

This is a consolidated version of S.I. 2005/2903 showing the S.I. as amended by S.I. 2011/727, S.I. 2012/3038 and S.I. 2013/3135. This consolidation has been produced for the purpose of this consultation to assist consultees in understanding the textual effect of the proposed new amending S.I. and should not be relied on for any another purpose.

S T A T U T O R Y I N S T R U M E N T S

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 in relation to greenhouse gas emission allowance trading in exercise of the powers conferred upon her by section 2(2) of that Act 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.

Duty to review these Regulations [*Regulation 1A was inserted by S.I. 2013/3135*]

1A.—(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 Emissions Trading Directive and Decision 280/2004/EC 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 the Greenhouse Gas Emissions Trading Scheme and National Emissions Inventory (Amendment) Regulations 2013 come into force.

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

Interpretation

2.—(1) In these Regulations—

"the 2005 Regulations" means the Greenhouse Gas Emissions Trading Scheme Regulations 2005;

"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

(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 as amended by Directive 2004/101/EC;

"Kyoto Protocol" means the Kyoto Protocol to the UNFCCC signed at Kyoto on 11th December 1997;

"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.

(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 [*Words in regulation 3 were amended by S.I. 2013/3135*]

3. Schedule 2 to the Greenhouse Gas Emissions Trading Scheme Regulations 2012 shall apply to a notice or document served under these Regulations.

PART 2

[*This Part was omitted by S.I. 2012/3038*]

PART 3

Project Approval and Authorisation to Participate

Approval of and authorisation of participation in project activities [*Words in regulation 5(1) and (2) were amended and paragraphs (8) to (10) were inserted by S.I. 2011/727*]

5.—(1) Subject to regulation 8A, 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) Subject to regulation 8A, 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.

(8) Subject to paragraph (9), an application under paragraph (1) or (2) must be accompanied by the fee set out in paragraph (10) of this regulation where that application is submitted on or before 6th April 2012.

(9) No fee is required where the application relates to a proposed project activity in one of the countries listed in the Schedule to these Regulations (List of Least Developed Countries).

(10) The fee which must be paid under paragraph (8) is—

- (a) £700 for an application in respect of a proposed Article 6 project activity;
- (b) £700 for an application in respect of a proposed Article 12 project activity for the production of hydro-electric power with a generating capacity of more than 20 megawatts;
- (c) £250 for an application in respect of any other proposed Article 12 project activity.

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 with-drawn.

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".

(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.

Exercise of Functions by the Environment Agency [Regulation 8A was inserted by S.I. 2011/727]

8A.—(1) On or after 1st June 2011 applications under regulation 5 must be submitted to the Environment Agency.

(2) Subject to paragraphs (3) and (4), the functions of the Secretary of State under regulations 5, 6, 7 and 8 of these Regulations in respect of any such application submitted on or after 1st June 2011 must be exercised by the Environment Agency and in such a case the references to the Secretary of State in regulations 5, 6, 7 and 8 of these Regulations should be read as references to the Environment Agency.

(3) The Environment Agency must consult the Secretary of State as soon as reasonably practicable before determining—

- (a) an application under regulation 5 in relation to a proposed Article 6 project activity which is not of a type—
 - (i) which has been approved by the Secretary of State or the Environment Agency on or before the date on which the application is submitted; or
 - (ii) in respect of which participation has been authorised by the Secretary of State or the Environment Agency on or before the date on which the application is submitted;
- (b) an application under regulation 5 in relation to any proposed project activity which the Environment Agency reasonably considers to be novel, contentious or controversial;
- (c) an application under regulation 5 in relation to any proposed project activity for the production of hydro-electric power with a generating capacity of more than 20 megawatts.

(4) The Secretary of State may require the Environment Agency to refer an application under regulation 5 to the Secretary of State for the Secretary of State to decide in accordance with this Part.

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.

(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. [*Regulation 11 was omitted by S.I. 2013/3135*]

Agreement with devolved administrations on national inventory [*Words were omitted from Regulation 12 by S.I. 2013/3135*]

12. The power of the Secretary of State to serve a notice under regulation 10... is exercisable—

(a) where a notice is to be served in Scotland..., only with the agreement of the Scottish Ministers;

(b) where a notice is to be served in Northern Ireland..., only with the agreement of the Department of the Environment; and

(c) where a notice is to be served in Wales..., only with the agreement of the National Assembly for Wales.

PART 5

Offences

Offences [*Words were omitted from Regulation 13 by S.I. 2013/3135*]

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

- (a) . . .
- (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) . . .
 - (iii) . . .
- (c) . . .
- (d) . . .

(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.

PART 6 [*Part 6 was inserted by S.I. 2013/3135*]

Civil Penalties

Penalty notices

14.—(1) Subject to regulation 15, where the Secretary of State is satisfied that a person ("P") is liable to a civil penalty under this Part the Secretary of State must, serve a notice on P (a "penalty notice").

(2) The penalty notice must specify—

- (a) the regulation under which that liability arises;
- (b) the amount of the civil penalty due;

- (c) whether or not P may be liable to a civil penalty in accordance with regulation 16(2)(b) (an "additional daily penalty"); and
- (d) if P will not be liable to an additional daily penalty, the date by which the penalty for which P is liable must be paid.

(3) Subject to regulation 15, where the Secretary of State is satisfied that P is liable to an additional daily penalty the Secretary of State must, when the amount of that additional daily penalty can be determined, serve a notice on P (an "additional penalty notice") specifying—

- (a) the total amount of the civil penalties due; and
- (b) the date by which that amount must be paid.

(4) A civil penalty imposed by a penalty notice or an additional penalty notice must be paid to the Secretary of State by the date specified in the notice.

(5) Any such civil penalty is recoverable by the Secretary of State as a civil debt.

Discretion in imposing civil penalties

15. Where the Secretary of State considers it appropriate to do so, the Secretary of State may—

- (a) refrain from imposing a civil penalty under this Part;
- (b) reduce the amount of a penalty (including the amount of an additional daily penalty);
- (c) extend the time for payment specified in the penalty notice or additional penalty notice;
- (d) withdraw a penalty notice or an additional penalty notice; or
- (e) modify the notice by substituting a lower penalty.

Failure to comply with a notice under regulation 10(1)

16.—(1) A person ("P") is liable to the civil penalties in paragraph (2) where P fails to comply (or to comply on time) with the requirements of a notice served under regulation 10(1) (an "information notice").

(2) The civil penalties are—

- (a) £1,500; and
- (b) £150 for each day that P fails to comply with the requirements of the information notice, following service of a penalty notice, up to a maximum of £13,500.

Providing false or misleading information

17.—(1) Where paragraph (2) applies, a person is liable to the civil penalty in paragraph (3) where that person provides false or misleading information, or makes a statement which is false or misleading in a material particular.

(2) This paragraph applies where the statement is made (or the information is provided) to the Secretary of State in writing for the purpose of preparing a national inventory, whether or not the statement is made (or the information provided) in purported compliance with a requirement imposed by a notice under regulation 10(1).

(3) The civil penalty is £1,000.

Appeals

18.—(1) A person on whom a penalty notice or additional penalty notice has been served under this Part may appeal to the First-tier tribunal.

(2) The bringing of the appeal suspends the effect of the notice pending the final determination or withdrawal of the appeal.

(3) In determining the appeal the First-tier tribunal may—

- (a) affirm or quash the notice; or

- (b) reduce the amount of the penalty imposed by the notice (including the amount of any additional daily penalty).

16th October 2005

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

SCHEDULE

Regulation 5(9)

[*The Schedule was inserted by S.I. 2011/727*]

LIST OF LEAST DEVELOPED COUNTRIES

The countries referred to in paragraph 9 of regulation 5 are—

Afghanistan
Angola
Bangladesh
Benin
Bhutan
Burkina Faso
Burundi
Cambodia
Central African Republic
Chad
Comoros
Democratic Republic of the Congo
Djibouti
Equatorial Guinea
Eritrea
Ethiopia
Gambia
Guinea
Guinea-Bissau
Haiti
Kiribati
Lao People's Democratic Republic
Lesotho
Liberia
Madagascar
Malawi
Mali
Mauritania
Mozambique
Myanmar
Nepal

Niger
Rwanda
Samoa
São Tomé and Príncipe
Senegal
Sierra Leone
Solomon Islands
Somalia
Sudan
Timor-Leste
Togo
Tuvalu
Uganda
United Republic of Tanzania
Vanuatu
Yemen
Zambia

[This explanatory note relates to S.I. 2005/2903 as originally made]

EXPLANATORY NOTE

(This note is not part of the Order)

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 (SI 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.