

**2010 No. 216**

**CLIMATE CHANGE**

**The Carbon Accounting Scheme (Scotland) Regulations 2010**

*Made* - - - - 27th May 2010

*Coming into force* - - 28th May 2010

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 13(5) and (6), 20(1) to (3) and 96(2)(b) of the Climate Change (Scotland) Act 2009<sup>(a)</sup> and paragraph 1A of Schedule 2 to the European Communities Act 1972<sup>(b)</sup> and all other powers enabling them to do so.

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972<sup>(c)</sup> and it appears to the Scottish Ministers that it is expedient for the references to Community instruments in these Regulations to be construed as references to those instruments as amended from time to time.

In accordance with section 96(4) of the Climate Change (Scotland) Act 2009, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

**Citation and commencement**

1. These Regulations may be cited as the Carbon Accounting Scheme (Scotland) Regulations 2010 and come into force on the day after the day they are made.

**Interpretation**

2. In these Regulations—

“2009 Regulations” means the Carbon Accounting Regulations 2009<sup>(d)</sup>;

“cancellation” of a carbon unit means the crediting of the unit in the national cancellation account in the UK registry, and a unit so credited is “cancelled”;

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(a) 2009 asp 12.

(b) 1972 c.68; paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (c.51).

(c) Section 2(2) was relevantly amended by paragraph 15(3) of Schedule 8 to the Scotland Act 1998 (c.46), section 27(1) and (2) of the Legislative and Regulatory Reform Act 2006 (c.51), and paragraph 1 of Part 1 of Schedule 1 to the European Union (Amendment) Act 2008 (c.7).

(d) S.I. 2009/1257 as amended by S.I. 2009/3146.

“EU ETS” means the European Union Emissions Trading Scheme established under 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(a);

“Kyoto Protocol” means the Kyoto Protocol to the UNFCCC signed at Kyoto on 11th December 1997(b);

“Registries Regulation” means Commission Regulation (EC) No 2216/2004 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(c);

“registry administrator” means the body appointed by the competent authority as the registry administrator(d) for the UK registry for the purposes of the Registries Regulation;

“UNFCCC” means the United Nations Framework Convention on Climate Change signed at New York on 9th May 1992(e); and

“UK registry” means the registry established for the United Kingdom in accordance with the Registries Regulation.

### References to community instruments

3. References in these Regulations to Community instruments are references to those instruments as amended from time to time.

### Carbon units

4.—(1) A carbon unit for the purposes of the Climate Change (Scotland) Act 2009 is a unit of the following kind:—

- (a) assigned amount unit;
- (b) European Union allowance;
- (c) certified emission reduction; and
- (d) emission reduction unit.

(2) A carbon unit has a value of 1 tonne of carbon dioxide equivalent.

(3) In this regulation—

“assigned amount unit” means a unit issued—

- (a) under Article 7(3) of Decision No 280/2004/EC(f) of the European Parliament and of the Council concerning a mechanism for monitoring Community greenhouse gas emissions and for implementing the Kyoto Protocol; or
- (b) by a party to the Kyoto Protocol which is not subject to that Decision;

“European Union allowance” means an assigned amount unit converted into an allowance for the purposes of the EU ETS in accordance with Article 45 of the Registries Regulation;

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- (a) O.J. No. L 275, 25.10.2003, p.32 as amended by Directive 2004/101/EC (O.J. No. L 338, 13.11.2004, p.18); Directive 2008/101/EC (O.J. No. L 8, 13.1.2009, p.3); Commission Regulation (EC) No. 219/2009, (O.J. No. L 87, 31.3.2009, p.109); and Directive 2009/29/EC (O.J. No. L 140, 5.6.2009, p.63). The Emissions Trading Directive is transposed by the Greenhouse Gas Emissions Trading Scheme Regulations 2005 (S.I. 2005/925).
  - (b) The Protocol was signed by the United Kingdom on 29th April 1998 and entered into force on 16th February 2005. The text of the Protocol can be found at <http://unfccc.int/2860>.
  - (c) O.J. No. L 386, 29.12.2004, p.1 as amended by Commission Regulation (EC) No. 916/2007, (O.J. No. L 200, 1.8.2007, p.5) and Commission Regulation (EC) No. 994/2008 (O.J. No. L 271, 11.10.2008, p.3).
  - (d) The Secretary of State is the competent authority, and the Environment Agency is appointed as the registry administrator.
  - (e) The Convention was signed by the United Kingdom on 12th June 1992 and came into force on 21st March 1994. The text of the Convention can be found at <http://unfccc.int/resource/docs/convkp/conveng.pdf>.
  - (f) O.J. No. L 49, 19.2.2004, p.1.

“certified emission reduction ” means a unit issued under Article 12 of the Kyoto Protocol and the Decisions adopted under the UNFCCC or the Kyoto Protocol; and

“emission reduction unit” means a unit issued under Article 6 of the Kyoto Protocol and the Decisions adopted under the UNFCCC or the Kyoto Protocol.

### **Carbon accounting scheme**

5.—(1) The Scottish Ministers must on or before 1st August 2010 instruct the registry administrator to open an account (“the Scottish credit account”) in the UK registry.

(2) The Scottish credit account—

(a) must be used to hold a carbon unit that is to be credited to the net Scottish emissions account; and

(b) may be used to hold any other carbon unit.

(3) The Scottish Ministers may only instruct the registry administrator to transfer a carbon unit from the Scottish credit account—

(a) for cancellation; or

(b) to the credit account opened in accordance with regulation 4 of the 2009 Regulations.

(4) The Scottish Ministers may only instruct a transfer under paragraph 3(b) if they are satisfied that the carbon unit will be credited to the net UK carbon account in accordance with regulation 5 of the 2009 Regulations.

### **Carbon units transferred**

6.—(1) A carbon unit transferred in accordance with regulation 5(3)(b) in respect of which—

(a) a declaration is made in accordance with regulation 5(2)(b) of the 2009 Regulations, may be treated by the Scottish Ministers as credited to the net Scottish emissions account; or

(b) no such declaration is made, is to be dealt with in accordance with paragraph (2).

(2) Where this paragraph applies, the Scottish Ministers must instruct the registry administrator to transfer the carbon unit to the Scottish credit account.

### **Crediting of carbon units to the net Scottish emissions account**

7.—(1) A carbon unit is credited to the net Scottish emissions account if—

(a) a person transfers the carbon unit to the Scottish credit account; and

(b) the Scottish Ministers declare that the carbon unit is credited to the net Scottish emissions account.

(2) A declaration under paragraph (1)(b)—

(a) must state the year in respect of which the carbon unit is to be credited; and

(b) may be made in such manner and at such time as the Scottish Ministers consider appropriate.

(3) The Scottish Ministers must not make a declaration under paragraph (1)(b) if they reasonably believe that the carbon unit has been used to offset greenhouse gas emissions which are not Scottish emissions.

(4) A carbon unit which is credited to the net Scottish emissions account in accordance with this regulation must have been cancelled.

## **Crediting and debiting of carbon units to the net Scottish emissions account in connection with the EU ETS**

8.—(1) The Scottish Ministers shall in respect of each year in the period 2010–2012 calculate whether any carbon unit is to be credited to or debited from the net Scottish emissions account as a result of the operation of the EU ETS.

(2) Calculations under this regulation must be performed—

- (a) for 2010 by 31st May 2011;
- (b) for 2011 by 31st May 2012; and
- (c) for 2012 by 31st May 2013.

(3) In order to calculate whether carbon units are to be credited or debited for a year, the Scottish Ministers must determine whether the total amount of carbon units surrendered in respect of Scotland as a result of the operation of the EU ETS in the relevant period for that year is more or less than the specified amount.

(4) If the amount of carbon units surrendered in a year is more than the specified amount, then an amount of carbon units equal to the difference is to be credited to the net Scottish emissions account for that year.

(5) If the amount of carbon units surrendered in a year is less than the specified amount, then an amount of carbon units equal to the difference is to be debited from the net Scottish emissions account for that year.

(6) In this regulation—

“relevant period” means—

- (a) for 2010, the 16 months preceding 1st May 2011;
- (b) for 2011, the 16 months preceding 1st May 2012; and
- (c) for 2012, the 16 months preceding 1st May 2013; and

“the specified amount” means—

- (a) 23,025,000 for 2010 and 2011; and
- (b) 24,659,000 for 2012.

## **Register of transactions**

9.—(1) The Scottish Ministers must maintain a register containing information about the carbon units credited to and debited from the net Scottish emissions account under these Regulations.

(2) In relation to carbon units credited under regulation 7, or treated as so credited under regulation 6, the register must contain details of the—

- (a) type of units transferred to the Scottish credit account;
- (b) date of transfer to the Scottish credit account;
- (c) date of any declaration that units are to be credited;
- (d) year in respect of which the units are credited; and
- (e) date of cancellation.

(3) In relation to carbon units to be credited or debited under regulation 8, the register must contain details of the—

- (a) date on which the calculation under regulation 8(1) was performed;
- (b) date of surrender;
- (c) figures used in that calculation;
- (d) amount of units credited to or debited from the net Scottish emissions account; and
- (e) year in respect of which units are credited or debited.

**Delegation of functions**

**10.** The Scottish Ministers may delegate to SEPA the performance of any function conferred on them by these Regulations.

*STEWART STEVENSON*  
Authorised to sign by the Scottish Ministers

St Andrew's House,  
Edinburgh  
27th May 2010

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make provision about carbon units and carbon accounting for the purposes of Part 1 of the Climate Change (Scotland) Act 2009 (“the Act”).

Regulation 2 sets out various definitions for the purposes of the Regulations.

Regulation 3 provides that references in the Regulations to Community instruments are to those instruments as amended from time to time.

Regulation 4 specifies the kinds of carbon unit that are to count as carbon units for the purposes of the Act, and assigns a value to those units.

Regulation 5 places a duty on the Scottish Ministers to instruct the registry administrator to open a Scottish credit account in the UK registry.

The UK registry is operated on behalf of the Secretary of State as the competent authority for the purposes of Commission Regulation (EC) No 2216/2004 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 (O.J. No. L 386, 29.12.2004) (the “Registries Regulation”).

The Scottish Ministers may only instruct the transfer of a carbon unit from the Scottish credit account to one of two accounts in the UK registry, namely the national cancellation account, or the credit account (the “UK credit account”) opened by the Secretary of State under regulation 4 of the Carbon Accounting Regulations 2009 for the purpose of holding carbon units which are to be credited to net UK carbon account.

Regulation 6 provides that the Scottish Ministers must credit a carbon unit to the net Scottish emissions account (“NSEA”) where the unit is transferred from the Scottish credit account to the UK credit account, and a Minister of the Crown declares under regulation 5 of the Carbon Accounting Regulations 2009 that the unit is credited to the net UK carbon account.

It also provides that where no such declaration is made, then the Scottish Ministers must instruct the registry administrator to transfer the unit to the Scottish credit account. The registry administrator must deal with that instruction in accordance with regulation 4(3) and (4) of the Carbon Accounting Regulations 2009.

Regulation 7 provides that a carbon unit is credited to the NSEA if a person transfers it to the Scottish credit account, and the Scottish Ministers declare that it is to be credited to the NSEA. It has the effect that a carbon unit may not be counted as a credit if it has been used to offset emissions which are not attributable to Scotland. It also provides that a carbon unit credited to the net Scottish emissions account must first have been cancelled.

Regulation 8 provides for the Scottish Ministers to calculate for each year in the period 2010-2012 whether or not any carbon units are to be credited to or debited from the NSEA as a result of the operation of the European Union emissions trading scheme. Units are to be credited if installations in Scotland use fewer units than are permitted under the EU ETS (the “specified amount”), or to be debited if installations use more units than the specified amount.

Regulation 9 places a duty on the Scottish Ministers to maintain a register containing information in respect of carbon units credited to and debited from the NSEA.

Regulation 10 provides that the Scottish Ministers may delegate any of the functions conferred on them by the Regulations to SEPA.

A Regulatory Impact Assessment has not been produced for these Regulations as they will have no direct impact on businesses, charities or the voluntary sector.



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