

2012 No. 2788

CLIMATE CHANGE

**The Greenhouse Gas Emissions Trading Scheme (Amendment)
(Charging Schemes) Regulations 2012**

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| <i>Made</i> | - - - - | <i>6th November 2012</i> |
| <i>Laid before Parliament</i> | | <i>12th November 2012</i> |
| <i>Coming into force</i> | - - | <i>3rd December 2012</i> |

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

These Regulations make provision for a purpose mentioned in section 2(2) of the Act, and it appears to the Secretary of State that it is expedient for 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, in exercise of the powers conferred by section 2(2) of the Act as read with paragraph 1A of Schedule 2(c) to the Act, makes the following Regulations:

PART 1

General

Citation and commencement

1. These Regulations may be cited as the Greenhouse Gas Emissions Trading Scheme (Amendment) (Charging Schemes) Regulations 2012 and come into force on 3rd December 2012.

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

(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) Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 and amended by S.I. 2007/1388 and by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008.

(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 is implemented in other member States.

(3) The report must in particular—

- (a) set out the objectives intended to be achieved 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.

(6) In this regulation, “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(a), as amended from time to time.

PART 2

Amendments to the Environment Act 1995

Interpretation

3. In this Part, a reference to a numbered section is to that section of the Environment Act 1995(b).

Section 41

4. In section 41 (power to make schemes imposing charges)(c)—

- (a) omit subsection (1)(i) and (j); and
- (b) in subsection (10), omit the definitions of “aircraft operator” and “trading scheme registry”.

Section 41A

5.—(1) Section 41A (charges in respect of greenhouse gas emissions permits etc)(d) is amended as follows.

(2) In the heading, for “greenhouse gas emissions permits etc: supplementary” substitute “the EU greenhouse gas emissions trading scheme”.

(3) For subsection (1) substitute—

“(1) Each of the new Agencies may require the payment to it of such charges as may from time to time be prescribed—

(a) OJ No L 275, 25.10.03, 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).

(b) 1995 c. 25; relevant amendments are noted below.

(c) Section 41 has been amended by S.S.I. 2003/235, S.I. 2005/894, 2005/1806 (W. 138), 2006/937, 2007/1711, 2007/3106, 2008/3087, 2009/890, 2009/3381, section 99 of and paragraph 2 of Schedule 2 to the Climate Change (Scotland) Act 2009 (asp.12), section 33 of and paragraph 39 of Schedule 4 to the Flood and Water Management Act 2010 (c. 29), and by S.I. 2011/988 and 2011/2911.

(d) Section 41A was inserted by S.I. 2005/925 and amended by S.I. 2011/2911.

- (a) as a means of recovering costs incurred by it in performing functions conferred under or by virtue of regulations made for the purpose of implementing the EU ETS Directive;
- (b) in respect of—
 - (i) an application to open an account that, under the Registries Regulation 2011, is required to be held in a trading scheme registry;
 - (ii) the subsistence of such an account;
 - (iii) the updating of information provided to the Agency in relation to such an account;

and in this section “prescribed” means specified in, or determined under, a scheme (in this section referred to as a “charging scheme”) made under this section by the new Agency in question.

(1A) A charging scheme may—

- (a) make different provision for different cases, including different provision in relation to different persons, circumstances or localities;
- (b) provide for the times at which, and the manner in which, the charges prescribed by the scheme are to be paid;
- (c) revoke or amend any previous charging scheme;
- (d) contain supplemental, incidental, consequential or transitional provision for the purposes of the scheme.

(1B) A charging scheme must specify, in relation to any charge prescribed by the scheme, the description of person who is liable to pay the charge.

(1C) A new Agency may not make a charging scheme unless the provisions of the scheme have been approved by the Secretary of State or the Scottish Ministers under section 42.”.

(4) In subsection (2)—

- (a) for “operator registry charges or aircraft operator registry charges” substitute “charges under subsection (1)(b)”;
- (b) for “under section 42(2) below” substitute “or the Scottish Ministers under section 42”.

(5) In subsection (5), for “operator registry charges and any aircraft operator charges” substitute “charges under subsection (1)(b)”.

(6) For subsection (6)(a) substitute—

“(a) an application to open an account in a trading scheme registry, other than one that under the Registries Regulation 2011 is required to be held in that registry;”.

(7) For subsection (7) substitute—

“(7) In this section—

“the Registries Regulation 2011” means Commission Regulation (EU) No 1193/2011 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(a), as amended from time to time;

“trading scheme registry” means—

- (a) any registry operated by the Agency for the purpose of meeting the obligations of the United Kingdom referred to in Article 3(1) of Commission Regulation (EU) No 920/2010 for a standardised and secured system of registries pursuant to

(a) OJ No L 315, 29.11.11, p 1.

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^(a); or

(b) the registry established by Article 4(1) of the Registries Regulation 2011.”.

Section 42

6.—(1) Section 42 (approval of charging schemes)^(b) is amended as follows.

(2) In subsection (2), for paragraph (b) substitute—

“(b) have regard to—

- (i) in the case of a charging scheme made under section 41, the matter specified in subsection (3);
- (ii) in the case of a charging scheme made under section 41A, the matter specified in subsection (3A).”.

(3) In subsection (3), for “(2)(b)” substitute “(2)(b)(i)”.

(4) After subsection (3), insert—

“(3A) The matter mentioned in subsection (2)(b)(ii) above is the desirability of ensuring that the amounts recovered by the new Agency in question by way of charges prescribed by charging schemes are the amounts which, taking one year with another, need to be recovered by that new Agency to meet such of the costs and expenses (whether of a revenue or capital nature) which it incurs in carrying out its functions in relation to the matters described in section 41A(1) as the Secretary of State may consider it appropriate to attribute to the carrying out of those functions.”.

(5) In subsection (4)—

- (a) after “subsection (3)” insert “or (3A)”; and
- (b) omit “in relation to the activities to which environmental licences of any particular description relate”.

(6) For subsection (11) substitute—

“(11) In this section “charging scheme” means a scheme made under section 41 or 41A.”.

Section 56

7. In section 56(1) (interpretation of Part 1)—

(a) in the definition of “environmental licence”, both in relation to the Environment Agency and in relation to SEPA^(c)—

- (i) in paragraph (aa), insert at the end “, other than regulations made for the purpose of implementing the EU ETS Directive”; and
- (ii) omit paragraph (k); and

(b) after those definitions, insert—

““the EU ETS 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, as amended from time to time;”.

(a) OJ No L 270, 14.10.10, p 1.

(b) Subsection (7) of that section was amended by S.I. 1999/1820; there are other amendments that are not relevant.

(c) In those definitions, paragraph (aa) was inserted by S.I. 2000/1973 and paragraph (k) by S.I. 2005/925; there are other amendments that are not relevant.

Section 111

8.—(1) Section 111 (evidence in connection with certain pollution offences)(a) is amended as follows.

(2) After subsection (2) insert—

“(2A) Information provided or obtained pursuant to or by virtue of relevant regulations (including information so provided or obtained, or recorded, by means of any apparatus) shall be admissible in evidence in any proceedings, whether against the person subject to a requirement arising under or by virtue of the regulations or any other person.”.

(3) In subsection (3)—

- (a) for “subsection (2)” substitute “subsections (2) and (2A)”; and
- (b) for “the relevant licence otherwise provides” substitute “provision otherwise is made by the relevant licence or by virtue of the relevant regulations”.

(4) In subsection (4)—

- (a) in paragraph (a)—
 - (i) after “a relevant licence” insert “or by virtue of relevant regulations”, and
 - (ii) at the end insert “or compliance with any requirement arising under or by virtue of the regulations”; and
- (b) at the end insert “or that requirement has not been complied with”.

(5) In subsection (5), after the definition of “relevant licence” insert—

““relevant regulations” means regulations made for the purpose of implementing the EU ETS Directive (as defined by section 56)”.

PART 3

Amendments to the Environment (Northern Ireland) Order 2002

Interpretation

9. In this Part, a reference to a numbered paragraph is to that paragraph of Schedule 1 to the Environment (Northern Ireland) Order 2002 (particular purposes for which provision may be made under Article 4 (regulation of polluting activities))(b).

Paragraphs 9A and 9B

10.—(1) Omit paragraph 9A(c).

(2) In paragraph 9B(d)—

- (a) in sub-paragraph (1), for the words from “by regulations” to the end substitute “under or by virtue of regulations made for the purpose of implementing the EU ETS Directive”; and
- (b) for sub-paragraph (2) substitute—

“(2) Without prejudice to paragraph 9, authorising the Department to make schemes for the charging by enforcing authorities of fees or other charges (“registry charges”) in respect of—

- (a) an application to open an account that, under the Registries Regulation 2011, is required to be held in a trading scheme registry;

(a) There are amendments to that section that are not relevant.
(b) S.I. 2002/3153 (N.I. 7); relevant amendments are noted below.
(c) Paragraph 9A was inserted by S.R. (N.I.) 2010/92.
(d) Paragraph 9B was inserted by S.I. 2011/2911.

- (b) the subsistence of such an account;
- (c) the updating of information provided to the Environment Agency in relation to such an account.”.

Paragraphs 24 and 24A

- 11.—(1) In paragraph 24 omit “9A,”.
- (2) In paragraph 24A(a)—
 - (a) omit “9A, or”; and
 - (b) omit “operator registry charges, or aircraft operator”.

Paragraph 26

- 12.—(1) Paragraph 26(b) is amended as follows.
- (2) Omit the definitions of “aircraft operator”, “allowance” and “operator”.
- (3) After the definition of “Environment Agency” insert—

“the EU ETS 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, as amended from time to time;”.
- (4) After the definition of “public body” insert—

“the Registries Regulation 2011” means Commission Regulation (EU) No 1193/2011 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, as amended from time to time;”.
- (5) For the definition of “trading scheme registry” substitute—

“trading scheme registry” means—

 - (a) any registry operated by the Environment Agency for the purpose of meeting the obligations of the United Kingdom referred to in Article 3(1) of Commission Regulation (EU) No 920/2010 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; or
 - (b) the registry established by Article 4(1) of the Registries Regulation 2011.”.

PART 4

Amendments to the Greenhouse Gas Emissions Trading Scheme Charging Scheme Regulations (Northern Ireland) 2010

Interpretation

13. In this Part a reference to a numbered regulation is to that regulation of the Greenhouse Gas Emissions Trading Scheme Charging Scheme Regulations (Northern Ireland) 2010(c).

(a) Paragraph 24A was inserted by S.R. (N.I.) 2010/92.
(b) Paragraph 26 was amended by S.R. (N.I.) 2010/92 and S.I. 2011/2911.
(c) S.R. (N.I.) 2010/151; amended by S.I. 2011/2911.

Regulation 2

14. In regulation 2—

- (a) omit the definitions of “2005 Regulations” and “greenhouse gas emissions permit”;
- (b) at the end of the definition of “the Directive” insert “, as amended from time to time”;
- (c) after that definition insert—

“the Registries Regulation 2011” means Commission Regulation (EU) No 1193/2011 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, as amended from time to time;”; and
- (d) for the definition of “trading scheme registry” substitute—

“trading scheme registry” means—

 - (a) any registry operated by the Environment Agency for the purpose of meeting the obligations of the United Kingdom referred to in Article 3(1) of Commission Regulation (EU) No 920/2010 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; or
 - (b) the registry established by Article 4(1) of the Registries Regulation 2011”.

Regulations 4 and 5

15.—(1) In regulation 4—

- (a) in paragraph (2)—
 - (i) omit sub-paragraphs (a) to (f);
 - (ii) for sub-paragraph (g) substitute—

“(g) charges (“registry charges”) in respect of—

 - (i) an application to open an account that, under the Registries Regulation 2011, is required to be held in a trading scheme registry;
 - (ii) the subsistence of such an account;
 - (iii) the updating of information provided to the Environment Agency in relation to such an account”;
 - (iii) for sub-paragraph (h) substitute—

“(h) fees or charges in respect of any costs incurred by the enforcing authority in performing any functions conferred under or by virtue of regulations made for the purpose of implementing the Directive”; and
 - (iv) omit sub-paragraph (i);
- (b) in paragraph (3), for “the 2005 Regulations” substitute “regulations made for the purpose of implementing the Directive”; and
- (c) in paragraph (4), for “its functions under the 2005 Regulations” substitute “the functions referred to in paragraph (2)(h)”.

(2) In regulation 5—

- (a) in paragraph (1)(a), for the words from “prescribe” to the end substitute “prescribe registry charges, or to amend any provision for such charges included in a charging scheme made under section 41A of the Environment Act 1995”; and
- (b) in paragraph (4), for “operator registry charges or aircraft operator registry charges” substitute “registry charges”.

PART 5

Consequential amendment and revocations

Amendment of the Pollution Prevention and Control Act 1999

16. In paragraph 9A of Schedule 1 to the Pollution Prevention and Control Act 1999^(a)—
- (a) for sub-paragraph (1) substitute—

“(1) Authorising the Secretary of State to make schemes for the charging by regulators of charges, as respects functions in relation to offshore installations, corresponding to those that may be prescribed under section 41A of the Environment Act 1995^(b).”; and
 - (b) in sub-paragraph (3), for ““greenhouse gas emissions permit” and “offshore installation” have” substitute ““offshore installation” has”.

Revocations

17.—(1) Paragraph 1(3) of Schedule 6 to the Greenhouse Gas Emissions Trading Scheme Regulations 2005^(c) is revoked.

(2) In the Schedule to the Greenhouse Gas Emissions Trading Scheme (Amendment) (Registries and Fees etc.) Regulations 2011^(d), the following are revoked—

- (a) paragraph 22(b);
- (b) paragraph 23(b) to (f);
- (c) paragraph 28(a).

(3) In regulation 2 of the Environment (Northern Ireland) Order 2002 (Amendment) Regulations (Northern Ireland) 2010^(e), the following are revoked—

- (a) paragraph (2)(a) and (b);
- (b) paragraph (2)(d)(iii).

6th November 2012

Gregory Barker
Minister of State
Department of Energy and Climate Change

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations deal with matters arising from the duty to transpose into United Kingdom law Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (“the EU ETS Directive”), as amended in particular by Directives 2008/101/EC and 2009/29/EC of the European Parliament and of the Council. Under the emissions trading system established by those Directives (“EU ETS”), an overall cap is set for emissions of greenhouse gases from specified activities. Operators must monitor and report emissions, and surrender sufficient emissions trading allowances to cover their emissions for each year. Under the amendments made by Directive 2008/101/EC, the system covers emissions from

(a) 1999 c. 24; paragraph 9A was inserted by S.I. 2005/925.
(b) Section 41A is amended by regulation 5 of these Regulations.
(c) S.I. 2005/925; there are amendments that are not relevant to Schedule 6.
(d) S.I. 2011/2911.
(e) S.R. (N.I.) 2010/92.

aviation activities as well as from stationary installations. A new phase of the system (“Phase 3”) begins on 1st January 2013.

The EU ETS Directive is currently implemented by the Greenhouse Gas Emissions Trading Scheme Regulations 2005 (S.I. 2005/925) and the Aviation Greenhouse Gas Emissions Trading Scheme Regulations 2010 (S.I. 2010/1996) (“the current implementing Regulations”). These confer responsibility for the day-to-day administration of the system on regulators in England and Wales, Scotland and Northern Ireland (respectively the Environment Agency, the Scottish Environment Protection Agency, and the chief inspector in Northern Ireland). By virtue of the charging provisions of Part 1 of the Environment Act 1995, of the Environment (Northern Ireland) Order 2002, and of the Greenhouse Gas Emissions Trading Scheme Charging Scheme Regulations (Northern Ireland) 2010, those regulators may make charging schemes in order to cover the costs of carrying out their EU ETS functions. The present Regulations amend those charging provisions so that appropriate charging schemes can continue to be made when the current implementing Regulations are themselves amended or replaced (and in particular when this is done for the purposes of the implementation of Phase 3 of EU ETS).

Regulations 4 and 5 amend sections 41 and 41A of the Environment Act 1995 (“the Act”), which applies to regulators in England, Wales and Scotland. As a result, the charging scheme powers for EU ETS will now be contained solely in section 41A. In addition, the provisions will no longer make specific reference to the current implementing Regulations or to functions specifically relating to permits. Instead, a more general reference will now be made to functions conferred by regulations made for the purpose of implementing the EU ETS Directive. Charges may also be prescribed in relation to opening, subsistence and updating of accounts that are required to be held in a trading scheme registry (these being the accounts held by the operators and aircraft operators covered by EU ETS). The definition of “trading scheme registry” is then updated to take into account the Registries Regulation 2011 (Commission Regulation (EU) No 1193/2011).

Regulation 6 makes consequential amendments to section 42 of the Act. As a result, the provisions relating to consultation, approval by Secretary of State (or Scottish Ministers) and Treasury consent will continue to apply to charging schemes made for the purposes of EU ETS. Amendments also ensure that the conditions for approval set out in section 42(2) extend to all the EU ETS functions of the regulators concerned.

Regulation 7 makes consequential amendments to the definitions in section 56 of the Act. The amendments made by *regulation 8* then ensure that the provisions in section 111 (relating to evidence in proceedings) continue to apply.

Regulations 10 to 12 similarly amend Schedule 1 to the Environment (Northern Ireland) Order 2002, which applies to functions in Northern Ireland. As a result, that Schedule will no longer make specific reference to the current implementing Regulations, or to functions specifically relating to permits. Paragraph 9B of the Schedule will now refer instead to functions conferred by regulations made for the purpose of implementing the EU ETS Directive (as now defined in paragraph 26), and to accounts that are required to be held in a trading scheme registry. The definition of “trading scheme registry” is similarly updated.

Regulations 14 and 15 make corresponding amendments to the Greenhouse Gas Emissions Trading Scheme Charging Scheme Regulations (Northern Ireland) 2010.

Regulation 16 makes consequential amendments to the Pollution Prevention and Control Act 1999.

Regulation 17 revokes provisions which, as a result of the above amendments made by these Regulations, are now otiose.

An Impact Assessment has not been prepared as the instrument is not expected to have any direct 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>).

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STATUTORY INSTRUMENTS

2012 No. 2788

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£5.75

E4911 11/2012 124911T 19585

ISBN 978-0-11-153056-6



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