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## STATUTORY INSTRUMENTS

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# 2012 No. 3038

## The Greenhouse Gas Emissions Trading Scheme Regulations 2012

### PART 2

#### Stationary installations

#### CHAPTER 1

#### Permits

#### Requirement for permit to carry out regulated activities

9. No person may carry out a regulated activity at an installation except to the extent authorised by a permit held by the operator of the installation.

#### Applications for and grant of permits

10.—(1) The operator of an installation (other than an excluded installation) may apply to the regulator for a greenhouse gas emissions permit to carry out a regulated activity at the installation.

(2) The operator of an excluded installation may apply to the regulator for an excluded installation emissions permit to carry out a regulated activity at the installation.

(3) However, an application may not be made—

- (a) under paragraph (1) or (2) where a permit has already been granted in respect of the installation and continues to have effect; or
- (b) under paragraph (2) where an excluded installation emissions permit has been granted in respect of the installation and has been surrendered or revoked.

(4) Following an application under paragraph (1) or (2), the permit must be granted if the regulator is satisfied that—

- (a) the application is duly made, and
- (b) at the time that the permit is granted (or, if later, has effect) the applicant will be capable of monitoring and reporting emissions from the installation in accordance with—
  - (i) the monitoring and reporting requirements of the greenhouse gas emissions permit,  
or
  - (ii) the monitoring and reporting conditions of the excluded installations permit,

but must otherwise be refused.

(5) A permit may be granted under this regulation in respect of more than one installation on the same site, provided that they are operated by the same operator.

(6) Paragraph 1 of Schedule 4 makes further provision about applications for permits.

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(7) Paragraph 2 of Schedule 4 makes provision about the contents of greenhouse gas emissions permits, and paragraph 3 of Schedule 5 makes provision about the contents of excluded installation emissions permits.

### Review, variation and consolidation of permits

**11.**—(1) The regulator must review a permit before the end of the period of five years beginning with the date on which the permit was granted, and afterwards at intervals not exceeding five years.

(2) The regulator may, by giving notice to the operator, vary a permit at any time and may in particular make any variation of the permit that the regulator considers necessary in consequence of—

- (a) a review under paragraph (1);
- (b) any report made by the operator under Article 69 of the Monitoring and Reporting Regulation; or
- (c) any notification as mentioned in paragraph 2(7)(b) of Schedule 4 (notification of planned changes in operation etc).

(3) The regulator may by giving notice to the operator vary a permit where the operator—

- (a) applies to the regulator for such a variation pursuant to a provision of the permit; or
- (b) has failed to comply with a requirement of the permit to apply for such a variation.

(4) The regulator may by giving notice to the operator vary a permit in order to comply with regulator's duty under—

- (a) regulation 88(6); or
- (b) any of the following provisions of Schedule 5—
  - (i) paragraph 2(1);
  - (ii) paragraph 3(3);
  - (iii) paragraph 6(5) or (6);
  - (iv) paragraph 7(4)(b), (6)(b) or (7)(b);
  - (v) paragraph 8(6).

(5) A notice given under paragraph (2), (3)(b) or (4) may specify a period within which a fee for the variation of the permit must be paid.

(6) The regulator may by giving notice to the operator replace a permit with a consolidated permit applying to the same regulated activities, and containing the same or equivalent provisions, in the following circumstances—

- (a) where the permit has been varied;
- (b) where there is more than one permit applying to installations on the same site operated by the same operator.

### Transfer of permits

**12.**—(1) Subject to paragraph (6), the holder of a permit (“the current operator”) and another person may jointly apply to the regulator for the permit to be transferred to that other person (“the new operator”).

(2) An application may also be made under paragraph (1) for the partial transfer of a permit; and for that purpose a “partial transfer” is a transfer in respect of—

- (a) some only of the installations to which the permit relates; or
- (b) some only of the parts of an installation to which the permit relates.

(3) Paragraph 3 of Schedule 4 makes further provision about the transfer, or partial transfer, of a permit.

(4) Subject to paragraph 3(2)(b) of Schedule 4, an application under paragraph (1) must be granted if the regulator is satisfied that—

- (a) the application is duly made, and
- (b) the new operator will (from the relevant date) be the operator of the installation and will be capable of monitoring and reporting emissions from the installation in accordance with—
  - (i) the monitoring and reporting requirements of the greenhouse gas emissions permit, or
  - (ii) the monitoring and reporting conditions of the excluded installations emissions permit,

but must otherwise be refused.

(5) For the purposes of paragraph (4), the relevant date is the date mentioned in paragraph 3(6), (8) or (10) of Schedule 4 as the case may be.

(6) An application for the transfer (or partial transfer) of a permit may not be made in respect of any installation (or part of an installation) that has ceased operation.

### **Surrender of permits**

**13.**—(1) Subject to paragraph (4), if an installation has ceased operation the operator must apply to the regulator to surrender the permit authorising regulated activities at the installation.

(2) Such an application must be made within the period specified by paragraph (3), or such longer period as may be agreed with the regulator.

(3) The period specified is, in the case of an installation that has ceased operation by virtue of meeting the condition in—

- (a) paragraph 7(1)(b) or (c) of Schedule 6, one month beginning with the date on which the installation ceased operation;
- (b) paragraph 7(1)(d) of Schedule 6, one month following the end of the relevant period (as defined by paragraph 7(5) of that Schedule).

(4) The application need not be made where—

- (a) the permit authorises regulated activities at more than one installation, some of which have not ceased operation; and
- (b) by the end of the period mentioned in paragraph (2), the operator has applied to vary that permit so that it no longer applies to any of those installations that have ceased operation.

(5) Where the carrying out of regulated activities at an installation mentioned in paragraph (6) has been suspended, but the installation has not ceased operation, the operator may at any time make an application under paragraph (1) but is not obliged to do so.

(6) Those installations are—

- (a) an excluded installation; or
- (b) an installation that, by virtue of Article 10a(3) of the Directive, is not eligible for an allocation.

(7) If the application under paragraph (1) is granted, the notice of determination given to the operator (“notice of surrender”) takes effect on the date specified in the notice.

(8) Paragraph 4 of Schedule 4 makes further provision about the surrender of permits.

## Revocation of permits

- 14.—(1) The regulator—
- (a) may at any time revoke a permit by serving on the operator a notice to that effect (a “revocation notice”), and in particular may do so if the operator has failed to pay a fee for the subsistence of the permit; and
  - (b) must do so where the regulator becomes aware that the operator has failed to comply with regulation 13(1) to (3).
- (2) A revocation notice takes effect—
- (a) 28 days after the date on which it is served; or
  - (b) if a later date is specified in the notice, on that date.
- (3) Paragraph 5 of Schedule 4 makes further provision about the revocation of permits.

## CHAPTER 2

### Excluded installations: further provision

## Excluded installations

- 15.—(1) Schedule 5 makes further provision about excluded installations.
- (2) Subject to paragraphs (3) and (4), and unless a contrary intention appears, these Regulations apply to an excluded installation as they apply to an installation that is not an excluded installation.
- (3) The following provisions do not so apply—
- (a) regulation 12(2);
  - (b) Chapter 3 of this Part and Schedule 6.
- (4) The following provisions so apply—
- (a) paragraph 4 of Schedule 4, but as if—
    - (i) any reference in that paragraph to the monitoring and reporting requirements of the greenhouse gas emissions permit were a reference to the monitoring and reporting conditions of the excluded installation emissions permit; and
    - (ii) sub-paragraph (1)(c) and sub-paragraphs (2)(b)(ii), (3), (4) and (6) to (8) were omitted;
  - (b) paragraph 5 of Schedule 4, but as if—
    - (i) any reference in that paragraph to the monitoring and reporting requirements of the greenhouse gas emissions permit were a reference to the monitoring and reporting conditions of the excluded installation emissions permit; and
    - (ii) sub-paragraph (1)(c) and sub-paragraphs (3)(b)(ii), (4), (5) and (7) to (9) were omitted.

## CHAPTER 3

### Allocation of allowances

## Allocation of allowances for 2013 to 2020

- 16.—(1) In this regulation the “allocated amount”, in relation to an installation, means the annual amount of allowances to be allocated to that installation for each scheme year in the trading period 2013 to 2020.

(2) Subject to paragraph (5), the allocated amount is the amount specified in the list that was submitted to the European Commission on 12th December 2011 in accordance with Article 15(5) of the Free Allocation Decision, as substituted by the modified list submitted in April 2012 following the first stage of the Commission's scrutiny process <sup>F1</sup>.

(3) Schedule 6 sets out procedures for the allocation of allowances to new entrants to the scheme, and for the adjustment of existing allocations.

(4) The Secretary of State must make any revisions to that list that become necessary in consequence of—

- (a) the procedures set out in Schedule 6;
- (b) the application of the linear reduction factor referred to in Article 9 of the Directive; or
- (c) any other adjustment required by the European Commission in accordance with the Directive or the Free Allocation Decision.

(5) Following such a revision the allocated amount is the amount specified in the list as so revised.

(6) The Secretary of State must by 30th April in each scheme year publish the latest version of the list as so revised.

(7) Paragraph (6) is subject to regulation 47 (national security).

#### Textual Amendments

- F1** See *Modified UK National Implementation Measures for Phase III of the EU Emissions Trading System*  
<http://www.decc.gov.uk/assets/decc/11/cutting-emissions/eu-ets/5233-modified-uk-national-implementation-measures-for-p.pdf>.

## CHAPTER 4

### Offshore installations

#### Powers of entry

**17.—**(1) The Secretary of State may authorise in writing any person who appears suitable to the Secretary of State to exercise, in accordance with the terms of that authorisation, any of the powers specified in paragraph (2) in respect of offshore installations for the purposes of—

- (a) determining whether the requirements, restrictions or prohibitions imposed under or by virtue of these Regulations are being, or have been, complied with;
- (b) discharging one or more of the functions conferred or imposed upon the Secretary of State under or by virtue of these Regulations; or
- (c) determining whether and, if so, how such a function should be discharged.

(2) The powers exercisable under paragraph (1) are the powers in sub-paragraphs (a) to (k) of regulation 13(2) of the Offshore Regulations (but subject to paragraphs (3) to (4) of that regulation <sup>F2</sup>).

(3) Regulation 18(1)(h) of the Offshore Regulations applies to a failure to comply with an obligation imposed pursuant to a power exercisable under paragraph (1) as it applies to a failure to comply with an obligation imposed pursuant to regulation 13(2) of the Offshore Regulations.

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### Textual Amendments

- F2** Paragraphs (1) and (2) of regulation 13 were amended, paragraph (3) substituted, and paragraphs (3A) and (3B) inserted, by [S.I. 2005/2055](#).

### Charging schemes

**18.**—(1) The Secretary of State may make, and from time to time revise, a scheme prescribing charges in relation to offshore installations in respect of the matters to which paragraph (2) applies.

(2) This paragraph applies to—

- (a) the performance by the Secretary of State of functions conferred under or by virtue of these Regulations, as regulator in relation to offshore installations; and
- (b) the subsistence of an account required to be held in a trading scheme registry by the operator of an offshore installation.

(3) In this regulation, “trading scheme registry” has the meaning given by section 41A(7) of the Environment Act 1995 <sup>F3</sup>.

(4) The charges prescribed by a scheme under paragraph (1) must be paid to the Secretary of State.

### Textual Amendments

- F3** [1995 c. 25; section 41A](#) of that Act (“the 1995 Act”) was inserted by [S.I. 2005/925](#); [sections 41 and 41A](#) were amended by [S.I. 2011/2911](#), and sections 41, 41A, 42 and 56 and 111 were amended by [S.I. 2012/2788](#). By paragraph 9A(2) of Schedule 1 to the Pollution Prevention and Control Act 1999, subsections (2) to (5) of section 41A of the 1995 Act apply in relation to the Secretary of State and a charging scheme made under this regulation as they apply in relation to SEPA and a charging scheme made by SEPA under the 1995 Act. Paragraph 9A of that Schedule was also amended by [S.I. 2012/2788](#).

### Charging schemes: supplementary

**19.**—(1) On making, or revising, a scheme the Secretary of State must lay before each House of Parliament a copy of (as the case may be)—

- (a) the scheme; or
- (b) the revisions made to the scheme (or the scheme as so revised).

(2) A scheme may, in particular—

- (a) make different provision for different cases, including different provision in relation to different persons in different circumstances or localities;
- (b) allow for reduced charges payable in respect of permits granted to the same operator;
- (c) provide for the times at which and the manner in which the payments required by the scheme are to be made (subject to any requirements in these Regulations as to times at which payment is required); and
- (d) make such incidental, supplementary and transitional provisions as appear to the Secretary of State to be appropriate.

(3) The Secretary of State must take such steps as the Secretary of State considers appropriate for bringing the provisions of a scheme which is for the time being in force to the attention of persons likely to be affected by it.

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(4) In this regulation, “scheme” means a scheme made under regulation 18(1).

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