

2014 No. 0000

CLIMATE CHANGE

The Greenhouse Gas Emissions Trading Scheme and National Emissions Inventory (Amendment) Regulations 2014

<i>Made</i> - - - -	2014
<i>Laid before Parliament</i>	2014
<i>Coming into force</i> - -	2014

The Secretary of State is a Minister designated^(a) for the purposes of section 2(2) of the European Communities Act 1972^(b) in relation to the environment.

Accordingly the Secretary of State, with the consent of the Treasury, in exercise of the powers conferred by section 56(1) and (2) of the Finance Act 1973^(c) and section 2(2) of European Communities Act 1972 makes the following Regulations^(d):

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Greenhouse Gas Emissions Trading Scheme and National Emissions Inventory (Amendment) Regulations 2014 and come into force on xx 2014.

(2) In these Regulations “the 2005 Regulations” means the Greenhouse Gas Emissions Trading Scheme (Amendment) and National Emissions Inventory Regulations 2005^(e).

Amendment of the 2005 Regulations

2.—(1) The 2005 Regulations are amended as follows.

(2) In regulation 5 (approval of and authorisation of participation in project activities)—

(a) for paragraphs (1) and (2)^(f) substitute—

(a) S.I. 2008/301.

(b) 1972 c. 68; section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51) and by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7).

(c) 1973 c. 51.

(d) Under section 57 of the Scotland Act 1998 (c. 46), despite the transfer to the Scottish Ministers of functions in relation to observing and implementing obligations under Community law in respect of devolved matters, any function of the Secretary of State in relation to any matter continues to be exercisable as regards Scotland for the purposes specified in section 2(2) of the European Communities Act 1972.

(e) S.I. 2005/2903, amended by S.I. 2011/727, S.I. 2012/3038 and S.I. 2013/3135.

(f) Paragraphs (1) and (2) were amended by regulation 4(2) of S.I. 2011/727 which provided that for the words “A person wishing to be” in both paragraphs the wording “Subject to regulation 8A, a person wishing to be” should be substituted. However, the words “A person wishing to be” did not occur in paragraph (1) and the amendment in these regulations corrects this error.

“(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.”; and

- (b) omit the whole of paragraphs (8) to (10) and the Schedule (list of least developed countries) referred to in paragraph (9) of that regulation(a).
- (3) For regulation 9 (appeals) substitute—

“Appeals

9.—(1) A person may appeal to the First-tier Tribunal(b) against a determination to refuse to approve the proposed project activity or to authorise participation, or against a determination to attach a condition to an approval or authorisation.

(2) Where an appeal is made against a determination to attach any condition to an approval or authorisation, the approval or authorisation is suspended pending the final determination or withdrawal of the appeal.

(3) The First-tier Tribunal may affirm or quash the determination to—

- (a) refuse to approve the proposed project activity or to authorise participation; or
- (b) attach a condition to an approval or authorisation.”.

(4) Omit regulation 13(c) (offences).

(5) For paragraph (2) of regulation 17(d) (providing false or misleading information) substitute—

“(2) This paragraph applies where the statement is made or the information is provided to the Secretary of State or the Environment Agency as the case may be in writing for the purpose of—

- (a) making an application under regulation 5;
- (b) providing further information in response to a notice requesting further information served by the Environment Agency in accordance with regulation 6(e); or
- (c) 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).”.

Consequential amendments

3.—(1) In the Greenhouse Gas Emissions Trading Scheme (Amendment) (Fees) and National Emissions Inventory Regulations 2011(f) omit paragraphs (2), (3) and (5) of regulation 4 (amendment of the 2005 Regulations) and the Schedule referred to in paragraph (5) of that regulation.

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- (a) Paragraphs (8) to (10) and the Schedule were inserted by regulation 4(3) and (5) of, and the Schedule to, S.I. 2011/727.
 - (b) The procedure for appeals to the First-tier Tribunal is provided by the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (S.I. 2009/1976 (L. 20)). Appeals are assigned to the General Regulatory Chamber of the First-tier Tribunal by virtue of article 3(a) of the First-tier Tribunal and Upper Tribunal (Chambers) Order 2010 (S. I. 2010/2655).
 - (c) Amended by S.I. 2013/3135, regulations 7 and 11.
 - (d) Regulation 17 was inserted by regulation 12 of S.I. 2013/3135.
 - (e) The reference to the Secretary of State in regulation 6 of S.I. 2005/2903 is a reference to the Environment Agency by virtue of regulation 8A of that S.I.. Regulation 8A was inserted by S.I. 2011/727.
 - (f) S.I. 2011/727.

(2) In the Greenhouse Gas Emissions Trading Scheme and National Emissions Inventory (Amendment) Regulations 2013(a) omit regulation 11.

Date 2014 *Name*
Minister of State
Department of Energy and Climate Change

We consent to the making of these Regulations

Date 2014 *Name*
Name
Two of the Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Greenhouse Gas Emissions Trading Scheme (Amendment) and National Emissions Inventory Regulations 2005 (S.I. 2005/2903) (“the 2005 Regulations”) in relation to the way in which the 2005 Regulations deal with the approval of projects under the Kyoto Protocol(b).

Regulation 2(2) of these Regulations removes the fee provisions from, makes a consequential amendment to, and corrects an error in, regulation 5 of the 2005 Regulations.

Regulation 2(3) replaces regulation 9 of the 2005 Regulations and creates a right of appeal to the First-tier Tribunal against a determination under regulation 7 of the 2005 Regulations to refuse to approve the proposed project activity or to authorise participation in an Article 6 project activity(c) or to attach a condition to an approval or authorisation.

These Regulations also abolish the criminal offence of making a false or misleading statement in connection with an application under regulation 5 of the 2005 Regulations (regulation 2(4)) and introduce a civil penalty in its place (regulation 2(5)). An appeal against the imposition of a penalty may be made to the First-tier Tribunal.

Regulation 3 provides for consequential amendment to two statutory instruments which have themselves amended provisions in the 2005 Regulations which have been made redundant by these Regulations.

An impact assessment has not been prepared as the instrument is not expected to have any significant impact on the private, voluntary or public sectors. An Explanatory Memorandum is published alongside the instrument on the legislation website of The National Archives (<http://www.legislation.gov.uk>).

(a) S.I. 2013/3135.

(b) Kyoto Protocol to the United Nations Framework Convention on Climate Change (Cm 6485).

(c) An Article 6 project activity is a project activity within the meaning of Article 6 of the Kyoto Protocol and is defined in regulation 2(1) of the 2005 Regulations.