

**2005 No. 2903**

**ENVIRONMENTAL PROTECTION**

**The Greenhouse Gas Emissions Trading Scheme (Amendment)  
and National Emissions Inventory Regulations 2005**

<i>Made</i> - - - -	<i>16th October 2005</i>
<i>Laid before Parliament</i>	<i>19th October 2005</i>
<i>Coming into force</i> - -	<i>13th November 2005</i>

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

**PART 1**  
**GENERAL**

**Title and commencement**

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

**Interpretation**

2.—(1) In these Regulations—

“the 2005 Regulations” means the Greenhouse Gas Emissions Trading Scheme Regulations 2005(d);

“Annex I party” means a country which—

(a) is listed in Annex I to the UNFCCC or which has given notice in accordance with Article 4(2)(g) of the UNFCCC; and

(b) has ratified the Kyoto Protocol to the UNFCCC signed at Kyoto on 11th December 1997;

“approval” means, in relation to a proposed project activity—

(a) the approval of an Article 6 project activity required by Article 6(1)(a) of the Kyoto Protocol; or

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(a) 1972 c. 68.

(b) S.I. 2004/1984.

(c) As regards Scotland, see also section 57(1) of the Scotland Act 1998 (c. 46), which provides that, despite the transfer to the 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.

(d) S.I. 2005/925.

(b) the approval of voluntary participation in an Article 12 project activity required by Article 12(5)(a) of the Kyoto Protocol,

and “approve” shall be construed accordingly;

“Article 6 project activity” means a project within the meaning of Article 6 of the Kyoto Protocol, that is to say a project in an Annex I party aimed at reducing anthropogenic emissions by sources or enhancing anthropogenic removals by sinks of greenhouse gases in any sector of the economy;

“Article 12 project activity” means a project activity within the meaning of Article 12 of the Kyoto Protocol, that is to say a project activity under the clean development mechanism;

“the Emissions Trading 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(a) as amended by Directive 2004/101/EC(b);

“Kyoto Protocol” means the Kyoto Protocol to the UNFCCC signed at Kyoto on 11th December 1997(c);

“national inventory” means the estimation, under Article 4(1)(a) of the UNFCCC, of anthropogenic emissions of greenhouse gases (that is, those gaseous constituents of the atmosphere that absorb and reemit infrared radiation) by sources and removals of all greenhouse gases by sinks not controlled by the Montreal Protocol on Substances that Deplete the Ozone Layer adopted at Montreal on 16th September 1987;

“project activity” means an Article 6 project activity or an Article 12 project activity;

“sink” means any process, activity or mechanism which removes a greenhouse gas, an aerosol or a precursor of a greenhouse gas from the atmosphere; and

“UNFCCC” means the United Nations Framework Convention on Climate Change signed in New York on 9th May 1992(d).

(2) Expressions used in these Regulations have the same meaning as in the Emissions Trading Directive unless otherwise stated.

(3) For the purposes of these Regulations—

(a) “Scottish applicant” means a person whose principal place of residence is in Scotland or, where the applicant is a body corporate or partnership, whose principal office is in Scotland;

(b) “NI applicant” means a person whose principal place of residence is in Northern Ireland or, where the applicant is a body corporate or a partnership, whose principal office is in Northern Ireland; and

(c) “Welsh applicant” means a person whose principal place of residence is in Wales or, where the applicant is a body corporate or a partnership, whose principal office is in Wales.

## Notices

3. Regulation 4 of the 2005 Regulations shall apply to a notice or document served under these Regulations.

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(a) OJ No. L 275, 25.10.2003, p.32. The Directive is amended by Directive 2004/101/EC, OJ No.L 338, 13.11.2004, p.18.

(b) OJ No. L 338, 13.11.2004, p.18.

(c) This is available at <http://unfccc.int/resource/docs/convkp/kpeng.html>.

(d) This is available at <http://unfccc.int/resource/docs/convkp/conveng.pdf>.

**PART 2**  
**AMENDMENT OF 2005 REGULATIONS**

**Amendment of the 2005 Regulations**

4. The 2005 Regulations are amended as follows—

(a) in regulation 2(1)—

(i) there shall be inserted at the appropriate place in alphabetical order—

““CER” means certified emission reduction and has the meaning given to it in Article 3 of the Directive;”;

““ERU” means an emission reduction unit and has the meaning given to it in Article 3 of the Directive;”;

““project activity” has the meaning given to it in Article 3 of the Directive;”;

(ii) in the definition of “national allocation plan”, for “Articles 9 and 10” there shall be substituted “Articles 9, 10 and 30(3)”.

(b) in regulation 26, after paragraph (16) the following paragraph shall be inserted—

“(17) An operator holding account and a person holding account shall be capable of holding all ERUs and CERs.”;

(c) after regulation 27 the following regulation shall be inserted—

**“Use of CERs and ERUs**

**27A.**—(1) Subject to paragraphs (2) to (5), an operator of an installation may, in accordance with Article 53 of the Registries Regulation, use any combination of—

(a) CERs from project activities;

(b) ERUs from project activities; and

(c) allowances,

to comply with a requirement to surrender allowances imposed pursuant to regulation 10(3), 16(7)(b), 17(5)(b) or 40(2)(a).

(2) An operator may not use ERUs to comply with an obligation relating to emissions in the first scheme phase.

(3) An operator may not use CERs or ERUs generated from—

(a) nuclear facilities; or

(b) land use, land use change and forestry activities.

(4) In relation to the second and subsequent scheme phases, an operator may only use CERs and ERUs up to the limit provided for in the approved national allocation plan for that scheme phase.

(5) In relation to a scheme phase in which a partial transfer of a greenhouse gas emissions permit is effected in accordance with regulation 15(7)(a), an operator may not use CERs or ERUs where the obligation relates to the transferred unit.”;

(d) In regulation 35—

(i) in paragraph (1), for the words “For the purposes of the discharge of its functions under these Regulations,” there shall be substituted “For the purposes in paragraph (4), ”;

(ii) in paragraph (2), for the words “For the purpose of the discharge of its functions under these Regulations,” there shall be substituted “For the purposes in paragraph (4),”; and

(iii) after paragraph (3), the following paragraphs shall be added—

- “(4) The purposes referred to in paragraphs (1) and (2) are—
- (a) the purpose of the discharge of the relevant body’s functions under these regulations; and
  - (b) the purpose of applying, seeking to apply, or assessing whether to seek to apply emission allowance trading to activities, installations and greenhouse gases which are not listed in Schedule 1 in accordance with Article 24 of the Directive.
- (5) Where the Secretary of State is entitled to serve a notice on a person under paragraph (2)—
- (a) in relation to England and Wales, the regulator; and
  - (b) in relation to Scotland and Northern Ireland, the regulator or the Environment Agency,
- may serve that notice for the purpose of assisting the Secretary of State.”.

## PART 3

### PROJECT APPROVAL AND AUTHORISATION TO PARTICIPATE

#### **Approval of and authorisation of participation in project activities**

5.—(1) A person wishing to have a proposed project activity approved shall, in accordance with this regulation, apply to the Secretary of State for approval of the proposed project activity.

(2) A person wishing to be authorised to participate in an Article 6 project activity shall, in accordance with this regulation, apply to the Secretary of State for such authorisation.

(3) An application under this regulation shall be made in the English language and shall contain the following information—

- (a) the applicant’s name and address;
- (b) a description of the project activity or proposed project activity; and
- (c) any other information that the Secretary of State may require for the purpose of determining the application.

(4) Any application made under this regulation shall be made in such form as may be required by the Secretary of State.

(5) The Secretary of State may require any information included in an application under this regulation to be independently verified and a requirement under this paragraph may include a requirement for the verification to be provided by a person of a description specified by the Secretary of State.

(6) An application under paragraph (2) may be combined with an application under paragraph (1).

(7) An application made under this regulation may be withdrawn at any time before it is determined.

#### **Request for further information**

6.—(1) For the purposes of determining an application made under regulation 5, the Secretary of State may serve a notice on the applicant requesting further information as she considers necessary.

(2) The notice shall specify the information required and the time period for furnishing such further information.

(3) A notice under paragraph (1) may include a requirement for information furnished in connection with an application under regulation 5 to be independently verified and a requirement under this paragraph may include a requirement for the verification to be provided by a person of a description specified by the Secretary of State.

(4) If an applicant fails to comply with a request under paragraph (1), the Secretary of State may serve a notice on the applicant stating that the application is deemed to have been withdrawn.

### **Determination of application**

7.—(1) Where an application is duly made under regulation 5 the Secretary of State shall determine whether to approve the proposed project activity or to authorise the participation in accordance with this regulation.

(2) When determining an application duly made under regulation 5, the Secretary of State may attach such conditions to an approval or authorisation as she thinks necessary.

(3) The Secretary of State shall give notice of her determination to the person who made the application within a period of two months beginning on the date on which the application was received or within such longer period as may be agreed in writing with the applicant.

(4) For the purposes of calculating the period of two months mentioned in paragraph (3), no account shall be taken of any period beginning on the date on which notice is served under regulation 6(1) and ending on the date on which the applicant furnishes the further information.

(5) The Secretary of State may not approve a proposed project activity to be carried out in the United Kingdom.

(6) The Secretary of State may only approve a proposed project activity if she is satisfied that—

- (a) where a proposed project activity is to be undertaken in a country which has signed a Treaty of Accession with the European Union, the baseline used for determining the emissions reductions from the project activity complies with the body of common rights and obligations which binds all Member States within the European Union, including the temporary derogations set out in that Treaty; and
- (b) in relation to a proposed project activity for the production of hydro-electric power with a generating capacity of more than 20 megawatts, the development of the proposed project activity will respect the criteria and guidelines identified in the Report produced by the World Commission on Dams on 16th November 2000 entitled “Dams and Development – A New Framework for Decision-Making(a)”.

(7) The Secretary of State may only authorise the applicant’s participation in a proposed project activity if she is satisfied that to do so would be consistent with article 11b(5) of the Emissions Trading Directive.

### **Agreement with devolved administrations on project approval**

8. The power of the Secretary of State to determine an application under regulation 7 is exercisable—

- (a) in so far as an application under regulation 5(1) relates to a Scottish applicant, only with the agreement of the Scottish Ministers;
- (b) in so far as an application under regulation 5(1) relates to a NI applicant, only with the agreement of the Department of the Environment; and
- (c) in so far as an application under regulation 5(1) relates to a Welsh applicant, only with the agreement of the National Assembly for Wales.

### **Appeals**

9.—(1) A person may appeal to the Secretary of State against the refusal of an application made under regulation 5 or against any conditions attached to an approval or authorisation notified under regulation 7.

(2) Where an appeal is made under this regulation, the Secretary of State may affirm, reverse or vary her decision.

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(a) ISBN 1 85383 798 9.

(3) Schedule 2 of the 2005 Regulations shall apply in relation to an appeal under this regulation as if—

- (a) the reference to “regulation 32 or 33” in paragraph 1 of that Schedule were to this regulation;
- (b) references to “appeal body” were to the Secretary of State;
- (c) paragraph 2(1) contained a new paragraph (h) as follows—

“(h) in the case of an appeal under regulation 9(1) of the Greenhouse Gas Emissions Trading Scheme (Amendment) and National Emissions Inventory Regulations 2005, before the expiry of 6 months beginning with the date of the notice which is the subject matter of the appeal.”; and

- (d) the references to “regulation 33” in paragraph 3(2) and (6) were to this regulation.

(4) The Secretary of State may—

- (a) appoint any person to exercise on her behalf, with or without payment, the function of determining an appeal under this regulation or any matter or question involved in such an appeal; or
- (b) refer any matter or question involved in an appeal under this regulation to such person as she may appoint for the purpose, with or without payment.

(5) Schedule 3 of the 2005 Regulations shall have effect with respect to appointments under paragraph (4)(a) as if references in paragraph 1 of that Schedule to “regulation 34(2)(a)” were references to paragraph (4)(a) of this regulation.

## PART 4

### NATIONAL INVENTORY

#### **Information for the preparation of a national inventory**

**10.**—(1) For the purposes of preparing a national inventory, the Secretary of State may require any person to furnish information by serving a notice on that person.

(2) A notice under this regulation shall specify—

- (a) the information required to be furnished;
- (b) if the Secretary of State requires the information to be furnished in a particular form, the form in which it is to be furnished; and
- (c) the date by which the information is required to be furnished.

(3) The information which a person may be required to furnish by a notice served under this regulation includes—

- (a) information, which, although it is not in that person’s possession or under his control, is information which it is reasonable to require that person to obtain and, where relevant, to compile;
- (b) evidence that information furnished to the Secretary of State for the purposes of preparing a national inventory (whether or not the information is furnished for the purpose of complying with a notice under this regulation) has been independently verified.

#### **Powers of entry**

**11.**—(1) The Secretary of State may authorise in writing any person (the “authorised person”) who appears suitable to her to exercise, in accordance with the terms of that authorisation, any of the powers specified in paragraph (3).

(2) The authorised person may only exercise the powers specified in paragraph (3) for the purpose of obtaining or verifying information for the preparation of a national inventory.

- (3) The powers exercisable under this regulation are—
- (a) to enter at any reasonable time any premises (other than premises used solely as a place of residence) which he has reason to believe it is necessary to enter;
  - (b) on entering any premises by virtue of paragraph (a) above, to take with him—
    - (i) any equipment or materials that he requires; and
    - (ii) if he has reasonable cause to apprehend any serious obstruction in the execution of his duty, a constable;
  - (c) to make such examination and investigation as he considers necessary (for which purpose he may install or maintain monitoring or other apparatus on the premises);
  - (d) as regards any premises which he has power to enter, to give a direction requiring that the premises or any part of the premises, or anything in them, be left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purposes of any examination or inspection under sub-paragraph (c);
  - (e) to take such measurements and photographs and make such recordings as he considers necessary for the purpose of any examination or inspection 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 he has power to enter and of the air in, or in the vicinity of, the premises;
  - (g) to require any person whom he has reasonable cause to believe to be able to give any information relevant to any examination or investigation under sub-paragraph (c) to—
    - (i) attend at a place and time specified by the authorised person; and
    - (ii) answer (in the absence of any person other than persons whom the authorised person may allow to be present and a person nominated to be present by the person on whom the requirement is imposed) such questions as the authorised person may ask.
  - (h) to require the production of, or where the information is recorded in computerised form, the furnishing of extracts from, any records which he considers it necessary to see for the purposes of an examination or investigation under paragraph (c); and
  - (i) to require any person to afford him 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 authorised person to exercise any power conferred on him by this regulation.

(4) No answer given by a person in pursuance of a requirement imposed under paragraph (3)(g) above shall be admissible in evidence in England and Wales or Northern Ireland against that person in any proceedings, or in Scotland against that person in criminal proceedings.

(5) Nothing in paragraph (3) shall be taken to compel the production by any person of a document of which he would on grounds of legal professional privilege be entitled to withhold production on an order for disclosure or discovery in an action in the High Court or, in relation to Scotland, on an order for the production of documents in an action in the Court of Session.

#### **Agreement with devolved administrations on national inventory**

**12.** The power of the Secretary of State to serve a notice under regulation 10 and to authorise a person under regulation 11 is exercisable—

- (a) where a notice is to be served in Scotland or an authorisation authorises the exercise of powers in Scotland, only with the agreement of the Scottish Ministers;
- (b) where a notice is to be served in Northern Ireland or an authorisation authorises the exercise of powers in Northern Ireland, only with the agreement of the Department of the Environment; and
- (c) where a notice is to be served in Wales or an authorisation authorises the exercise of powers in Wales, only with the agreement of the National Assembly for Wales.



## PART 5 OFFENCES

### Offences

13.—(1) It is an offence for a person to—

- (a) fail, without reasonable excuse, to comply with a condition of a notice under regulation 10(1);
- (b) make a statement which he knows to be false or misleading in a material particular, or recklessly to make a statement which is false or misleading in a material particular, where the statement is made—
  - (i) in connection with an application under regulation 5;
  - (ii) in writing for the purpose of preparing a national inventory (whether or not the statement is made in purported compliance with a requirement imposed by a notice under regulation 10);
  - (iii) for the purposes of satisfying a requirement under regulation 11 for the supply of information to an authorised person;
- (c) wilfully obstruct a person appointed under regulation 11 from exercising any of the powers that he is authorised to exercise under that regulation;
- (d) without reasonable excuse, fail to comply with an obligation imposed pursuant to regulation 11(3) or prevent another person from complying with such a requirement.

(2) A person guilty of an offence under this regulation shall be liable—

- (a) on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding three months or to both; or
- (b) in the case of an offence under paragraph (1)(b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both.

(3) Where a body corporate is guilty of an offence under these Regulations, and that offence is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of—

- (a) a qualified person appointed as such for the purposes of these Regulations;
- (b) any director, manager, secretary or other similar person of the body corporate, or
- (c) any person who was purporting to act in any such capacity;

he, as well as the body corporate, is guilty of the offence and is liable to be proceeded against and punished accordingly.

(4) For the purposes of paragraph (3)(b) above, “director”, in relation to a body corporate whose affairs are managed by its members means a member of the body corporate.

(5) Where an offence which has been committed by a Scottish partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, he as well as the partnership is guilty of the offence and is liable to be proceeded against and punished accordingly.

16th October 2005

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



## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations transpose Directive 2004/101/EC of the European Parliament and of the Council amending Directive 2003/87/EC establishing a Scheme for greenhouse gas emission allowance trading within the Community, in respect of the Kyoto Protocol's project mechanisms. They also provide the Secretary of State with powers to assist her in carrying out her obligations under Decision 280/2004/EC of the Council and of the Parliament to prepare a national emissions inventory and makes a small number of other provisions relating to the collection of data.

Part 2 of the Regulations amends the Greenhouse Gas Emissions Trading Scheme Regulations 2005 (S.I. 2005/925) ("the ETS Regulations") to permit holders of accounts in the UK emissions trading registry to hold certain types of Certified Emissions Reductions (CERs) and Emissions Reduction Units (ERUs) in their registry accounts (regulation 26(17) of the ETS Regulations). It also allows people with obligations to surrender allowances under the EU Emissions Trading Scheme, subject to specified limitations, to use certain types of CERs and ERUs as well as allowances towards complying with those obligations (regulation 27A of the ETS Regulations). It also extends the power that the Secretary of State and other bodies have under the ETS Regulations to require people to supply information (regulation 35(4)-(5) of the ETS Regulations).

Part 3 of the Regulations establishes an application procedure by which a person may apply to the Secretary of State for approval of one of the project activities established under the Kyoto Protocol or for authorisation to participate in the project activity (regulation 5). It sets out certain conditions that the Secretary of State must ensure when considering whether or not to approve such a project or authorise participation (regulation 7). It also provides a procedure for the applicant to appeal against the determination of his application (regulation 9).

Part 4 of the Regulations provide a power for the Secretary of State and devolved administrations to require a person to supply information for the purposes of compiling a national emissions inventory (regulation 10). Regulation 11 sets out powers of entry and inspection which may be exercised by an authorised person for the purpose of preparing such an inventory.

Part 5 makes it an offence to comply with a number of obligations imposed under the Regulations (regulation 13(1)) and specifies the maximum penalties which may be imposed for such an offence (regulation 13(2)). It also provides that where an offence is committed by a body corporate or by a Scottish partnership, specified individuals may also be guilty of that offence if it were committed with that person's consent or connivance, or as a result of their neglect (regulation 13(3)-(5)).

A regulatory impact assessment and a transposition note has been prepared and placed in the library of each House of Parliament. Copies can be obtained from National Climate Change Policy Division, Department for Environment, Food and Rural Affairs, Ashdown House, 123 Victoria Street, London SW1E 6DE.

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