

2011 No. 727

ENVIRONMENTAL PROTECTION

**The Greenhouse Gas Emissions Trading Scheme (Amendment)
(Fees) and National Emissions Inventory Regulations 2011**

<i>Made</i> - - - -	<i>10th March 2011</i>
<i>Laid before Parliament</i>	<i>15th March 2011</i>
<i>Coming into force</i> - -	<i>6th April 2011</i>

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.

These Regulations make provision for a purpose mentioned in section 2(2) of that Act, and it appears to the Secretary of State that it is expedient for the references to EU instruments in these Regulations to be construed as references to those instruments as amended from time to time.

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 the European Communities Act 1972 makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Greenhouse Gas Emissions Trading Scheme (Amendment) (Fees) and National Emissions Inventory Regulations 2011 and come into force on 6th April 2011.

Interpretation

2. In these Regulations—

“the 2005 Regulations” means the Greenhouse Gas Emissions Trading Scheme (Amendment) and National Emissions Inventory Regulations 2005^(d);

(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). 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.

(c) 1973 c. 51.

(d) S.I. 2005/2903.

“Emissions Trading 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(a) as amended from time to time.

Review

3.—(1) The Secretary of State must carry out a review of the provisions of Part 3 of the 2005 Regulations before the end of each review period and set out the conclusions of the review in a report.

(2) In carrying out the review the Secretary of State must, so far as is reasonable, compare the implementation of European obligations in Article 11b and Article 18(b) of the Emissions Trading Directive with the implementation of those obligations 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 those provisions;
- (b) assess the extent to which those objectives have been achieved;
- (c) include the assessment of the comparison between implementations; and
- (d) 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 Secretary of State must lay the report before Parliament before the end of the review period.

(5) The first review period is the period of five years beginning with the day on which these Regulations come into force.

(6) Each subsequent review period is a period of five years beginning with the date on which the report of the review carried out during the preceding review period was laid before Parliament.

Amendment of the 2005 Regulations

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

(2) In paragraphs (1) and (2) of regulation 5 (approval of and authorisation of participation in project activities), for “A person wishing to be” substitute “Subject to regulation 8A, a person wishing to be”.

(3) In regulation 5 after paragraph (7) insert—

“(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.”.

(a) OJ No L 275, 25.10.03, p 32. The Directive is 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).

(b) Articles 11b and 18 of the Emissions Trading Directive have been implemented in part by Part 3 of the 2005 Regulations.

(4) After regulation 8 (agreement with devolved administrations on project approval) insert—

“Exercise of Functions by the Environment Agency

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.”.

(5) Insert as a Schedule to the 2005 Regulations the Schedule contained in the Schedule to these Regulations.

10th March 2011

Gregory Barker
Minister of State,
Department of Energy and Climate Change

We consent

10th March 2011

Angela Watkinson
James Duddridge
Two of the Lords Commissioners of Her Majesty’s Treasury

SCHEDULE

Regulation 4(5)

“SCHEDULE

Regulation 5(9)

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”

EXPLANATORY NOTE

(This note is not part of the Regulations)

Part 3 of the Greenhouse Gas Emissions Trading Scheme (Amendment) and National Emissions Inventory Regulations 2005 (S.I. 2005/2903) (“the 2005 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 such a project activity. Such approval and/or authorisation is required under international rules made pursuant to the Kyoto Protocol. These Regulations amend Part 3 of the 2005 Regulations to provide that the Environment Agency must determine applications for the above projects on or after 1st June 2011 except where the Secretary of State requests it to refer an application to the Secretary of State. The Environment Agency is required to consult the Secretary of State in relation to certain categories of application. These Regulations also require the payment of fees in relation to applications under Part 3 of the 2005 Regulations until 6th April 2011.

A full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the Department of Energy and Climate Change’s International Energy and Climate Change Division (telephone 0300 060 4000) and is annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website (www.opsi.gov.uk).

STATUTORY INSTRUMENTS

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£4.00