

**EXPLANATORY MEMORANDUM TO**  
**THE GREENHOUSE GAS EMISSIONS TRADING SCHEME**  
**(AMENDMENT NO. 2) REGULATIONS 2007**

**2007 No.3433**

1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

This memorandum does not contain information for the Joint Committee on Statutory Instruments.

2. **Description**

2.1 The Greenhouse Gas Emissions Trading Scheme Regulations 2005 (“the 2005 Regulations”) (SI 2005/925) provide a framework for the EU Emissions Trading Scheme in the UK and implement Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community.

2.2 The Greenhouse Gas Emissions Trading Scheme (Amendment No. 2) Regulations 2007 make a number of minor, technical changes to the 2005 Regulations that are necessary for the efficient implementation of Phase II of the Scheme which begins on 1 January 2008.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None.

4. **Legislative Background**

4.1 The 2005 Regulations implement the EU Emissions Trading Scheme (EU ETS) in the UK as a mechanism for encouraging certain businesses who carry out activities listed in Schedule 1 to the 2005 Regulations to reduce carbon dioxide emissions from their installations in order to help combat climate change. Installations within the scope of the 2005 Regulations must hold a permit, and are then allocated a specified number of allowances to emit a specified number of tonnes of carbon dioxide for the relevant scheme period.

4.2 These Regulations are made under section 2(2) of the European Communities Act 1972.

4.3 These Regulations make a number of technical amendments to the 2005 Regulations to reflect changes in the trading scheme required by the UK’s National Allocation Plan for Phase II of the EU ETS.

## **5. Territorial Extent and Application**

5.1 This instrument applies to all of the United Kingdom.

## **6. European Convention on Human Rights**

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

7.1 The EU Emissions Trading Scheme is one of the policies which has been introduced across Europe to tackle emissions of carbon dioxide and other greenhouse gases in order to combat the serious threat of climate change.

7.2 The second phase of the Scheme runs from 2008 to 2012 to coincide with the first Kyoto Commitment Period. Further Scheme periods are expected following the Commission's current formal review of the Directive.

7.3 The Scheme works on a 'Cap and Trade' basis. EU Member State governments are required to set an emission cap for all installations covered by the Scheme. The total number of allowances to be allocated to installations in the UK for each phase, and the manner in which they will be distributed is set down in a decision document – the Final Allocation Decision (FAD) – that is based upon the UK's National Allocation Plan as approved by the Commission in accordance with Article 11 of the Directive.

7.4 The UK's National Allocation Plan for Phase II (Phase II NAP) was approved by the Commission in November 2006. The Phase II NAP introduces a Contingency Fund – a ring-fenced pot of 2.4 million allowances within the New Entrant Reserve (NER) – available for late entrants to Phase II and to correct errors in allocation made by the UK Government.

7.7 The Department acknowledges that the 2005 Regulations should ideally be consolidated, but there is a major review of the European Directive due to report soon; it will comprise a legislative proposal for substantial amendments to the Directive. The Department envisages that significant changes will therefore shortly be required to implement these amendments, and therefore the consolidation will take place to implement those amendments.

## **8. Impact**

8.1 No Impact Assessment (IA) has been prepared for this instrument since the amendments do not create any new costs to any sector.

8.2 A number of public consultations were held during the development of the Phase II NAP, including a formal consultation published with the draft Phase II NAP in March 2006. The UK's Phase II NAP and accompanying Regulatory Impact Assessments can be found at:

<http://www.defra.gov.uk/environment/climatechange/trading/eu/operators/phase-2.htm>

## **9. Contact**

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