

EXPLANATORY MEMORANDUM TO
ENVIRONMENT (NORTHERN IRELAND) ORDER 2002 (AMENDMENT)
REGULATIONS (NORTHERN IRELAND) 2010

2010 No. 92

1. Introduction

- 1.1 This Explanatory Memorandum has been prepared by the Department of the Environment (“the Department”) to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2 The Statutory Rule is made under the powers conferred by section 2(2) of the European Communities Act 1972 and is subject to the negative resolution procedure.

2. Purpose

- 2.1 To amend the Environment (Northern Ireland) Order 2002 to allow the Department to provide by regulations for a Northern Ireland charging scheme for the cost of regulating the EU Emissions Trading Scheme and to amend the Greenhouse Gas Emissions Trading Scheme Regulations 2005 to provide that the fees and charges set out in Schedule 5 of the 2005 Regulations may be superseded by a charging scheme made under Article 4 of the Environment (Northern Ireland) Order 2002.

3. Background

- 3.1 The Greenhouse Gas Emissions Trading Scheme Regulations 2005 (“the 2005 Regulations”) provides the framework for a UK wide greenhouse gas emissions trading scheme for the purpose of implementing Directive 2003/87/EC of the European Parliament and the Council establishing a scheme for greenhouse gas emissions trading within the Community and amending Council Directive 96/61/EC (the Emissions Trading Directive).
- 3.2 In Northern Ireland the regulation of the EU Emissions Trading Scheme is the responsibility of the Northern Ireland Environment Agency and the Chief Inspector, as the regulator for Northern Ireland, may charge for the costs of regulating the scheme under regulation 18 and Schedule 5 of the 2005 Regulations.
- 3.3 Regulation 18(3) of the 2005 Regulations provides for the provisions of Schedule 5 (fees and charges) to be superseded by the provisions of a charging scheme made under section 41 of the Environment Act 1995 (the 1995 Act) in respect of installations situated in England, Wales or Scotland. The 1995 Act does not extend to Northern Ireland

and no alternative provision was made in the 2005 Regulations for Schedule 5 to be superseded by a Northern Ireland charging scheme.

4. Detail

- 4.1 Regulation 2 provides a new paragraph 9A to be inserted into Schedule 1 to the Environment (Northern Ireland) Order 2002. The purpose is to provide for the inclusion of fees and charges related to greenhouse gas emissions permits and operator registry costs in the list of purposes for which the Department is authorised to make a charging scheme. It also provides that the operator charges received by the enforcing authority are to be passed to the Environment Agency.
- 4.2 Regulation 3 amends Regulation 18(3) of the Greenhouse Gas Emissions Trading Scheme Regulations 2005 by the insertion of a new sub-paragraph to provide that the fees and charges set out in Schedule 5 to the 2005 Regulations may be superseded by a charging scheme made in respect of installations (other than offshore installations) situated in Northern Ireland, under Article 4 of the Environment (Northern Ireland) Order 2002.

5. Consultation

- 5.1 The draft regulations were subjected to a 12 week public consultation directed in the main to businesses and organisations that require greenhouse gas emissions permits to carry out the activities specified in Schedule 1 to the 2005 Regulations but also local councils, government departments, other government organisations and all statutory consultees.
- 5.2 No adverse comment was received.

6. Equality Impact

- 6.1 The Department has carried out an equality screening exercise on the draft regulations. No adverse impacts for any of the nine section 75 categories were identified. A full Equality Impact Assessment was therefore not required.

7. Regulatory Impact

- 7.1 The Environment Order amendment Regulations do not introduce a policy change as affected businesses are currently paying fees and charges, as a requirement of the 2005 Regulations. Nevertheless a partial Regulatory Impact Assessment (RIA) was prepared which indicated limited impact in Northern Ireland.
- 7.2 The RIA did not attract any comment from the consultation.

8. Financial Implications

8.1 There are no financial implications for the Department.

9. Section 24 of the Northern Ireland Act 1998

9.1 The Human Rights Impact Assessment carried out concluded that the Environment Order Amendment Regulations do not breach any of the rights in the European Convention on Human Rights. The Environment Order Amendment Regulations are fully compatible with European Community Law. They do not discriminate against any person or class of person on the grounds of religious belief or political opinion.

10. EU Implications

10.1 Not applicable.

11. Parity or Replicatory Measure

11.1 The Environment Order Amendment Regulations will allow for the making of regulations under which a charging scheme may be made to enable the Northern Ireland Environment Agency to recover its costs for regulating the EU Emissions Trading Scheme. This will bring Northern Ireland into line with the rest of the United Kingdom.

12. Additional Information

12.1 Not applicable.