

2004 No. 3390

ENVIRONMENTAL PROTECTION

**The Greenhouse Gas Emissions Trading Scheme (Amendment)
Regulations 2004**

<i>Made</i> - - - -	<i>21st December 2004</i>
<i>Laid before Parliament</i>	<i>22nd December 2004</i>
<i>Coming into force</i> - -	<i>13th January 2005</i>

The Secretary of State, in exercise of the powers conferred upon her by subsection (2) of section 2 of the European Communities Act 1972(a), being the Minister designated for the purpose of that subsection in relation to greenhouse gas emission allowance trading(b) hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Greenhouse Gas Emissions Trading Scheme (Amendment) Regulations 2004 and shall come into force on 13th January 2005.

Amendment to the Greenhouse Gas Emissions Trading Scheme Regulations 2003

2. The Greenhouse Gas Emissions Trading Scheme Regulations 2003(c) (“the 2003 Regulations”) shall be amended as follows—

- (a) in regulation 4(1), for “responsible authority” substitute “a responsible authority, the Secretary of State”;
- (b) after regulation 17(3), insert new paragraphs (4) to (8) as follows—
 - “(4) Subject to paragraph (5), the following charges shall be payable by the operator who holds a greenhouse gas emissions permit on 24th January 2005 for the continued subsistence of such permit for (or, where the permit is granted after 24th January 2005, the subsistence of the permit during the remainder of) the financial year 2004/2005—
 - (a) where the estimated 2005 emissions of the installation to which the permit relates are less than 50 kilotonnes, £2,260;
 - (b) where the estimated 2005 emissions of the installation to which the permit relates are between 50 and 500 kilotonnes, £4,470; or
 - (c) where the estimated 2005 emissions of the installation to which the permit relates are greater than 500 kilotonnes, £8,670.

(a) 1972 c. 68. As regards Scotland, see also section 57(1) of the Scotland Act 1998 (c. 46), which provides that, despite the transfer to Scottish Ministers by virtue of that Act of functions in relation to observing and implementing obligations under Community law, any function of a Minister of the Crown in relation to any matter shall continue to be exercisable by him as regards Scotland for the purposes specified in section 2(2) of the European Communities Act 1972.

(b) S.I. 2004/1984.

(c) S.I. 2003/3311.

(5) An operator who has submitted an application to surrender the whole greenhouse gas emissions permit under regulation 15(1)(a) on or before 24th January 2005 shall not be required to pay the charge payable under paragraph (4) unless—

- (a) the application is withdrawn;
- (b) the application is refused and no notice of appeal against the refusal of the application is given before the expiry of the period mentioned in paragraph 2(1)(a) of Schedule 2, or where an appeal relates to an installation in Northern Ireland, paragraph 2(1)(a) of Schedule 4;
- (c) an appeal against the refusal of the application is withdrawn; or
- (d) the appropriate authority determines an appeal against the refusal of the application by affirming the refusal of the application.

(6) A charge payable under paragraph (4) shall be payable within a period of 28 days beginning on the date on which notice of the estimated 2005 emissions and the charge is sent by the regulator to the operator.

(7) If an operator has failed to pay a charge payable under paragraph (4), the regulator may revoke the greenhouse gas emissions permit under regulation 16.

(8) In paragraph (4)—

“estimated 2005 emissions” means a reasonable estimate, in the opinion of the regulator, of the reportable emissions likely to be emitted from the installation in the calendar year 2005; and

“financial year” means a year beginning on 1st April and ending on 31st March.”;

(c) in regulation 29—

(i) in paragraph (1), for “or a responsible authority” substitute “, a responsible authority or the Secretary of State”; and

(ii) in paragraph (2), after “responsible authority” insert “, the Secretary of State”; and

(d) for regulation 32(1)(g) substitute the following—

“(g) to fail, before 25th January 2005, to correct in writing to the Secretary of State any statement which—

- (i) he knows to be false or misleading in a material particular or which he made recklessly and is false or misleading in a material particular; and
- (ii) was made in writing to the Secretary of State before 13th January for the purpose of developing a national allocation plan;”.

21st December 2004

Elliot Morley
Minister of State
Department of Environment, Food and Rural Affairs

EXPLANATORY NOTE

(This note is not part of the Order)

These Regulations are made under section 2(2) of the European Communities Act 1972. They amend the Greenhouse Gas Emissions Trading Scheme Regulations 2003 (S.I. 2003/3311) (the “2003 Regulations”) which implemented Directive 2003/87/EC (OJ No L 275, 25.10.03, p32) of the European Parliament and the Council establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC.

The amendments to regulation 17 of the 2003 Regulations provide for a subsistence charge, based on estimated 2005 emissions, to be payable to the regulator for the financial year 2004/5 by persons holding a greenhouse gas emissions permit to cover the costs of administering the scheme which relate to the subsistence of the permit.

The Regulations correct an omission in the 2003 Regulations by amending regulation 29 of the 2003 Regulations to include a power for the Secretary of State to serve a notice on regulators and other persons requesting information. There is a consequential amendment to ensure that the provisions of regulation 4 apply to a notice served by the Secretary of State. An amendment to regulation 32 of the 2003 Regulations makes it an offence not to correct information provided to the Secretary of State before the entry into force of these Regulations for the purpose of developing the national allocation plan.

These Regulations apply to the United Kingdom.

A Regulatory Impact Assessment has been prepared and placed in the library of each House of Parliament. Copies can be obtained from NCCP Division, Zone 3/E1, Department for Environment, Food and Rural Affairs, Ashdown House, 123 Victoria Street, London, SW1E 6DE.

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