

EXPLANATORY MEMORANDUM TO
THE GREENHOUSE GAS EMISSIONS TRADING SCHEME (AMENDMENT)
(CHARGING SCHEMES) REGULATIONS 2012

2012 No. 2788

1. This explanatory memorandum has been prepared by the Department of Energy and Climate Change and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This Statutory Instrument updates powers for UK regulators¹ to recover from regulated entities the costs incurred in the course of administering the EU Emissions Trading System (EU ETS). Phase III of the EU ETS begins on 1 January 2013 and it is necessary to update existing powers to ensure that they cover all of the activities that regulators will be required to carry out. The opportunity has also been taken to simplify the drafting of the provisions and ensure consistency of treatment.

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

3.2 None.

4. Legislative Context

4.1 The EU ETS Directive (Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emissions allowance trading within the Community and amending Council Directive 96/61/EC) is currently implemented in the UK by the Greenhouse Gas Emissions Trading Scheme Regulations 2005 (S.I. 2005/925) and the Aviation Greenhouse Gas Emissions Trading Scheme Regulations 2010 (S.I. 2010/1996). However, it is envisaged that those instruments will be replaced by a single, consolidated set of implementing Regulations, to be made in early December after the present instrument comes into force, and which are necessary to transpose amendments to the Directive.

4.2 In December 2008, the European Commission agreed Directive 2009/29/EC, amending Directive 2003/87/EC so as to improve and extend the system for greenhouse gas emission allowance trading within the European Community. It came into force on 23 April 2009, and Member States have to fully transpose it by 31 December 2012. The Department intends to make and lay regulations implementing the amended Directive so that they will come into force in compliance with that transposition deadline on 1st January 2013.

4.3 This instrument amends the Environment Act 1995, the Environment (Northern Ireland) Order 2002 (S.I. 2002/3153 (N.I. 7)) and the Greenhouse Gas Emissions Trading Scheme Charging Scheme Regulations (Northern Ireland) 2010

¹ The Environment Agency; the Scottish Environment Protection Agency; and the chief inspector in the Department of Environment Northern Ireland. In addition, the Secretary of State is the regulator for certain offshore installations.

(S.R. (N.I.) 2010 No. 151), which provide the powers enabling regulators to recover costs incurred in the course of administering the EU ETS. Those powers are amended so that they will apply to the full range of activities that regulators will be required to carry out from 1 January 2013. A consequential amendment is also made to Schedule 1 to the Pollution Prevention and Control Act 1999, which gives powers to make charging schemes for offshore installations.

4.4 Those powers were previously amended by S.I. 2011/2911. That instrument ensured in particular that charging schemes could be made in respect of aviation operators as well as operators of stationary installations. The amendments made by the present instrument ensure that operators and aviation operators are now treated consistently, and make other changes designed to ensure consistency and simplicity. Furthermore the powers are framed in more general terms, so that appropriate charging schemes can continue to be made when the current implementing Regulations are amended or replaced.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 The Rt. Hon. Greg Barker MP has made the following statement regarding Human Rights:

In my view the provisions of the Greenhouse Gas Emissions Trading Scheme (Amendment) (Charging Schemes) Regulations 2012 are compatible with the Convention rights.

7. Policy background

- *What is being done and why*

7.1 The EU Emissions Trading System is an EU-wide scheme which caps the emissions of greenhouse gases. Regulated operators are required to surrender allowances equivalent to the amount of greenhouse gas emissions produced each year. The scheme works on a cap and trade basis enabling businesses to meet their obligations through direct reduction of emissions or through purchase of emission trading allowances. Phase III of the EU ETS starts on 1 January 2013. Legislation to implement Phase III in the UK is currently being prepared and will be made later this year (see paragraph 4.2 above).

7.2 In order to prepare for those changes required for Phase III of the EU ETS the Government is updating and simplifying powers set out in the Environment Act 1995 for regulators to charge regulated operators to recover costs incurred in the course of administering the scheme. Corresponding changes are also made to the legislation applicable in Northern Ireland.

7.3 Changes to the EU ETS mean that there will be three categories of business requiring regulation: stationary installations (e.g. power stations); excluded installations (stationary installations producing emissions below a defined threshold, and hospitals); and aviation operators. To accommodate this diversity the Government is updating and simplifying the charging powers so that they apply in similar to terms to each category of operator. In particular, reference is no longer made to “greenhouse gas emissions permits” as a specific form of environmental licence (as defined in section 56 of the Environment Act 1995). This is inappropriate, as the regulation of aviation operators is not based on the issue of a permit.

7.4 The charging provisions relating to accounts in the trading scheme registries are also made consistent as between different kinds of account, and references to the relevant Registries Regulation made by the European Commission are updated.

8. Consultation outcome

8.1 As this Statutory Instrument is updating and simplifying existing powers no consultation has been carried out. The Government carried out public consultation for 12 weeks in the summer of 2012 on draft legislation, the Greenhouse Gas Emissions Trading Scheme Regulations 2012, to implement the revised EU ETS Directive. The outcome and associated Impact Assessment will be published on DECC’s website.

8.2 The Environment Agency has consulted on fees and charges for Phase III of the EU ETS: <https://consult.environment-agency.gov.uk/portal/ho/finance/charges2013>.

9. Guidance

9.1 Full guidance for businesses that are covered by the EU ETS can be found on the Environment Agency’s website at: <http://www.environment-agency.gov.uk/business/topics/pollution/140761.aspx>. Updated guidance covering Phase III of the EU ETS, from 1 January 2013, is being prepared.

10. Impact

10.1 The impact on business, charities or voluntary bodies is limited to operators who are regulated under the EU ETS.

10.2 The impact on the public sector is limited to operators who are regulated under the EU ETS and to regulators in so far as the powers enable recovery of costs incurred in administering the scheme.

10.3 A separate Impact Assessment has not been prepared for this Statutory Instrument because a full assessment has been prepared to accompany legislation implementing the revised EU ETS Directive. This will be published on the DECC website when the forthcoming legislation, the Greenhouse Gas Emissions Trading Scheme Regulations 2012, is made. A draft of the Impact Assessment can be found on the DECC website at: http://www.decc.gov.uk/en/content/cms/consultations/trans_eu_dir/trans_eu_dir.aspx.

11. Regulating small business

11.1 The legislation does not apply to small business directly but it provides for regulators to recover costs related to the EU ETS from small businesses that are regulated.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is to ensure that costs charged to individual businesses reflect the administrative effort of regulating that business. Under this approach, Regulators are able to charge smaller emitters a lower subsistence fee and, where practicable, fees are charged for individual applications rather than included in the subsistence fee. Guidance within HM Treasury's "Managing Public Money" (http://www.hm-treasury.gov.uk/d/mpm_whole.pdf) specifies that the same charge is to be applied to all users of a defined category of service, and therefore does not provide for the possibility of cross subsidisation of fees and charges from larger businesses to smaller businesses.

11.3 The basis for the final decision on what action to take to assist small business is the Treasury requirements and guidance for fees and charges established in HM Treasury's "Managing Public Money".

12. Monitoring & review

12.1 Charging schemes for EU ETS activity carried out by regulators are intended to achieve full cost recovery. Regulators carry out public consultation when setting fees and in the case of England, Wales and Scotland charging schemes have to be approved by the Secretary of State (with the consent of Her Majesty's Treasury) or the Scottish Ministers.

13. Contact

Ben McKie at the Department of Energy and Climate Change Tel: 0300 068 5485 or email: ben.mckie@decc.gsi.gov.uk can answer any queries regarding the instrument.