
STATUTORY INSTRUMENTS

2012 No. 3038

The Greenhouse Gas Emissions Trading Scheme Regulations 2012

PART 1

General

Citation and commencement

1. These Regulations may be cited as the Greenhouse Gas Emissions Trading Scheme Regulations 2012 and come into force on 1st January 2013.

Duty to review these Regulations

2.—(1) The Secretary of State must from time to time—

- (a) carry out a review of these Regulations;
- (b) set out the conclusions of the review in a report; and
- (c) publish the report.

(2) In carrying out the review the Secretary of State must, so far as is reasonable, have regard to how the Directive, and measures adopted under it by the European Commission, are implemented in other member States.

(3) The report must in particular—

- (a) set out the objectives intended to be achieved by the regulatory system established by these Regulations;
- (b) assess the extent to which those objectives are achieved; and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(4) The first report under this regulation must be published before the end of the period of five years beginning with the day on which these Regulations come into force.

(5) Reports under this regulation are afterwards to be published at intervals not exceeding five years.

Interpretation

3.—(1) In these Regulations—

“the 2005 Regulations” means the Greenhouse Gas Emissions Trading Scheme Regulations 2005^{F1};

“the 2010 Regulations” means the Aviation Greenhouse Gas Emissions Trading Scheme Regulations 2010^{F2};

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“allocation”, in relation to an allowance, means allocation free of charge in accordance with Chapter [F32 or 3] of the Directive [F4 (and, except in regulation 87A(3), “allocated” has the corresponding meaning)];

“allowance”—

- (a) in this regulation, has the meaning given in Article 3(a) of the Directive, but
- (b) otherwise (and subject to regulations 54(7) and 82(1)) means an allowance other than an aviation allowance;

“annual reportable emissions” means the reportable emissions arising in any scheme year;

“authority” means—

- (a) in relation to an installation which is (or will be) situated in England or an offshore installation, the Secretary of State;
- (b) in relation to an installation, other than an offshore installation, which is (or will be) situated in—
 - (i) Scotland, the Scottish Ministers;
 - (ii) Wales, the Welsh Ministers;
 - (iii) Northern Ireland, the Department of the Environment;
- (c) in relation to a UK administered operator, the authority defined in regulation 20;
- (d) in relation to a banned non-UK operator, the Secretary of State;

“aviation activity” means an aviation activity listed in Annex 1 to the Directive;

“aviation allowance” means any allowance allocated in accordance with Article 3e or 3f of the Directive or auctioned in accordance with Article 3d of the Directive;

“aviation emissions” means emissions, arising from an aviation activity, of gases specified in respect of that activity by Annex 1 to the Directive;

“aviation emissions plan” means an emissions plan as defined by regulation 20;

“banned non-UK operator” means a person on whom an operating ban has been imposed under Article 16(10) of the Directive and who is not a UK administered operator;

“bioliquids” has the meaning given in Article 2(h) of the Renewable Energy Directive;

“cease operation”, in relation to an installation, has the meaning given in paragraph (3);

“chief inspector” means the chief inspector constituted under regulation 8(3) of the Northern Ireland Regulations;

“current operator” has the meaning given by regulation 12(1);

“the Directive” means 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](#)^{F5}, as amended from time to time and as adapted by Annex 20 to the EEA agreement^{F6};

“duly made”, in relation to an application, means made in accordance with the requirements of these Regulations;

“emissions” has the meaning given in Article 3(b) of the Directive;

“excluded installation” means an installation the exclusion of which is deemed to be approved by the European Commission under the first sub-paragraph of Article 27(2) of the Directive, unless a notice has been given to the operator under paragraph 8(1) or (4) or paragraph 9(1) of Schedule 5 (in which case the installation ceases to be an excluded installation as from the date specified in the notice);

“excluded installation emissions permit” means a permit—

- (a) granted following an application under regulation 10(2), or
 - (b) which results from a variation under paragraph 2 of Schedule 5;
- “fee”, in relation to any matter, means the fee or charge prescribed in respect of that matter by a scheme, or regulations, made under—
- (a) regulation 18;
 - (b) section 41A of the Environment Act 1995 ^{F7};
 - (c) regulation 4 of the Greenhouse Gas Emissions Trading Scheme Charging Scheme Regulations (Northern Ireland) 2010 ^{F8}; or
 - (d) Article 127 of the Planning (Northern Ireland) Order 1991 ^{F9};
- “the Free Allocation Decision” means Commission Decision 2011/278/EU of 27 April 2011 determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87/EC ^{F10};
- “greenhouse gas emissions permit” means a permit granted following an application under—
- (a) regulation 10(1); or
 - (b) regulation 8 of the 2005 Regulations;
- “installation” has the meaning given in Article 3(e) of the Directive (and references to an “installation” include a reference to a part of an installation);
- “KP registry administrator” has the meaning given by regulation 81(1);
- “monitoring and reporting conditions” has the meaning given by paragraph 3(8) of Schedule 5;
- “monitoring and reporting requirements” has the meaning given by paragraph 2(3) of Schedule 4;
- “the Monitoring and Reporting Regulation” means Commission Regulation (EU) No 601/2012 of 21 June 2012 on the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87/EC of the European Parliament and of the Council ^{F11}, as amended from time to time;
- “new operator” has the meaning given by regulation 12(1);
- “Northern Ireland Regulations” means the Pollution Prevention and Control Regulations (Northern Ireland) 2003 ^{F12};
- “notice of surrender” has the meaning given in regulation 13(7);
- [^{F13}“the NRBW” means the Natural Resources Body for Wales;]
- [^{F13}“the NRBW Order” means the Natural Resources Body for Wales (Establishment) Order 2012;]
- “offshore installation” means—
- (a) an offshore petroleum installation; or
 - (b) an offshore storage or unloading installation;
- “offshore petroleum installation” means an installation which—
- (a) is used for purposes connected with the exploration for, or exploitation of, petroleum (within the meaning of section 1 of the Petroleum Act 1998 ^{F14}); and
 - (b) is, or will be, situated in the area (together with places above and below it) comprising—
 - (i) those parts of the sea adjacent to England and Wales from the low water mark to the landward baseline of the United Kingdom territorial sea;

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- (ii) the United Kingdom territorial sea apart from those areas comprised in any controlled waters within the meaning of section 30A(1) of the Control of Pollution Act 1974 ^{F15}; and
- (iii) those areas of sea in any area for the time being designated under section 1(7) of the Continental Shelf Act 1964 ^{F16};

“the Offshore Regulations” means the Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001 ^{F17};

“offshore storage or unloading installation” means an installation which—

- (a) is used for purposes connected with an activity within section 2(3) or section 17(2) of the Energy Act 2008 ^{F18}; and
- (b) is, or will be, situated in the area (together with places above and below it) comprising—
 - (i) those parts of the sea adjacent to England from the low water mark to the landward baseline of the United Kingdom territorial sea;
 - (ii) the United Kingdom territorial sea, other than the territorial sea adjacent to Scotland or Wales; and
 - (iii) those areas of sea in a Gas Importation and Storage Zone (within the meaning of section 1(5) of that Act ^{F19});

“operator”, in relation to an installation, has the meaning given in paragraph (2) (and “operate” has the corresponding meaning);

“partial transfer” has the meaning given by regulation 12(2);

“permit” (except in paragraph 1(2)(b) of Schedule 4 and paragraph 7(12) of Schedule 6) means—

- (a) a greenhouse gas emissions permit; or
- (b) an excluded installation emissions permit;

“the Planning Appeals Commission” means the Planning Appeals Commission established under article 110 of the Planning (Northern Ireland) Order 1991 ^{F20};

“prescribed” (in relation to a fee) means specified in, or determined under, the scheme or regulations in question;

“the Registries Regulation 2010” means Commission Regulation (EU) No 920/2010 of 7 October 2010 for a standardised and secured system of registries pursuant to Directive [2003/87/EC](#) of the European Parliament and of the Council and Decision No [280/2004/EC](#) of the European Parliament and of the Council ^{F21};

“the Registries Regulation 2011” means Commission Regulation (EU) No 1193/2011 of 18 November 2011 establishing a Union Registry for the trading period commencing on 1 January 2013, and subsequent trading periods, of the Union emissions trading scheme pursuant to Directive [2003/87/EC](#) of the European Parliament and of the Council and Decision No [280/2004/EC](#) of the European Parliament and of the Council and amending Commission Regulations (EC) No [2216/2004](#) and (EU) No 920/2010 ^{F22}, as amended from time to time;

“registry administrator” has the meaning given by regulation 8(1);

“registry account” means an operator holding account or an aircraft operator holding account in the Union Registry (and “open”, “blocked” or “excluded” status, in relation to such an account, have the meanings given by Article 9 of the Registries Regulation 2011);

“regulated activity” means an activity (other than an aviation activity) that—

- (a) is listed in Annex 1 to the Directive, and

(b) results in specified emissions;

“regulator” means, in relation to—

(a) an installation (other than an offshore installation) which is, or will be, situated in—

(i) England ^{F23} ..., the Environment Agency;

(ia) [^{F24}Wales, the NRBW;]

(ii) Scotland, SEPA;

(iii) Northern Ireland, the chief inspector;

(b) an offshore installation, the Secretary of State;

(c) a UK administered operator, the regulator specified in regulations 27 to 29;

(d) a banned non-UK operator, the Environment Agency;

“the Renewable Energy Directive” means Directive 2009/28/EC of the European Parliament and of the Council on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC^{F25}, as amended from time to time;

“reportable emissions” means—

(a) in relation to an installation, the total specified emissions (expressed in tonnes of carbon dioxide equivalent) which arise from the regulated activities carried out at that installation; or

(b) in relation to a UK aircraft operator, the total aviation emissions of that aircraft operator (expressed in tonnes of carbon dioxide equivalent);

“revocation notice” has the meaning given by regulation 14(1);

“scheme year” means the year beginning with 1st January 2013 or any subsequent calendar year;

“SEPA” means the Scottish Environment Protection Agency;

“specified emissions”, in relation to an activity listed in Annex 1 to the Directive, means emissions of gases specified in Annex 1 in respect of that activity;

“sub-installation” has the meaning given by Article 3(b), (c), (d) and (h) and Article 6 of the Free Allocation Decision;

“surrender requirements” has the meaning given by paragraph 2(4) of Schedule 4;

“tonne of carbon dioxide equivalent” has the meaning given in Article 3(j) of the Directive;

“trading period” means one of the following eight-year periods—

(a) 2013 to 2020; and

(b) subsequent consecutive periods of eight calendar years;

“UK administered operator” has the meaning given in regulation 20;

“UK aircraft operator” has the meaning given by regulation 26;

“the Union Registry” means the registry established by Article 4 of the Registries Regulation 2011;

“the UK Registry” means the registry operated by the Environment Agency for the purposes specified in Article 3(1) of the Registries Regulation 2010 immediately before the coming into force of these Regulations;

“variation”, in relation to a permit or a plan, means the amendment of its provisions (and “vary” has the corresponding meaning);

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“the Verification Regulation” means Commission Regulation (EU) No 600/2012 of 21 June 2012 on the verification of greenhouse gas emission reports and tonne-kilometre reports and the accreditation of verifiers pursuant to Directive [2003/87/EC](#) of the European Parliament and of the Council ^{F26}, as amended from time to time;

“working day” means any day other than—

- (a) a Saturday, Sunday, Good Friday, or Christmas Day; or
- (b) a day which is a bank holiday under the Banking and Financial Dealings Act 1971 ^{F27};

“written procedures” means the written procedures required by Article 11(1) of the Monitoring and Reporting Regulation.

- (2) The “operator” of an installation is the person who has control over its operation; but where—
 - (a) an installation has not been put into operation, the operator is the person who will have control over the operation of the installation when it is put into operation;
 - (b) an installation has ceased operation, the operator is the person who holds the permit relating to the installation; and
 - (c) the holder of a permit has ceased to have control of the installation to which it relates, the operator is that permit holder.
- (3) An installation ceases operation where—
 - (a) the conditions in paragraph 7(1)(b) or (c) of Schedule 6 apply in relation to that installation; or
 - (b) the installation is a relevant installation, and has permanently ceased the carrying out of regulated activities for the purposes of paragraph 7 of that Schedule.
- (4) For the purposes of paragraph (3), a relevant installation is any installation other than—
 - (a) an excluded installation; or
 - (b) an installation that, by virtue of Article 10a(3) of the Directive, is not eligible for an allocation.

(5) References in these Regulations to anything taking effect (or ceasing to have effect) on a particular date are to be read as references to it taking effect (or ceasing to have effect) as from the beginning of that date.

Textual Amendments

- F1** [S.I. 2005/925](#); amended by [S.I. 2005/2903](#), 2006/737, 2007/465, 2007/1096, 2007/3433, 2010/1513, 2011/1506, 2011/2911 and S.R. (N.I.) 2010/92.
- F2** [S.I. 2010/1996](#), amended by [S.I. 2011/76](#) and 2011/2911.
- F3** Words in reg. 3 substituted (23.5.2013) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2013 \(S.I. 2013/1037\)](#), regs. 1(1), **2(1)(a)**
- F4** Words in reg. 3 inserted (23.5.2013) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2013 \(S.I. 2013/1037\)](#), regs. 1(1), **2(1)(b)**
- F5** OJ No L 275, 25.10.2003, p 32. The Directive was amended by European Parliament and Council Directives 2004/101/EC (OJ No L 338, 13.11.2004, p 18), 2008/101/EC (OJ No L 8, 13.1.2009, p 3) and 2009/29/EC (OJ No L 140, 5.6.2009, p 63), and by Regulation (EC) No 219/2009 of the European Parliament and of the Council (OJ No L 87, 31.3.2009, p 109).
- F6** See Point 21a of that Annex, amended by Decision of the EEA Joint Committee No 6/2011 (OJ No L 93, 7.4.2011, p 35); and see the Introduction and Sectoral Adaptation included at the beginning of the Annex.
- F7** [1995 c. 25](#); section 41A was amended by [S.I. 2011/2911](#) and 2012/2788, and see further the footnote to regulation 18(3).

- F8** S.R. (N.I.) 2010 No. 151; amended by S.I. 2011/2911 and 2012/2788.
- F9** Article 127 was substituted by S.I. 2006/1252 (N.I. 7).
- F10** OJ No L 130, 17.5.2011, p 1.
- F11** OJ No L 181, 12.7.2012, p 30.
- F12** S.R. (NI) 2003 No 46, amended by S.R. (NI) 2003 No 496 and S.I. 2003/3311; there are other amending instruments which are not relevant.
- F13** Words in reg. 3(1) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), Sch. 4 para. 419(2) (with Sch. 7)
- F14** 1998 c. 17.
- F15** 1974 c. 40; section 30A was substituted (in relation to Scotland) by section 169 of, and paragraph 4 of Schedule 23 to, the Water Act 1989 (c. 15), and was amended by section 120 of, and paragraph 29 of Schedule 22 to, the Environment Act 1995.
- F16** 1964 c. 29; section 1(7) was amended by section 37 of, and paragraph 1 of Schedule 3 to, the Oil and Gas (Enterprise) Act 1982 (c. 23).
- F17** S.I. 2001/1091; amended by S.I. 2005/2055, 2007/938, 2007/938 and 2010/1513.
- F18** 2008 c. 32; section 17 was amended by S.S.I. 2011/224 and S.I. 2011/2453.
- F19** Section 1 is amended (from a date yet to be appointed) by section 41 of, and paragraph 5 of Schedule 4 to, the Marine and Coastal Access Act 2009 (c. 23).
- F20** S.I. 1991/1220 (N.I. 11); relevant amending instruments are S.I. 1999/660 (N.I. 4) and 2003/430 (N.I. 8).
- F21** OJ No L 270, 14.10.2010, p 1; amended by the Registries Regulation 2011.
- F22** OJ No L 315, 29.11.2011, p 1.
- F23** Words in reg. 3(1) omitted (1.4.2013) by virtue of The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), Sch. 4 para. 419(3)(a) (with Sch. 7)
- F24** Words in reg. 3(1) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), Sch. 4 para. 419(3)(b) (with Sch. 7)
- F25** OJ No L 140, 5.6.2009, p 16.
- F26** OJ No L 181, 12.7.2012, p 1.
- F27** 1971 c. 80; see section 1 and Schedule 1 (which was amended by section 1 of the St Andrew's Day Bank Holiday (Scotland) Act 2007 (2007 asp 2)).

Application to the Crown etc.

4. Schedule 1 (application to the Crown etc.) has effect.

Notices etc.

5. Schedule 2 (notices etc.) has effect.

Applications etc.

6. Schedule 3 (applications etc.) has effect.

Functions of the regulator: Northern Ireland

7.—(1) Regulation 8(4) of the Northern Ireland Regulations (delegation of functions) has effect as if the reference to the chief inspector's functions included a reference to the chief inspector's functions under these Regulations.

(2) Regulation 37(1) of the Northern Ireland Regulations (power of the Department to give directions) has effect as if the reference to functions under those Regulations included a reference to functions under these Regulations.

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(3) Any direction of the Department of the Environment that is given by virtue of paragraph (2) must be published in such manner as the Department of the Environment considers appropriate.

Commission Regulations: designations

8.—(1) The Environment Agency is the national administrator designated by the United Kingdom for the purposes of the Registries Regulation 2011, and in these Regulations is referred to in that capacity as the “registry administrator”.

(2) Subject to paragraph (3), the regulator is the competent authority designated by the United Kingdom for the purposes of the Registries Regulation 2010.

(3) The Secretary of State is the competent authority so designated for the purposes of—

- (a) Article 26(2);
- (b) Article 27(6),
- (c) Article 28(1); and
- (d) Article 64a(1).

(4) Subject to paragraph (5), the regulator is the competent authority designated by the United Kingdom for the purposes of the Registries Regulation 2011 (other than Articles 23(3) and 31(6)).

(5) The Secretary of State is the competent authority so designated for the purposes of—

- (a) Article 17;
- (b) Article 29(2);
- (c) Article 30(1);
- (d) Article 31(7); and
- (e) Article 71(1).

(6) Subject to paragraph (7), the regulator is the competent authority designated by the United Kingdom for the purposes of the Monitoring and Reporting Regulation.

(7) The Secretary of State is the competent authority so designated for the purposes of Article 68(3).

(8) Subject to paragraph (9), the regulator is the competent authority designated by the United Kingdom for the purposes of the Verification Regulation.

(9) The Secretary of State is the competent authority so designated for the purposes of Article 64(3), and is designated as the focal point authorised by the United Kingdom for the purposes of Article 69(2).

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