from the date of publication on the internet.
- (b) For the purposes of paragraph (a), the Minister shall consult with—
- (i) the Commission, and
 - (ii) electricity generators,

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and may consult with such other persons as he or she considers appropriate.

Returns to
Commission.

40G.—(1) Each electricity generator shall make a return to the Commission within 10 working days of the end of each levy period, in the prescribed form and manner, of—

- (a) the total of the emissions, during the levy period concerned, from each installation of which the electricity generator is the operator, calculated in accordance with the formula for the calculation of emissions set out in Schedule 4 to the Regulations of 2004, expressed in tonnes of carbon dioxide equivalent,
- (b) in the case of a qualifying generating station, information relating to such portion of the total of the emissions referred to in paragraph (a) as is attributable to the quantity of electricity produced by the qualifying generating station—
 - (i) in respect of which revenues are received during the levy period concerned by the electricity generator through participation in the Single Electricity Market, and
 - (ii) in respect of which the electricity generator does not receive payments from the Board in accordance with the CADA,

and

- (c) such other information as may be prescribed by the Commission for the purposes of this section relating to the verification of—
 - (i) the calculation of the total of the emissions referred to in paragraph (a), and
 - (ii) in the case of a qualifying generating station, the portion of the total of the emissions as referred to in paragraph (b).

(2) The Commission may make regulations providing for all or any of the following matters:

- (a) the form and manner in which returns are to be made, including by electronic means, as appropriate;

- (b) requirements relating to the certification of returns by or on behalf of the electricity generator;
- (c) the information to be contained in returns relating to the verification of—
 - (i) the calculation of the total of the emissions referred to in subsection (1)(a), and
 - (ii) in the case of a qualifying generating station, the portion of the total of the emissions as referred to in subsection (1)(b);
- (d) such other matters as the Commission considers appropriate relating to the making of returns.

(3) The Commission may request an electricity generator to give to the Commission such evidence as the Commission may reasonably require in order to verify any information, particulars or documents given to the Commission in respect of a return made under this section.

(4) A request under subsection (3) shall be in such form as the Commission determines and shall specify a period of not less than 10 working days from the date of the request within which such evidence shall be given to the Commission.

(5) A person commits an offence where he or she knowingly gives to the Commission under this section information which is false or misleading in a material respect.

(6) A person convicted of an offence under subsection (5) is liable—

- (a) on summary conviction to a fine not exceeding €5,000 or a term of imprisonment not exceeding 6 months or to both, or
- (b) on conviction on indictment to a fine not exceeding €15,000 or a term of imprisonment not exceeding 3 years or to both.

Notice of amount of carbon revenue levy.

40H.—The Commission shall, within 10 working days of receipt of the return under section 40G, or within such longer period as the Commission may, in any particular case, determine, give to each electricity generator, in such form and manner as the Commission may determine, a notice in respect of the levy period concerned specifying—

- (a) the average of the daily price of allowances for the levy period concerned

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referred to in the construction of ‘P’ in the formula in section 40D(1),

- (b) the percentage rate provided for by section 40F,
- (c) the amount of the carbon revenue levy payable by the electricity generator, calculated in accordance with section 40E, in respect of each installation of which the electricity generator is the operator,
- (d) the date by which the carbon revenue levy is due and payable and the form and manner in which it is to be paid, including by electronic means, as appropriate, and
- (e) the consequences of non-payment of the carbon revenue levy.

Payment of carbon revenue levy. 40I.—Within 15 working days after the date of the notice given under section 40H, each electricity generator shall pay to the Commission, in the form and manner specified in the notice, the amount of the carbon revenue levy payable by the electricity generator.

Condition of licences granted under section 14(1)(a). 40J.—It shall be a condition of every licence granted under section 14(1)(a), whether granted before or after the relevant date, that the holder of the licence complies with the requirements imposed by this Part on electricity generators in respect of the carbon revenue levy.

Interest on unpaid amount of carbon revenue levy. 40K.—If all or any part of the amount of carbon revenue levy specified in a notice given under section 40H is not paid on or before the date specified in the notice as the date on which the amount becomes payable, interest on the unpaid amount accrues at a rate calculated in accordance with Regulation 5 of the European Communities (Late Payment in Commercial Transactions) Regulations 2002 (S.I. No. 388 of 2002) for each day or part of a day beginning on the day on which the amount should have been paid and ending on the day immediately before the day on which it is paid.

Recovery of unpaid carbon revenue levy and interest. 40L.—The Commission may recover, as a simple contract debt in any court of competent jurisdiction, from the electricity generator by whom it is payable any amount due and owing to the Commission under this Part in respect of the carbon revenue levy and any interest that has accrued on that amount.

Proceeds of carbon revenue levy. 40M.—(1) The proceeds of the carbon revenue levy collected by the Commission under this Part shall be paid into an account, established by the Commission for the purposes of this section, which is separate from the Commission’s other accounts

and moneys standing to the credit of that account shall not be used by the Commission other than in accordance with this section.

(2) The Minister For Finance may direct, following consultation with the Minister, that such amount as the Minister for Finance may determine of any dividend referred to in section 7 of the Electricity (Supply) (Amendment) Act 2001 be paid into the account referred to in subsection (1), in any financial year, in such manner as the Minister for Finance may direct under the said section 7.

(3) The Minister may give a direction that such sum or sums as the Minister may specify, with the prior consent of the Minister for Finance, standing to the credit of the account referred to in subsection (1) shall be paid into or disposed of for the benefit of the Exchequer in such manner as the Minister may direct following consultation with the Minister for Finance.

(4) Section 10A shall not apply to any direction given by the Minister under subsection (3).

(5) The Commission shall manage and control the account referred to in subsection (1).

(6) The Commission shall—

(a) keep in such form as may be approved by the Minister, with the consent of the Minister for Finance, all proper and usual accounts relating to the account referred to in subsection (1), and

(b) as soon as may be after the end of each financial year, submit the accounts to the Comptroller and Auditor General for audit and those accounts when so audited shall, together with—

(i) the report of the Comptroller and Auditor General thereon, and

(ii) a report of the Commission to the Minister in relation to the performance of its functions under this Part in the previous year,

be presented as soon as may be after the end of the financial year to the Minister, who shall cause copies of the accounts and the reports referred to in subparagraphs (i) and (ii) to be laid before each House of the Oireachtas.”.

4.—This Act may be cited as the Electricity Regulation Short title.
(Amendment) (Carbon Revenue Levy) Act 2010.