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STATUTORY INSTRUMENTS

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**2003 No. 3311**

**ENVIRONMENTAL PROTECTION**

**The Greenhouse Gas Emissions  
Trading Scheme Regulations 2003**

*Made* - - - - *18th December 2003*  
*Laid before Parliament* *19th December 2003*  
*Coming into force* - - *31st December 2003*

The Secretary of State, in exercise of the powers conferred upon her by subsection (2) of section 2 of the European Communities Act 1972<sup>(1)</sup>, being a Minister designated for the purpose of that subsection in relation to air pollution<sup>(2)</sup> hereby makes the following Regulations:

**PART 1**

*General*

**Citation and commencement**

1. These Regulations may be cited as the Greenhouse Gas Emissions Trading Scheme Regulations 2003 and shall come into force on 31st December 2003.

**Interpretation**

2.—(1) In these Regulations—

“address” means, in relation to electronic communications, any number or address used for the purposes of such communications;

“allowance” has the meaning given to it in Article 3 of the Directive;

“appeal body” means the body to which an appeal may be made under regulations 26 or 27;

“appropriate authority” means (except where regulation 21(15) or 26(10) apply)—

(i) in relation to an installation which is (or will be) situated in England and offshore installations, the Secretary of State;

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(1) 1972 c. 68. As regards Scotland, see also section 57(1) of the Scotland Act 1998 (c. 46), which provides that, despite the transfer to the Scottish Ministers by virtue of that Act of functions in relation to observing and implementing obligations under Community law, any function of a Minister of the Crown in relation to any matter shall continue to be exercisable by him as regards Scotland for the purposes specified in section 2(2) of the European Communities Act 1972.

(2) S.I.1988/785.

- (ii) in relation to an installation (other than offshore installations) which is (or will be) situated in Scotland, the Scottish Ministers;
- (iii) in relation to an installation (other than offshore installations) which is (or will be) situated in Wales, the National Assembly for Wales; and
- (iv) in relation to an installation (other than offshore installations) which is (or will be) situated in Northern Ireland, the Department of the Environment;

“change in operation” means, in relation to an installation, a change in the nature, functioning or scope of the installation which—

- (i) affects any information included in the greenhouse gas emissions permit pursuant to regulation 9(7)(d); or
- (ii) might, in the opinion of the regulator, require any monitoring and reporting condition to be amended;

“chief inspector” means the chief inspector constituted under regulation 8(3) of the Northern Ireland Regulations;

“the 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 and amending Council Directive [96/61/EC](#)(3);

“electronic communications” has the same meaning as in the Electronic Communications Act 2000(4);

“enforcement notice” has the meaning given by regulation 23(1);

“England and Wales Regulations” means the Pollution Prevention and Control (England and Wales) Regulations 2000(5);

“excluded installation” means an installation in respect of which the operator holds a valid certificate under regulation 11(3) stating that the installation is an excluded installation;

“greenhouse gas emissions” means the release of greenhouse gases into the atmosphere from sources in an installation;

“greenhouse gas emissions permit” means a permit granted under regulation 9;

“greenhouse gases” has the meaning given to it in Article 3 of the Directive;

“installation” means (except where it appears in Schedule 1)—

- (i) a stationary technical unit where one or more Schedule 1 activities are carried out; and
- (ii) any other location on the same site where any other directly associated activities are carried out which have a technical connection with the activities carried out in the stationary technical unit and which could have an effect on greenhouse gas emissions and pollution,

and references to an installation include references to part of an installation;

“monitoring and reporting condition” means a condition of a greenhouse gas emissions permit imposed pursuant to regulation 10(2) (but excluding conditions imposed pursuant to regulation 10(2)(c));

“national allocation plan” has the meaning given by regulation 18(1);

“Northern Ireland Regulations” means the Pollution Prevention and Control Regulations (Northern Ireland) 2003(6);

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(3) OJNo. L 275, 25.10.03, p.32.

(4) [2000 c. 7](#); the definition of electronic communications in section 15(1) was amended by the Communications Act [2003 \(c. 21\)](#), section 406(1) and Schedule 17, paragraph 158.

(5) S.I. [2000/1973](#), amended by S.I. [2002/1559](#); there are other amending instruments by none is relevant.

(6) S.R. (NI) [2003 No. 46](#), amended by S.I. [2003/496](#); there is another amending instrument which is not relevant.

“offshore installation” means an installation which is (or will be) situated in the area (together with places above and below it) comprising—

- (i) those parts of the sea adjacent to England and Wales from the low water mark to the landward baseline of the United Kingdom territorial sea;
- (ii) the United Kingdom territorial sea apart from those areas comprised in any controlled waters within the meaning of section 30A(1) of the Control of Pollution Act 1974(7); and
- (iii) those areas of sea in any area for the time being designated under section 1(7) of the Continental Shelf Act 1964(8);

“Offshore Regulations” means the Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001(9);

“operator” means, subject to paragraph (2), in relation to an installation, the person who has control over its operation;

“Planning Appeals Commission” means the Planning Appeals Commission established under Article 110 of the Planning (Northern Ireland) Order 1991(10);

“regulator” means—

- (i) in relation to an installation (other than an offshore installation) which is (or will be) situated in England and Wales, the Environment Agency;
- (ii) in relation to an installation (other than an offshore installation) which is (or will be) situated in Scotland, the Scottish Environment Protection Agency;
- (iii) in relation to an installation (other than an offshore installation) which is (or will be) situated in Northern Ireland, the chief inspector; and
- (iv) in relation to an offshore installation, the Secretary of State;

“reportable emissions” means, in relation to an installation, the total specified emissions (expressed in tonnes of carbon dioxide equivalent) which arise from the Schedule 1 activities carried out in that installation; and “annual reportable emissions” means, subject to regulation 10(7), the reportable emissions arising during any scheme year;

“responsible authority” has the meaning given by regulation 11(7);

“revocation notice” has the meaning given by regulation 16(1);

“Schedule 1 activity” means an activity falling within a description in Schedule 1;

“scheme year” means a year beginning with 1st January in a phase referred to in regulation 18(2);

“specified emissions” means in relation to any Schedule 1 activity the greenhouse gas emissions specified in that Schedule in relation to that activity;

“Scotland Regulations” means the Pollution Prevention and Control (Scotland) Regulations 2000(11);

“tonne of carbon dioxide equivalent” has the meaning given to it in Article 3 of the Directive;

“variation notice” has the meaning given by regulation 13(8).

(2) For the purposes of these Regulations—

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(7) 1974 c. 40; section 30A(1) was inserted by section 169 of, and Schedule 23 to, the Water Act 1989 (c. 15).

(8) 1964 c. 29; section 1(7) was amended by the Oil and Gas (Enterprise Act) 1982 (c. 23), section 37 and Schedule 3, paragraph 1.

(9) S.I. 2001/1091.

(10) S.I. 1991/1220 (N.I. 11); relevant amending instruments are S.I. 1999/663, 2003/430 (N.I. 8).

(11) S.S.I.2000/323, relevant amending instruments are S.S.I. 2003/146, 2003/235.

- (a) where an installation has not been put into operation, the person who will have control over the operation of the installation when it is put into operation shall be treated as the operator of the installation;
- (b) where an installation has ceased to be in operation, the person who holds the greenhouse gas emissions permit which applies to the Schedule 1 activities carried out in the installation shall be treated as the operator of the installation; and
- (c) where a permit holder has ceased to be the operator of an installation to which a greenhouse gas emissions permit relates references to the operator, other than in regulation 16(2)(a) or (6)(a), shall be read as references to the permit holder.

### **Application of these Regulations to the Crown**

3.—(1) Subject to the provisions of this regulation, these Regulations bind the Crown.

(2) No contravention by the Crown of any provision of these Regulations shall make the Crown criminally liable under regulation 32 but the High Court, or in relation to an installation in Scotland the Court of Session, may, on the application of a regulator, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(3) Notwithstanding paragraph (2), the provisions of these Regulations apply to persons in the service of the Crown as they apply to other persons.

(4) If the Secretary of State certifies that it appears to her, as respects any Crown premises and any specified powers of entry exercisable under section 108 of the Environment Act 1995<sup>(12)</sup> or regulation 27 of the Northern Ireland Regulations in relation to functions conferred or imposed by these Regulations, that it is requisite or expedient that, in the interests of national security, the powers of entry should not be exercisable in relation to those premises, those powers shall not be exercisable in relation to those premises; and in this paragraph “specified” means specified in the certificate and “Crown premises” means premises held or used by or on behalf of the Crown.

(5) The following persons shall be treated as if they were the operator of the installation concerned for the purpose of any notice served or given or any proceedings instituted in relation to an installation operated or controlled by any person acting on behalf of the Royal Household, the Duchy of Lancaster or the Duke of Cornwall or other possessor of the Duchy of Cornwall—

- (a) in relation to an installation operated or controlled by a person acting on behalf of the Royal Household, the Keeper of the Privy Purse;
- (b) in relation to an installation operated or controlled by a person acting on behalf of the Duchy of Lancaster, such person as the Chancellor of the Duchy appoints in relation to that installation;
- (c) in relation to an installation operated or controlled by a person acting on behalf of the Duchy of Cornwall, such person as the Duke of Cornwall, or the possessor for the time being of the Duchy of Cornwall, appoints in relation to that installation.

### **Notices**

4.—(1) Any notice or other document served or given under these Regulations by an appropriate authority, responsible authority or a regulator shall be in writing or if the person to be served with or given any such notice or document has provided an address for service using electronic communications, by electronic communications.

(2) Any such notice or other document may be served on or given to a person by—

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(12) 1995 c. 25; section 108 was amended by the Pollution Prevention and Control Act 1999 (c. 24), section 6(2) and Schedule 3, in relation to England and Wales by the Pollution Prevention and Control Regulations 2000, regulation 39 and Schedule 10, Part 1, paragraphs 14 and 16 and in relation to Scotland by the Pollution Prevention and Control (Scotland) Regulations 2000, regulation 36, Schedule 10, Part 1, paragraph 5(1) and (3).

- (a) leaving it at his proper address;
  - (b) sending it by post to him at that address; or
  - (c) where an address for service using electronic communications has been given by that person, sending it using electronic communications to that person at that address.
- (3) Any such notice or other document may—
- (a) in the case of a body corporate (other than a limited liability partnership), be served on the secretary or clerk of that body;
  - (b) in the case of a limited liability partnership, be served on a member; or
  - (c) in the case of a partnership (other than a limited liability partnership), be served on or given to a partner or person having the control or management of the partnership business.
- (4) For the purpose of this regulation and of section 7 of the Interpretation Act 1978(13) (service of documents by post) in its application to this regulation, the proper address of any person on or to whom any such notice or other document is to be served or given shall be his last known address, except that—
- (a) in the case of a body corporate (other than a limited liability partnership) or its secretary or clerk, it shall be the address of the registered or principal office of that body;
  - (b) in the case of a limited liability partnership or a member of a limited liability partnership, it shall be the registered or principal office of that partnership;
  - (c) in the case of a partnership (other than a limited liability partnership) or person having the control or management of the partnership business, it shall be the principal office of the partnership,
- and for the purposes of this paragraph the principal office of a company registered outside the United Kingdom or of a partnership carrying on business outside the United Kingdom shall be its principal office within the United Kingdom.
- (5) If the person to be served with or given any such notice or document has specified an address in the United Kingdom other than his proper address within the meaning of paragraph (4) as the one at which he or someone on his behalf will accept notices or documents of the same description as that notice or document, that address shall also be treated for the purposes of this regulation and section 7 of the Interpretation Act 1978 as his proper address.
- (6) Where a notice or document is served or given using electronic communications, the service is deemed to be effected by properly addressing and transmitting the electronic communication.

## **Applications**

- 5.—(1) A regulator may require any application or type of application made to it under any provision of these Regulations to be made on a form made available by the regulator.
- (2) A form made available by a regulator under paragraph (1) shall specify the information required by the regulator to determine the application, which shall include any information required to be contained in the application by the provision of these Regulations under which the application is made.
- (3) Where a regulator makes available a form under paragraph (1) in relation to the making of applications to it under a provision of these Regulations any application made to it under that provision shall be made on that form.
- (4) Any application made under these Regulations may, with the agreement of the regulator, be sent to the regulator electronically.

(5) Where an application which is required to be accompanied by a fee is sent electronically, the fee may be sent to the regulator separately from the application but, the application shall not be treated as having been received by the regulator until the fee has also been received.

(6) An application made under these Regulations may be withdrawn at any time before it is determined.

(7) In its application to regulation 11 (excluded installations), paragraphs (1) to (6) shall apply as if any reference to “the regulator” were a reference to “the responsible authority”.

(8) In its application to regulation 21 (pooling), paragraphs (1) to (6) shall apply as if any reference to “the regulator” were a reference to “the appropriate authority”.

### **Functions of the regulator: Northern Ireland**

6. Any functions conferred or imposed by these Regulations on the chief inspector, may be delegated by him to any inspector appointed under regulation 8(1) of the Northern Ireland Regulations.

## **PART 2**

### *Greenhouse Gas Emissions Permits*

#### **Requirement for greenhouse gas emissions permit to carry out Schedule 1 activities**

7. No person shall carry out a Schedule 1 activity resulting in specified emissions after 1 January 2005, except under and to the extent authorised by a greenhouse gas emissions permit.

#### **Applications for greenhouse gas emissions permits**

8.—(1) An application for a greenhouse gas emissions permit shall be made to the regulator in accordance with this regulation and shall, except where the application relates to an offshore installation, be accompanied by the fee prescribed in respect of the application in regulation 17.

(2) An application under paragraph (1) shall contain the following information—

- (a) the name of the applicant, his telephone number and postal address (including post code) and, if different, any address to which correspondence relating to the application should be sent and, if the applicant is a body corporate, its registered number, the postal address of its registered or principal office and, if that body corporate is a subsidiary of a holding company (within the meaning of section 736 of the Companies Act 1985<sup>(14)</sup> or, in relation to Northern Ireland, article 4 of the Companies (Northern Ireland) Order 1986<sup>(15)</sup>), the name of the ultimate holding company and the postal address of its principal office;
- (b) the postal address of the site of the installation and its national grid reference (or for offshore installations equivalent information identifying the installation and its location), a description of that site and the location of the installation on that site;
- (c) a description of the installation and the Schedule 1 activities to be carried out in the installation including a description of the technology used;
- (d) the raw and auxiliary materials used in carrying out Schedule 1 activities in the installation, the use of which is likely to lead to specified emissions;
- (e) the sources of specified emissions from the Schedule 1 activities carried out in the installation;

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<sup>(14)</sup> 1985 c. 6; section 736 was substituted by section 144(1) of the Companies Act 1989 (1989 c. 40).

<sup>(15)</sup> S.I. 1986/1032 (N.I. 6), amended by S.I. 1990/1504 (N.I. 10); there is other amending legislation but none of it is relevant.

- (f) a description of the measures which are planned to monitor and report specified emissions;
  - (g) a description, including the reference number, of any environmental licence issued in relation to the installation;
  - (h) any additional information which the applicant wishes the regulator to take into account in considering the application; and
  - (i) a non-technical summary of the information referred to in sub-paragraphs (c) to (h).
- (3) For the purpose of paragraph (2)(g), “environmental licence” means—
- (a) an authorisation under Part I of the Environmental Protection Act 1990<sup>(16)</sup> or the Industrial Pollution Control (Northern Ireland) Order 1997<sup>(17)</sup>; or
  - (b) a permit granted under—
    - (i) the England and Wales Regulations;
    - (ii) the Scotland Regulations;
    - (iii) the Offshore Regulations; or
    - (iv) the Northern Ireland Regulations.

(4) Where an application is for a greenhouse gas emissions permit to operate more than one installation the application shall contain the information required by paragraph (2) in relation to each installation.

(5) Where, before the entry into force of these Regulations, a person has made to the regulator an application which, if made after the entry into force of these Regulations would have complied with paragraph (1), it shall be deemed to be an application under paragraph (1) made on the date of entry into force of these Regulations.

(6) The regulator may, by notice to the applicant, require him to furnish such further information specified in the notice, within the period so specified, as the regulator may require for the purpose of determining the application and if the applicant fails to furnish the specified information within the period specified, the application shall, if the regulator gives notice to the applicant that it treats the application as having been withdrawn, be deemed to have been withdrawn at the end of that period.

### **Determination of applications and grant of greenhouse gas emissions permits**

9.—(1) The regulator shall give notice of its determination of an application for a greenhouse gas emissions permit within a period of two months beginning on the date on which it received the application or within such longer period as may be agreed in writing with the applicant.

(2) For the purpose of calculating the period of two months mentioned in paragraph (1) no account shall be taken of any period beginning with the date on which notice is served on the applicant under regulation 8(6) and ending on the date on which the applicant furnishes the information specified in the notice.

(3) If a regulator fails to give notice of its determination of an application for a greenhouse gas emissions permit within the period allowed by or under paragraph (1), the application shall, if the applicant notifies the regulator that he treats the application as having been refused, be deemed to have been refused at the end of that period.

(4) Subject to paragraph (5), where an application is duly made to the regulator, the regulator shall either grant the greenhouse gas emissions permit subject to the conditions required or authorised to be imposed by regulation 10 or refuse the application.

(5) A greenhouse gas emissions permit shall not be granted if the regulator—

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<sup>(16)</sup> 1990 c. 43.

<sup>(17)</sup> S.I. 1997/2777 (N.I. 18), to which there are amendments not relevant to these Regulations.

- (a) considers that the stationary technical unit described in the application does not, or will not when it is put into operation, fall within the definition of an installation in regulation 2;
  - (b) considers that the applicant will not be the operator of the installation concerned after the grant of the permit; or
  - (c) is not satisfied that the applicant will ensure that the installation is operated so as to comply with the monitoring and reporting conditions which would be included in the permit.
- (6) A greenhouse gas emissions permit may authorise the operation of more than one installation on the same site operated by the same operator but may not otherwise authorise the operation of more than one installation.
- (7) A greenhouse gas emissions permit authorising the operation of an installation shall include—
- (a) the name and postal address of the operator and, if different, any address to which correspondence should be sent;
  - (b) the postal address of the site of the installation and its national grid reference (or for offshore installations equivalent information identifying the installation and its location);
  - (c) a description of the site and the location of the installation on that site;
  - (d) a description of the installation, the Schedule 1 activities to be carried out in the installation and the specified emissions from those activities.
- (8) Where—
- (a) the conditions of a greenhouse gas emissions permit have been varied under regulation 13 or affected by a partial transfer, surrender or revocation under regulations 14 to 16; or
  - (b) there is more than one greenhouse gas emissions permit applying to installations on the same site operated by the same operator,
- the regulator may replace the permit with a consolidated permit applying to the same Schedule 1 activities and subject to the same conditions as the permit being replaced.

### **Conditions of greenhouse gas emissions permits**

**10.**—(1) There shall be included in a greenhouse gas emissions permit such conditions as the regulator considers appropriate and in particular such conditions as the regulator considers appropriate to comply with paragraphs (2) to (6).

(2) A greenhouse gas emissions permit shall include conditions concerning the monitoring and reporting of specified emissions from the installation to which it relates and, in particular—

- (a) such conditions as the regulator considers appropriate to ensure that any specified emissions from the Schedule 1 activity to which it relates are monitored and reported, including conditions—
  - (i) specifying the monitoring methodology and frequency; and
  - (ii) requiring the operator to submit reports of the annual reportable emissions to the regulator and concerning the timing of such reports;
- (b) a requirement that all reports submitted pursuant to conditions imposed under subparagraph (a)(ii) are verified in accordance with the criteria set out in Annex V of the Directive and that the regulator is informed of the results of any such verification; and
- (c) a requirement that an operator notifies the regulator as soon as he becomes aware of any factor which might prevent him from complying with any of the conditions included in a greenhouse gas emissions permit pursuant to this paragraph.

(3) A greenhouse gas emissions permit shall contain such conditions as the regulator considers appropriate to ensure that the operator surrenders allowances equal to the annual reportable

emissions from the installation within four months of the end of the scheme year during which those emissions arose.

(4) A greenhouse gas emissions permit shall provide that, where an operator fails to comply with a condition imposed pursuant to paragraph (3) in respect of a scheme year (“a non-compliance year”), for the purpose of assessing compliance with that condition in relation to the later scheme year determined in accordance with paragraph (5) the annual reportable emissions from the installation shall be deemed to be increased by an amount equal to the amount of annual reportable emissions in respect of which the operator failed to comply with that condition in the non-compliance year.

(5) For the purposes of paragraph (4), the “later scheme year” shall be the scheme year following the non-compliance year, or where the non-compliance results from an error in the report submitted by an operator under a monitoring and reporting condition, the scheme year following discovery of the error.

(6) A greenhouse gas emissions permit shall contain a condition stating that in relation to any period for which the installation is an excluded installation (the “exclusion period”)—

- (a) the operator shall be deemed to be in compliance with any conditions imposed pursuant to paragraphs (2) and (3); and
- (b) the operator shall be required to notify the regulator of any change in operation during the exclusion period, at least 2 months before the end of that exclusion period.

(7) Where a certificate under regulation 11(3) stating that an installation is an excluded installation is revoked in accordance with regulation 11(4) during a scheme year, the annual reportable emissions from the installation for that scheme year shall be the reportable emissions from the installation from the date that the certificate was revoked to the end of that scheme year.

(8) Regulators shall periodically review the conditions of greenhouse gas emissions permits and may do so at any time.

### **Excluded installations**

**11.**—(1) Where the European Commission has provided for the temporary exclusion of an installation under Article 27(2) of the Directive, the operator of the installation may apply to the responsible authority for a certificate stating that the installation is an excluded installation.

(2) An application under paragraph (1) shall—

- (a) identify the installation in question;
- (b) contain the name and postal address of the operator and, if different, any address to which correspondence should be sent;
- (c) contain a copy of the greenhouse gas emissions permit relating to the installation identified in sub-paragraph (a);
- (d) identify the regulator which granted that permit; and
- (e) identify the national policy by virtue of which the European Commission has provided for the temporary exclusion of the installation.

(3) Where an application is duly made, the responsible authority shall serve on the regulator and the operator a certificate which shall—

- (a) identify the installation;
- (b) identify the operator and the regulator of that installation;
- (c) state the duration of the exclusion; and
- (d) specify any conditions applying to the exclusion.

(4) Where an operator fails to comply with the conditions referred to in paragraph (3)(d), the responsible authority may serve a notice on the operator and the regulator revoking the certificate served under paragraph (3).

(5) Where the regulator effects a transfer or partial transfer under regulation 14 of a greenhouse gas emissions permit which relates to an excluded installation, the regulator shall notify the responsible authority of the transfer or partial transfer and provide a copy of the endorsed permit and any new permit granted which relates to that installation.

(6) Where the regulator notifies the responsible authority in accordance with paragraph (5)—

- (a) in the case of a transfer of the whole greenhouse gas emissions permit, if the responsible authority is satisfied that the installation will continue to be covered by the national policy identified in the application under paragraph (1), the responsible authority shall serve a notice on the operator and regulator including a copy of the certificate served under paragraph (3) and specifying the change of operator;
- (b) in the case of a partial transfer, the responsible authority shall revoke the certificate served under paragraph (3) and if the responsible authority is satisfied that any part of the installation will continue to be covered by the national policy identified in the application under paragraph (1), the responsible authority shall serve on the operator and the regulator of that part a certificate under paragraph (3) in relation to that part;
- (c) in any other case, the responsible authority shall serve a notice on the operator and the regulator revoking the certificate served under paragraph (3).

(7) For the purposes of this regulation, the “responsible authority” means, subject to paragraph (8), the person who is responsible for the national policy by virtue of which the European Commission has provided for the temporary exclusion of the installation.

(8) If there is doubt as to who is responsible for a particular national policy, the Secretary of State shall decide who is to be considered to be responsible for the policy for the purposes of this regulation.

### **Proposed change in operation**

**12.**—(1) Subject to paragraph (4), where an operator of an installation who holds a greenhouse gas emissions permit in respect of the Schedule 1 activities carried out in the installation proposes to make a change in operation the operator shall, at least 14 days before making the change, notify the regulator.

(2) A notification under paragraph (1) shall be in writing and shall contain a description of the proposed change in operation including a brief explanation of whether and, if so, why it—

- (a) affects any information included in the greenhouse gas emissions permit pursuant to regulation 9(7)(d); or
- (b) might require any monitoring and reporting condition to be amended.

(3) A regulator shall, by notice served on the operator, acknowledge receipt of any notification received under paragraph (1).

(4) Paragraph (1) shall not apply where—

- (a) a change in operation is to be made more than 2 months before the end of the period for which the installation to which the change relates is an excluded installation; or
- (b) the operator applies under regulation 13(2) for the variation of the conditions of his greenhouse gas emissions permit before making the proposed change in operation and the application contains a description of that change.

### **Variation of provisions of greenhouse gas emissions permits**

13.—(1) The regulator may at any time vary any provision of a greenhouse gas emissions permit and shall do so if it appears to the regulator at that time, whether as a result of a review under regulation 10(8) or otherwise, that regulation 9(7) or 10 requires provisions to be included in the permit which are different from the subsisting provisions.

(2) An operator of an installation who holds a greenhouse gas emissions permit in respect of the Schedule 1 activity carried out in that installation may apply to the regulator for the variation of the provisions of his permit.

(3) An application under paragraph (2) shall be made in accordance with paragraph (4) and shall, except where the application relates to an offshore installation, be accompanied by any fee prescribed in respect of the application in regulation 17.

(4) An application under paragraph (2) shall contain the following information—

- (a) the name of the operator, his telephone number and postal address (including post code) and, if different, the address to which correspondence should be sent;
- (b) the postal address of the site of the installation to which the greenhouse gas emissions permit relates and its national grid reference (or for offshore installations, equivalent information identifying the installation and its location);
- (c) if relevant, a description of the proposed change in operation requiring the variation and a statement of any change as respects the matters dealt with in regulation 8(2)(c) to (f) which would result if the proposed change in operation were made;
- (d) an indication of the variations of the provisions of the greenhouse gas emissions permit which the operator wishes the regulator to make; and
- (e) any additional information which the operator wishes the regulator to take into account in considering his application.

(5) The regulator may, by notice to the operator, require him to furnish such further information specified in the notice, within the period so specified, as the regulator may require for the purpose of determining the application; and if the operator fails to furnish the specified information within the period specified in the notice, the application shall, if the regulator gives notice to the operator that it treats the application as having been withdrawn, be deemed to have been withdrawn at the end of that period.

(6) Where an application is duly made to the regulator under paragraph (2), the regulator shall determine whether to vary the provisions of the greenhouse gas emissions permit and shall give notice of its determination within two months beginning with the day on which the regulator received the application or within such longer period as may be agreed in writing with the operator.

(7) For the purpose of calculating the periods mentioned in paragraph (6) no account shall be taken of any period beginning with the date on which notice is served on an operator under paragraph (5) and ending on the date on which the operator furnishes the information specified in the notice.

(8) Where the regulator decides to vary the provisions of the greenhouse gas emissions permit, whether on an application under paragraph (2) or otherwise, it shall serve a notice on the operator (a “variation notice”) specifying the variations of the provisions of the permit and the date or dates on which the variations are to take effect and, unless the notice is withdrawn, the variations specified in the notice shall take effect on the date or dates so specified.

(9) A variation notice served under paragraph (8) shall, unless served for the purpose of determining an application under paragraph (2), require the operator to pay, within such period as may be specified in the notice, the fee prescribed in respect of the variation notice in regulation 17.

(10) Where the regulator decides on an application under paragraph (2) not to vary the provisions of the greenhouse gas emissions permit, it shall give notice of its decision to the operator.

(11) If the regulator fails to give notice of its determination of an application under paragraph (2) within the period allowed by or under paragraphs (6) and (7), the application shall, if the operator notifies the regulator that he treats the application as having been refused, be deemed to have been refused at the end of that period.

### **Transfer of greenhouse gas emissions permits**

**14.—**(1) Where the operator of an installation wishes to transfer, in whole or in part, his greenhouse gas emissions permit to another person (“the proposed transferee”) the operator and the proposed transferee shall jointly make an application to the regulator to effect the transfer.

(2) An application under paragraph (1) shall be accompanied by the greenhouse gas emissions permit and, except where the application relates to an offshore installation, the fee prescribed in respect of the transfer in regulation 17 and shall contain the operator’s and the proposed transferee’s telephone number and postal address and, if different, any address to which correspondence relating to the application should be sent.

(3) Where the operator wishes to transfer only part of his greenhouse gas emissions permit (a “partial transfer”), an application under paragraph (1) shall—

- (a) identify the Schedule 1 activity to which the transfer applies (the “transferred activity”);
- (b) identify the installation in which that transferred activity is carried out (the “transferred unit”).

(4) The regulator shall effect the transfer unless the regulator considers that—

- (a) the proposed transferee will not be the operator of the transferred unit after the transfer is effected; or
- (b) the proposed transferee will not ensure that the installation is operated so as to comply with any monitoring and reporting condition.

(5) The regulator shall effect a transfer under this regulation by—

- (a) in the case of a partial transfer—
  - (i) issuing a new greenhouse gas emissions permit to the proposed transferee which—
    - (aa) applies to the transferred activity;
    - (bb) identifies the transferred unit; and
    - (cc) includes the conditions required by paragraph (6); and
  - (ii) returning the original greenhouse gas emissions permit to the operator, endorsed to record the transfer and varied to—
    - (aa) identify the Schedule 1 activity and the specified emissions from that activity;
    - (bb) describe the installation after the transfer; and
    - (cc) specify the conditions applying after the transfer as required by paragraph (6);
- (b) in the case of a transfer of the whole greenhouse gas emissions permit, causing the permit to be endorsed with the name and other particulars of the proposed transferee as the operator of the transferred unit,

and the transfer shall take effect from such date as may be agreed with the applicants and specified in the endorsement and, in the case of a partial transfer, the new greenhouse gas emissions permit.

(6) In the case of a partial transfer effected under this regulation, the conditions included in the new greenhouse gas emissions permit and the original greenhouse gas emissions permit after the transfer shall be the same as the conditions included in the original permit immediately before

the transfer in so far as they are relevant, respectively, to any installation to which the new permit relates or the original permit continues to relate but subject to such variations as, in the opinion of the regulator, are necessary to take account of the transfer.

(7) If within the period of two months beginning with the date on which the regulator receives an application under paragraph (1), or within such longer period as the regulator and the applicants may agree in writing, the regulator has neither effected the transfer nor given notice to the applicants that it has rejected the application, the application shall, if the applicants notify the regulator in writing that they are treating the application as having been refused, be deemed to have been refused at the end of that period or that longer period, as the case may be.

(8) The regulator may, by notice, require the operator or the proposed transferee to furnish such further information specified in the notice, within the period so specified, as the regulator may require for the purpose of determining an application under this regulation.

(9) Where a notice is served on an operator or proposed transferee under paragraph (8)—

- (a) for the purpose of calculating the period of two months mentioned in paragraph (7), no account shall be taken of the period beginning with the date on which the notice is served and ending on the date on which the information specified in the notice is furnished; and
- (b) if the specified information is not furnished within the period specified, the application shall, if the regulator gives notice to the operator and proposed transferee that it treats the application as having been withdrawn, be deemed to have been withdrawn at the end of that period.

#### **Applications to surrender a greenhouse gas emissions permit**

**15.—**(1) Where an operator has ceased carrying out the Schedule 1 activities authorised by a greenhouse gas emissions permit (in whole or in part), the operator may—

- (a) if he has ceased carrying out all of the Schedule 1 activities covered by the greenhouse gas emissions permit, apply to the regulator to surrender the whole permit;
- (b) in any other case, apply to the regulator to surrender the greenhouse gas emissions permit in so far as it authorises the carrying out of the particular Schedule 1 activities (“the surrender activities”) which he has ceased carrying out (a “partial surrender”).

(2) An application under paragraph (1) shall, except where the application relates to an offshore installation, be accompanied by the fee prescribed in respect of the application in regulation 17, and shall contain the following information—

- (a) the operator’s telephone number and postal address and, if different, any address to which correspondence relating to the application should be sent;
- (b) in the case of a partial surrender, a description of the surrender activities and a description identifying the part of the installation in which the surrender activities were carried out; and
- (c) except where the application relates to an excluded installation, a report specifying the reportable emissions from the installation or, in the case of a partial surrender, the reportable emissions from the part of the installation relating to the surrender activities, from the beginning of the scheme year until the date on which the operator ceased carrying out the surrender activities, which report shall be prepared and verified in accordance with the relevant monitoring and reporting conditions.

(3) Where—

- (a) the application relates to an excluded installation; or
- (b) the operator has surrendered allowances equal to—
  - (i) the reportable emissions specified in a report referred to in paragraph (2)(c);

- (ii) where an operator has failed to comply with a condition of a greenhouse gas emissions permit imposed pursuant to regulation 10(3) in respect of the previous scheme year, the annual reportable emissions in respect of which the operator failed to comply with that condition in that year;
- (iii) where an application to surrender is made in the scheme year following discovery of an error in the report submitted by an operator under a monitoring and reporting condition in relation to any scheme year, the annual reportable emissions in respect of which, as a result of that error, the operator failed to comply with the condition of a greenhouse gas emissions permit imposed pursuant to regulation 10(3) in respect of that scheme year; and
- (iv) where a supplementary decision has been made under regulation 19(9), the total number of allowances which have been issued under regulation 20(3)(b) in respect of the installation which would not have been included in a decision under regulation 19(1)(b) or, if applicable, 19(1)(c) in respect of the installation if the statement referred to in regulation 19(9)(a) had not been false or misleading,

the regulator shall accept the application for surrender or partial surrender of the greenhouse gas emissions permit and give the operator notice of its determination and the greenhouse gas emissions permit shall cease to have effect or, in the case of a partial surrender, shall cease to have effect to the extent surrendered, on the date specified in the notice of determination.

(4) If, in the case of a partial surrender, the regulator is of the opinion that it is necessary to vary the conditions included in the greenhouse gas emissions permit to take account of the surrender, the regulator shall specify the necessary variations in the notice of determination given under paragraph (3) and the variations specified in the notice shall take effect on the date specified in the notice.

(5) If neither of the conditions for surrender in paragraph (3) is met, the regulator shall give to the operator notice of its determination stating that the application has been refused.

(6) The regulator shall give notice of its determination of an application under this regulation within the period of three months beginning with the date on which the regulator receives the application or within such longer period as the regulator and the operator may agree in writing.

(7) If the regulator fails to give notice of its determination accepting the surrender or refusing the application within the period allowed by or under paragraph (6) the application shall, if the operator notifies the regulator that he treats the application as having been refused, be deemed to have been refused at the end of that period.

(8) The regulator may, by notice to the operator, require him to furnish such further information specified in the notice, within the period so specified, as the regulator may require for the purpose of determining an application under this regulation.

(9) Where a notice is served on an operator under paragraph (8)—

- (a) for the purpose of calculating the period of three months mentioned in paragraph (6), no account shall be taken of the period beginning with the date on which the notice is served and ending on the date on which the information specified in the notice is furnished; and
- (b) if the specified information is not furnished within the period specified the application shall, if the regulator gives notice to the operator that it treats the application as having been withdrawn, be deemed to have been withdrawn at the end of that period.

### **Revocation of greenhouse gas emissions permits**

**16.—**(1) The regulator may at any time revoke a greenhouse gas emissions permit, in whole or in part, by serving a notice (“a revocation notice”) on the operator.

(2) Without prejudice to the generality of paragraph (1) and subject to paragraph (3), the regulator may serve a notice under this regulation in relation to a greenhouse gas emissions permit where—

- (a) the permit holder has ceased to be the operator of the installation which carries out the Schedule 1 activities covered by the permit; or
- (b) Schedule 1 activities are no longer carried out in the installation.

(3) The regulator may not revoke a greenhouse gas emissions permit under paragraph (2)(b) until the end of the relevant phase referred to in regulation 18(2) if the national allocation plan for that phase provides for allowances to continue to be issued to the operator in respect of the Schedule 1 activities which were carried out in the installation.

(4) A revocation notice may—

- (a) revoke a greenhouse gas emissions permit entirely; or
- (b) revoke a greenhouse gas emissions permit only in so far as it authorises the carrying out of particular Schedule 1 activities.

(5) A revocation notice shall specify—

- (a) in the case of a revocation mentioned in sub-paragraph (b) of paragraph (4) (a “partial revocation”), the extent to which the greenhouse gas emissions permit is being revoked; and
- (b) in all cases, the date on which the revocation shall take effect, which shall be at least 28 days after the date on which the notice is served.

(6) Except where a revocation notice relates to an excluded installation, a revocation notice shall specify that the operator is required to—

- (a) submit to the regulator by the date specified in the notice a report specifying the reportable emissions from the beginning of the scheme year in which the revocation notice is served until the date on which the installation to which the revocation notice relates ceased carrying out a Schedule 1 activity or the permit holder ceased being the operator of the installation and such report shall be prepared and verified in accordance with the relevant monitoring and reporting conditions; and

(b) surrender by the date specified in the notice allowances equivalent to—

- (i) the reportable emissions specified in that report;
- (ii) where an operator has failed to comply with a condition of a greenhouse gas emissions permit imposed pursuant to regulation 10(3) in respect of the previous scheme year, the annual reportable emissions in respect of which the operator failed to comply with that condition in that year;
- (iii) where an application to surrender is made in the scheme year following discovery of an error in the report submitted by an operator under a monitoring and reporting condition in relation to any scheme year, the annual reportable emissions in respect of which, as a result of that error, the operator failed to comply with a condition of a greenhouse gas emissions permit imposed pursuant to regulation 10(3) in respect of that scheme year; and
- (iv) where a supplementary decision has been made under regulation 19(9), the total number of allowances which have been issued under regulation 20(3)(b) in respect of the installation which would not have been included in a decision under regulation 19(1)(b) or, if applicable, 19(1)(c) in respect of the installation if the statement referred to in regulation 19(9)(a) had not been false or misleading.

(7) Subject to paragraph (8) and regulation 26, a greenhouse gas emissions permit shall cease to have effect, or, in the case of a partial revocation, shall cease to have effect to the extent specified in the revocation notice, from the date specified in the notice.

(8) The greenhouse gas emissions permit shall cease to have effect to authorise the carrying out of a Schedule 1 activity from the date specified in the revocation notice but any monitoring and reporting condition shall continue to have effect in so far as it is not superseded by the requirements of the notice specified pursuant to paragraph (6) until the regulator certifies that the requirements of the notice specified pursuant to paragraph (6) have been complied with.

(9) The requirements specified in a revocation notice pursuant to paragraph (6)(a) shall be treated as if they were monitoring and reporting conditions and the requirements specified in a revocation notice pursuant to paragraph (6)(b) shall be treated as if they were conditions of the greenhouse gas emissions permit imposed pursuant to regulation 10(3).

(10) A regulator which has served a revocation notice may, before the date on which the revocation takes effect, withdraw the notice.

### **Fees and charges**

17.—(1) The following fees are prescribed and shall be payable to the regulator—

- (a) in respect of an application for a greenhouse gas emissions permit under regulation 8(1), £530;
- (b) in respect of an application for the variation of the conditions of a greenhouse gas emissions permit under regulation 13(2) (except where the regulator considers that the application relates to changes of a purely administrative nature), £240;
- (c) in respect of an application under regulation 14(1) to transfer a greenhouse gas emissions permit, in whole or in part, £240;
- (d) in respect of an application under regulation 15(1) to surrender a greenhouse gas emissions permit, in whole or in part, £280.

(2) Except where the regulator considers that a variation relates to changes of a purely administrative nature, where a regulator serves a variation notice under regulation 13(8) varying the conditions of a greenhouse gas emissions permit, the fee prescribed in respect of the variation shall be £240 and shall be payable by the date specified in the variation notice.

(3) Where an application relates to an offshore installation, the fee under paragraph (1) shall be payable on the date specified in a notice given by the regulator to the operator.

## **PART 3**

### *Allowances*

#### **National Allocation Plans**

18.—(1) In respect of each period specified in paragraph (2), the Secretary of State shall develop a plan in accordance with Articles 9(1) and 10 and Annex III of the Directive (a “national allocation plan”).

(2) The periods in respect of which national allocation plans shall be developed shall be—

- (a) the three year period beginning on 1st January 2005 (“the first phase”); and
- (b) the five year period beginning on 1st January 2008 and each subsequent five year period (“the second and subsequent phases”).

(3) The Secretary of State shall send to the Scottish Ministers, the National Assembly for Wales and the Department of the Environment—

- (a) a copy of the national allocation plan developed under paragraph (1) for the first phase prior to 31st March 2004;

- (b) a copy of the national allocation plan developed under paragraph (1) for the second and subsequent phases, at least 18 months before the beginning of the relevant phase;
  - (c) information on whether the European Commission has accepted or rejected a national allocation plan or any aspect of a plan as soon as practicable after being advised of such acceptance or rejection; and
  - (d) any amendment to the national allocation plan proposed by the Secretary of State as soon as practicable after its communication to the European Commission.
- (4) The Secretary of State shall publish in England—
- (a) the national allocation plan developed for the first phase by 31st March 2004; and
  - (b) the national allocation plans developed for the second and subsequent phases, at least 18 months before the beginning of the relevant phase.
- (5) The Secretary of State shall publish in England information on whether the European Commission has accepted or rejected a national allocation plan or any aspect of a plan as soon as practicable after being advised of such acceptance or rejection.
- (6) Where the European Commission rejects a national allocation plan under Article 9(3) of the Directive and the Secretary of State proposes an amendment to the plan, the Secretary of State shall publish in England the amendment as soon as practicable after its communication to the European Commission.
- (7) The Scottish Ministers shall publish in Scotland any plan, information or amendment sent to them by the Secretary of State under paragraph (3) as soon as practicable after it is received.
- (8) The National Assembly for Wales shall publish in Wales any plan, information or amendment sent to it by the Secretary of State under paragraph (3) as soon as practicable after it is received.
- (9) The Department of the Environment shall publish in Northern Ireland any plan, information or amendment sent to it by the Secretary of State under paragraph (3) as soon as practicable after it is received.
- (10) Subject to paragraphs (11), (12) and (13), the power under paragraph (1) is exercisable—
- (a) in so far as it relates to installations situated in Scotland (other than offshore installations), only with the agreement of the Scottish Ministers; and
  - (b) in so far as it relates to installations situated in Wales (other than offshore installations), only with the agreement of the National Assembly for Wales; and
  - (c) in so far as it relates to installations situated in Northern Ireland (other than offshore installations), only with the agreement of the Department of the Environment.
- (11) The Secretary of State may exercise the power under paragraph (1) in relation to installations situated in Scotland where—
- (a) no agreement has been reached with the Scottish Ministers;
  - (b) she considers that it is necessary to do so to ensure that the United Kingdom complies with its obligations under the Directive; and
  - (c) she serves notice on the Scottish Ministers stating that she has decided to exercise the power under paragraph (1) in relation to Scotland for the phase specified in the notice.
- (12) The Secretary of State may exercise the power under paragraph (1) in relation to installations situated in Wales where—
- (a) no agreement has been reached with the National Assembly for Wales;
  - (b) she considers that it is necessary to do so to ensure that the United Kingdom complies with its obligations under the Directive; and

- (c) she serves notice on the National Assembly for Wales stating that she has decided to exercise the power under paragraph (1) in relation to Wales for the phase specified in the notice.

(13) The Secretary of State may exercise the power under paragraph (1) in relation to installations situated in Northern Ireland where—

- (a) no agreement has been reached with the Department of the Environment;
- (b) she considers that it is necessary to do so to ensure that the United Kingdom complies with its obligations under the Directive; and
- (c) she serves notice on the Department of the Environment stating that she has decided to exercise the power under paragraph (1) in relation to Northern Ireland for the phase specified in the notice.

### **Allocation and issue of allowances**

**19.**—(1) For each phase referred to in regulation 18(2), the Secretary of State shall decide upon—

- (a) the total quantity of allowances to be allocated for that phase;
- (b) the allocation of allowances to each installation including the number of those allowances to be issued in each scheme year in that phase; and
- (c) where there is more than one greenhouse gas emissions permit relating to an installation, the division of the allowances allocated to that installation under sub-paragraph (b) between each part of the installation to which a separate greenhouse gas emissions permit relates.

(2) Decisions under paragraph (1) shall—

- (a) be based upon the national allocation plan for the relevant phase as accepted by the European Commission under Article 9 of the Directive; and
- (b) take due account of comments from the public in accordance with the provisions of the national allocation plan.

(3) The Secretary of State shall publish in England her decision under paragraph (1)—

- (a) in respect of the first phase, by 1st October 2004; and
- (b) in respect of the second and subsequent phases, at least twelve months before the beginning of the relevant phase.

(4) The Secretary of State shall notify the Scottish Ministers, the National Assembly for Wales and the Department of the Environment of her decision under paragraph (1).

(5) Subject to paragraphs (6), (8) and (9), the number of allowances issued each scheme year under regulation 20(3)(b) in respect of each permitted installation shall be the amount allocated in the decision under paragraph (1)(b), and if applicable, (1)(c) to that installation and, subject to paragraph (7), shall be issued by 28th February in each scheme year of each phase referred to in regulation 18(2) to the holder of the greenhouse gas emissions permit in respect of that installation.

(6) Where allowances allocated in respect of an installation in any phase referred to in regulation 18(2)(b) are cancelled in accordance with Article 13(3) of the Directive, allowances equal to the number of allowances cancelled shall be issued to the holder of the greenhouse gas emissions permit in respect of that installation for the following phase.

(7) Where, after the decision in paragraph (1) has been made, a partial transfer under regulation 14(5) is effected in relation to an installation, the allowances allocated to that installation under paragraph (1)(b), and if applicable, (1)(c), or issued in respect of that installation under paragraph (6) shall be issued for each scheme year remaining in the phase during which the transfer occurred to the holder of the original greenhouse gas emissions permit.

(8) Where the European Commission has provided for additional allowances to be allocated in respect of an installation, or installations of any description, under Article 29(1) of the Directive, the Secretary of State may issue such additional allowances as have been authorised by the European Commission to the holder of the greenhouse gas emissions permit in respect of that installation or of each installation falling within that description.

(9) Where—

- (a) a person has made a statement which is false or misleading in a material particular in response to a request for information from the Secretary of State for the purposes of developing a national allocation plan under regulation 18(1) or failed to correct any such statement made for that purpose before the entry into force of these Regulations; and
- (b) as a result of that statement the number allocated in respect of an installation to which the statement relates in a decision under paragraph (1)(b) or, if applicable, (1)(c) is greater than it would otherwise have been,

the number of allowances to be issued under regulation 20(3)(b) in respect of that installation in each scheme year in the recovery phase shall be the amount provided for in a supplementary decision by the Secretary of State.

(10) A supplementary decision under paragraph (9) shall ensure that the total number of allowances issued in respect of an installation in the phase to which the supplementary decision applies shall be reduced by the amount by which the numbers provided for in the decision under paragraph (1)(b) or, if applicable, (1)(c) in respect of the preceding phase exceeded the number that the decision under paragraph (1)(b) or, if applicable, (1)(c) would have provided for that installation if the statement referred to in paragraph (9)(a) had not been false or misleading.

(11) The Secretary of State shall as soon as practicable publish her supplementary decision under paragraph (9) in England and shall notify the Scottish Ministers, the National Assembly for Wales and the Department of the Environment of her decision.

(12) The Scottish Ministers shall publish in Scotland any decision notified to them under paragraph (4) or (11) as soon as practicable on notification.

(13) The National Assembly for Wales shall publish in Wales any decision notified to them under paragraph (4) or (11) as soon as practicable on notification.

(14) The Department of the Environment shall publish in Northern Ireland any decision notified to them under paragraph (4) or (11) as soon as practicable on notification.

(15) Subject to paragraphs (16), (17) and (18), the power under paragraphs (1) and (9) is exercisable—

- (a) in so far as it relates to installations situated in Scotland (other than offshore installations), only with the agreement of the Scottish Ministers;
- (b) in so far as it relates to installations situated in Wales (other than offshore installations), only with the agreement of the National Assembly for Wales; and
- (c) in so far as it relates to installations situated in Northern Ireland (other than offshore installations), only with the agreement of the Department of the Environment.

(16) The Secretary of State may exercise the power under paragraph (1) or (9) in relation to installations situated in Scotland where—

- (a) no agreement has been reached with the Scottish Ministers;
- (b) she considers that it is necessary to do so to ensure that the United Kingdom complies with its obligations under the Directive; and
- (c) she serves a notice on the Scottish Ministers stating that she has decided to exercise the power under paragraph (1) in relation to Scotland.

(17) The Secretary of State may exercise the power under paragraph (1) or (9) in relation to installations situated in Wales where—

- (a) no agreement has been reached with the National Assembly for Wales;
- (b) she considers that it is necessary to do so to ensure that the United Kingdom complies with its obligations under the Directive; and
- (c) she serves a notice on the National Assembly for Wales stating that she has decided to exercise the power under paragraph (1) in relation to Wales.

(18) The Secretary of State may exercise the power under paragraph (1) or (9) in relation to installations situated in Northern Ireland where—

- (a) no agreement has been reached with the Department of the Environment;
- (b) she considers that it is necessary to do so to ensure that the United Kingdom complies with its obligations under the Directive; and
- (c) she serves a notice on the Department of the Environment stating that she has decided to exercise the power under paragraph (1) in relation to Northern Ireland.

(19) In paragraph (9), the “recovery phase” means the earliest phase for which allowances allocated to that installation under paragraph (1)(b) or (1)(c) have not already been issued under regulation 20(3)(b).

## **Registry**

**20.**—(1) The Secretary of State shall establish and maintain a registry in accordance with the requirements of Article 19 of the Directive.

(2) The Secretary of State shall ensure that the registry operates so that allowances are transferred, surrendered and cancelled in accordance with Articles 12 and 13 of the Directive.

(3) For the purpose of performing her duties under paragraphs (1) and (2), the Secretary of State shall carry out the following functions in respect of the registry—

- (a) opening accounts in the names of operators and other persons;
- (b) issuing allowances into accounts;
- (c) transferring allowances;
- (d) cancelling allowances;
- (e) arranging for the surrender of allowances;
- (f) suspending accounts;
- (g) closing accounts; and
- (h) correcting errors and omissions in relation to the issue, transfer, cancellation or surrender of allowances.

(4) Where—

- (a) an operator fails to submit to the regulator the report required to be submitted to the regulator by conditions of the greenhouse gas emissions permit imposed pursuant to regulation 10(2)(a)(ii) or the report submitted is incomplete; or
- (b) the report submitted to the regulator in accordance with conditions of the greenhouse gas emissions permit imposed pursuant to regulation 10(2)(a)(ii) or part of such report cannot be verified in accordance with the condition imposed pursuant to regulation 10(2)(b),

the operator or, where the installation is covered by a notice under regulation 21(10)(b) authorising a pool, the pool administrator, may not make further transfers of allowances until the report has been submitted to the regulator and has been verified in accordance with the conditions of the

greenhouse gas emissions permit imposed pursuant to regulation 10(2)(b) or the regulator has notified a determination in accordance with regulation 24.

(5) To the extent to which any function under paragraph (3) is exercisable in relation to a particular installation, the Secretary of State may delegate that function to the regulator of that installation.

## **Pooling**

**21.**—(1) One or more operators of installations to which this regulation applies may make a joint application to the appropriate authority to form a pool for the first phase or second phase referred to in regulation 18(2), or both.

(2) This regulation applies to installations which carry out activities which—

- (a) fall within the same description in Schedule 1; and
- (b) do not fall within any description in Annex I of Council Directive 96/61/EC concerning integrated pollution prevention and control<sup>(18)</sup>.

(3) An application under paragraph (1) shall be made at least 6 months before the start of the phase in which the operators wish to form a pool and shall—

- (a) identify the installations to be included in the pool;
- (b) contain the names and postal addresses of the operators of those installations and, if different, any addresses to which correspondence should be sent;
- (c) contain a copy of the greenhouse gas emissions permit in respect of each of those installations and identify the regulator which granted that permit;
- (d) nominate a person to act as pool administrator and contain a declaration from that person that he is willing to act as pool administrator;
- (e) specify whether the pool should apply for the first or second phase referred to in regulation 18(2), or both; and
- (f) contain evidence that the pool administrator will be able to fulfil the obligations in paragraph (12).

(4) Where an application is duly made under paragraph (1) and the appropriate authority considers it appropriate to allow the pool—

- (a) where the Secretary of State is not the appropriate authority, the appropriate authority shall send a copy of the application to the Secretary of State; and
- (b) the Secretary of State shall submit the application to the European Commission.

(5) The appropriate authority shall notify—

- (a) the operator of each installation to be included in the pool;
- (b) the regulator or regulators for the installations to be included in the pool; and
- (c) the person nominated to act as pool administrator under paragraph (3)(d),

of whether it considers it appropriate to allow the pool.

(6) If the European Commission rejects the application within 3 months of the date it receives the application—

- (a) where the Secretary of State is not the appropriate authority, the Secretary of State shall notify the appropriate authority; and
- (b) the appropriate authority shall notify—
  - (i) the operator of each installation to be included in the pool;

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<sup>(18)</sup> OJ No. L 257, 10.10.1996, p.26; to which there are amendments not relevant to this regulation.

- (ii) the regulator or regulators for the installations to be included in the pool; and
- (iii) the person nominated to act as pool administrator under paragraph (3)(d),

that the application has been rejected and of the reasons given by the European Commission for the rejection.

(7) Where operators are notified under paragraph (6) that the European Commission has rejected their application, they may submit an amended application to the appropriate authority.

(8) If the appropriate authority considers that the amended application addresses the reasons given by the European Commission for rejection of the application—

- (a) where the Secretary of State is not the appropriate authority, the appropriate authority shall send a copy of the amended application to the Secretary of State; and
- (b) the Secretary of State shall submit the amended application to the European Commission.

(9) The appropriate authority shall notify—

- (a) the operator of each installation to be included in the pool;
- (b) the regulator or regulators for the installations to be included in the pool; and
- (c) the person nominated to act as pool administrator under paragraph (3)(d),

of whether it considers that the amended application addresses the reasons given by the European Commission for rejection of the application.

(10) If the European Commission does not reject the application within 3 months of the date it receives the application or accepts an amended application submitted under paragraph (8)(b)—

- (a) where the Secretary of State is not the appropriate authority, the Secretary of State shall notify the appropriate authority; and
- (b) the appropriate authority shall serve a notice authorising the pool on—
  - (i) the operator of each installation to be included in the pool;
  - (ii) the regulator for each installation to be included in the pool; and
  - (iii) the person nominated to act as pool administrator under paragraph (3)(d).

(11) A notice under paragraph (10)(b) shall—

- (a) identify the installations included in the pool;
- (b) identify the person who will act as pool administrator;
- (c) specify any conditions applying to the approval of the pool; and
- (d) specify the phase for which the pool is approved.

(12) For the duration of the period for which a group of installations are covered by a notice under paragraph (10)(b) authorising the pool—

- (a) the allowances issued in respect of each installation referred to in paragraph (11)(a) shall be issued to the pool administrator;
- (b) the pool administrator shall surrender allowances equal to the annual reportable emissions from all the installations within the pool for which he is acting as pool administrator (as increased if required by regulation 10(4)) within 4 months of the end of the scheme year during which those emissions arose; and
- (c) regulation 33 shall apply to a pool administrator who fails to comply with the obligation in sub-paragraph (b) as it applies to an operator who fails to comply with a condition imposed pursuant to regulation 10(3).

(13) An operator of an installation which is included in a notice authorising a pool in accordance with paragraph (11)(a) shall be deemed to be in compliance with any condition of a greenhouse gas emissions permit imposed pursuant to regulation 10(3).

(14) Where the pool administrator fails to pay a civil penalty under regulation 33 by the due date determined in accordance with regulation 35(4), the appropriate authority shall revoke the notice under paragraph (10)(b) authorising the pool.

(15) For the purposes of this regulation, where an application to form a pool relates to installations in more than one country of the United Kingdom, the appropriate authority in relation to the application and any subsequent pool shall be the Secretary of State.

(16) Where the Secretary of State is the appropriate authority by virtue of paragraph (15), she shall exercise the powers under paragraphs (4) and (8)—

- (a) in so far as they relate to installations situated in Scotland (other than offshore installations), only with the agreement of the Scottish Ministers;
- (b) in so far as they relate to installations situated in Wales (other than offshore installations), only with the agreement of the National Assembly for Wales; and
- (c) in so far as they relate to installations situated in Northern Ireland (other than offshore installations), only with the agreement of the Department of the Environment.

(17) Where—

- (a) the Secretary of State is the appropriate authority by virtue of paragraph (15);
- (b) no agreement has been reached under paragraph (16) in relation to a decision under paragraph (4); and
- (c) the deadline in paragraph (3) for making an application to form a pool has passed,

the Secretary of State shall forthwith serve a notice on those persons referred to in paragraph (5) indicating that, as no agreement has been reached, it is not considered appropriate to allow the pool and providing that the operators of installations included in the application which are situated in the same country of the United Kingdom may make a new application under paragraph (1) to the appropriate authority within 2 weeks of the date of the notice under this paragraph.

(18) Where—

- (a) the Secretary of State is the appropriate authority by virtue of paragraph (15);
- (b) no agreement has been reached under paragraph (16) in relation to a decision under paragraph (8); and
- (c) a period of 4 weeks from the date of submission of an amended application to the Secretary of State under paragraph (7) has expired,

the Secretary of State shall forthwith serve a notice on those persons referred to in paragraph (9) indicating that it has not been agreed that the amended application addresses the reasons given by the European Commission for rejection of the application to form a pool and providing that the operators of installations included in the application which are situated in the same country of the United Kingdom may submit a further amended application under paragraph (8) to the appropriate authority within 2 weeks of the date of the notice under this paragraph.

## PART 4

### *Enforcement*

#### **Duty of regulator to enforce compliance with monitoring and reporting conditions**

**22.** While a greenhouse gas emissions permit is in force it shall be the duty of the regulator to take such action under these Regulations as may be necessary for the purpose of ensuring that the monitoring and reporting conditions are complied with.

#### **Enforcement notices**

**23.**—(1) If the regulator is of the opinion that an operator has contravened, is contravening or is likely to contravene any monitoring and reporting condition, the regulator may serve on him a notice (an “enforcement notice”).

(2) An enforcement notice shall—

- (a) state that the regulator is of the opinion that an operator has contravened, is contravening or is likely to contravene any monitoring and reporting condition;
- (b) specify the matters constituting the contravention or the matters making it likely that the contravention will arise, as the case may be;
- (c) specify the steps that must be taken to comply with the monitoring and reporting condition or, to the extent possible, to remedy any failure to comply with the monitoring and reporting condition, as the case may be; and
- (d) specify the period within which those steps must be taken.

(3) The regulator may withdraw an enforcement notice at any time.

#### **Power of the regulator to determine reportable emissions**

**24.**—(1) Where—

- (a) an operator served notice on the regulator in accordance with a condition of the greenhouse gas emissions permit imposed pursuant to regulation 10(2)(c) notifying it of factors that might prevent him from complying with the monitoring and reporting conditions of the permit and requesting the regulator to determine all or part of the annual reportable emissions from the installation or, in respect of the surrender or revocation of a greenhouse gas emissions permit (in whole or part), the reportable emissions from the installation for the period specified in regulation 15(2)(c) or 16(6)(a);
- (b) an operator fails to comply with the conditions included in a greenhouse gas emissions permit pursuant to regulation 10(2)(a)(ii) or 10(2)(b); or
- (c) an operator fails to comply with the requirements included in a revocation notice pursuant to regulation 16(6)(a),

the regulator shall determine the reportable emissions from the installation in the relevant period and the regulator’s determination of the reportable emissions shall be treated as the reportable emissions from that installation for the period to which the determination relates.

(2) When determining annual reportable emissions under paragraph (1) the regulator shall take account of the requirements set out in Annex V of the Directive.

(3) The regulator shall notify any determination under paragraph (1) to the operator of the installation.

(4) Where a regulator makes a determination under paragraph (1) it may recover the cost of making that determination from the operator concerned.

### **Powers of entry: offshore installations**

**25.**—(1) The Secretary of State may authorise in writing any person who appears suitable to her to exercise, in accordance with the terms of that authorisation, any of the powers specified in paragraph (2) in respect of offshore installations for the purposes of—

- (a) determining whether the requirements, restrictions or prohibitions imposed by or under these Regulations are being, or have been, complied with;
- (b) discharging one or more of the functions conferred or imposed upon the Secretary of State by or under these Regulations; or
- (c) determining whether and, if so, how such a function should be discharged.

(2) The powers exercisable under paragraph (1) are the powers in paragraphs (a) to (k) of regulation 13(2) of the Offshore Regulations and subject to paragraphs (3) and (4) of that regulation.

## **PART 5**

### *Appeals*

#### **Appeals against a decision of, or a notice served by, the regulator**

**26.**—(1) Subject to paragraph (3), the following persons, namely—

- (a) a person who has been refused the grant of a greenhouse gas emissions permit under regulation 9;
- (b) a person who has been refused the variation of the conditions of a greenhouse gas emissions permit on an application under regulation 13(2);
- (c) a person who is aggrieved by the conditions attached to his greenhouse gas emissions permit following an application under regulation 8 or by a variation notice following an application under regulation 13(2);
- (d) a person whose application under regulation 14(1) for a regulator to effect the transfer of a greenhouse gas emissions permit has been refused or who is aggrieved by the conditions attached to his greenhouse gas emissions permit to take account of such a transfer;
- (e) a person whose application under regulation 15(1) to surrender a greenhouse gas emissions permit has been refused, or who, in the case of a partial surrender, is aggrieved by the conditions attached to his greenhouse gas emissions permit to take account of the surrender; or
- (f) a person who is aggrieved by the regulator's determination of reportable emissions under regulation 24,

may appeal against the decision of the regulator to the appropriate authority.

(2) Subject to paragraph (3), a person on whom a variation notice is served, other than following an application under regulation 13(2), or on whom a revocation notice or an enforcement notice is served may appeal against the notice to the appropriate authority.

(3) Paragraphs (1) and (2) shall not apply where the decision or notice, as the case may be, implements a direction of the appropriate authority given under paragraph (4) or regulation 36.

(4) On determining an appeal against a decision of a regulator under paragraph (1) the appropriate authority may—

- (a) affirm the decision;

- (b) where the decision was a refusal to grant a greenhouse gas emissions permit or to vary the conditions of a greenhouse gas emissions permit, direct the regulator to grant the permit or to vary the conditions of the permit, as the case may be;
- (c) where the decision was as to the conditions attached to a greenhouse gas emissions permit, quash all or any of the conditions of the permit;
- (d) where the decision was a refusal to effect the transfer or accept the surrender of a greenhouse gas emissions permit, direct the regulator to effect the transfer or accept the surrender, as the case may be; or
- (e) where the decision was to determine the amount of reportable emissions from an installation, quash the determination and direct the regulator to re-determine the reportable emissions,

and where it exercises any of the powers in sub-paragraph (b) or (c) it may give directions as to the conditions to be attached to the permit.

(5) Where an appeal is brought under paragraph (1)(c), (d) or (e) in relation to the conditions attached to a greenhouse gas emissions permit, the bringing of the appeal shall not have the effect of suspending the operation of the conditions.

(6) Where an appeal is brought under paragraph (2) against a variation notice or an enforcement notice, the bringing of the appeal shall not have the effect of suspending the operation of the notice.

(7) Where an appeal is brought under paragraph (2) against a revocation notice, the revocation shall not take effect pending the final determination or the withdrawal of the appeal.

(8) Where an appeal is brought against a determination of reportable emissions the determination shall not be used for the purpose of checking compliance with a condition included in a greenhouse gas emissions permit pursuant to regulation 10(3) or the conditions for surrender of a permit in regulation 15(3)(b) pending the final determination or the withdrawal of the appeal.

(9) Regulation 10 shall apply where the appropriate authority, in exercising any of the powers in paragraph (4), gives directions as to the conditions to be attached to a greenhouse gas emissions permit as they would apply to the regulator when determining the conditions of the permit.

(10) For the purposes of appeals under this regulation, the appropriate authority in relation to installations (other than offshore installations) situated in Northern Ireland shall be the Planning Appeals Commission.

### **Appeals for reconsideration of decisions**

**27.—**(1) A person who has been served a notice under regulation 35(3)(b) may appeal to the appropriate authority against the notice.

(2) A person who is aggrieved by a decision under regulation 21(4), (8) or (14) may appeal to the appropriate authority against the decision.

(3) A person who is aggrieved by any decision under regulation 11(3), (4) or (6) may appeal to the responsible authority against the decision.

(4) A person who is aggrieved by a supplementary decision under regulation 19(9) may appeal to the Secretary of State against the decision.

(5) Where an appeal is made under this regulation, the appeal body shall reconsider its decision and may affirm, reverse, or vary its decision.

(6) Where an appeal is made under this regulation, the decision or notice to which the appeal relates shall not take effect pending the final determination or withdrawal of the appeal.

### **Procedure for appeals under regulations 26 and 27**

**28.**—(1) Except where paragraph (4) applies, Schedule 2 shall have effect in relation to the making and determination of appeals under regulations 26 or 27.

(2) Except where paragraph (4) applies, the appeal body may—

(a) appoint any person to exercise on its behalf, with or without payment, the function of determining an appeal under regulation 26 or 27 or any matter or question involved in such an appeal; or

(b) refer any matter or question involved in an appeal under regulation 26 or 27 to such person as it may appoint for the purpose, with or without payment.

(3) Schedule 3 shall have effect with respect to appointments under paragraph (2)(a).

(4) Where an appeal under regulation 26 relates to an installation (other than an offshore installation) situated in Northern Ireland, Schedule 4 shall have effect in relation to the making and determination of the appeal.

## **PART 6**

### *Information*

#### **Information**

**29.**—(1) For the purposes of the discharge of its functions under these Regulations, an appropriate authority or a responsible authority may, by notice served on a regulator, require the regulator to furnish such information about the discharge of its functions as a regulator as it may require.

(2) For the purpose of the discharge of its functions under these Regulations, an appropriate authority, a responsible authority or a regulator may, by notice served on any person, require that person to furnish such information as is specified in the notice, in such form and within such period following service of the notice or at such time as is so specified.

(3) The information which a person may be required to furnish by a notice served under paragraph (2) includes information, which, although it is not in the possession of that person or would not otherwise come into the possession of that person, is information which it is reasonable to require that person to compile for the purpose of complying with that notice.

#### **Publication of operators subject to penalties**

**30.** As soon as possible after the expiry of the period of 4 months after the end of each scheme year of each phase referred to in regulation 18(2), the appropriate authority shall publish a list of the names of operators who are liable to a civil penalty under regulation 33 or 34.

#### **National Security**

**31.**—(1) No information included in a national allocation plan developed under regulation 18(1), in a decision under regulation 19(1) or in a supplementary decision under regulation 19(9) shall be published, if, in the opinion of the Secretary of State, the inclusion of that information, or information of that description, would be contrary to the interests of national security.

(2) No information shall be included in the list published under regulation 30 if in the opinion of the Secretary of State, the inclusion of that information, or information of that description, would be contrary to the interests of national security.

(3) The Secretary of State may, for the purpose of—

- (a) ensuring that information to which paragraph (1) applies is not published; or
- (b) securing the exclusion from the list published under regulation 30 of the information to which paragraph (2) applies,

give to the appropriate authorities for installations (other than offshore installations) situated in Scotland, Wales and Northern Ireland directions specifying information, or descriptions of information, which shall not be published or shall be excluded from the list published under regulation 30.

(4) The other appropriate authorities referred to in paragraph (3) shall notify the Secretary of State of any information they exclude from the register in pursuance of directions under paragraph (3).

## PART 7

### *Offences and Civil Penalties*

#### **Offences**

- 32.**—(1) It is an offence for a person—
- (a) to contravene regulation 7;
  - (b) to fail to comply with or to contravene a condition of a greenhouse gas emissions permit (except where such failure to comply or contravention falls within regulation 33 or 34);
  - (c) to fail to comply with regulation 12(1);
  - (d) to fail to comply with the requirements of an enforcement notice;
  - (e) to fail, without reasonable excuse, to comply with any requirement imposed by a notice under regulation 8(6), 13(5), 14(8), 15(8) or 29(2);
  - (f) to 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 purported compliance with a requirement imposed by a notice under regulation 8(6), 13(5), 14(8), 15(8) or 29(2);
    - (ii) for the purpose of obtaining the grant of a greenhouse gas emissions permit to himself or any other person, or the variation, transfer or surrender of a greenhouse gas emissions permit;
    - (iii) for the purpose of obtaining a certificate under regulation 11;
    - (iv) for the purpose of obtaining a notice authorising a pool under regulation 21; or
    - (v) as part of the verification of a report required under a monitoring and reporting condition;
  - (g) to fail to correct any statement made before the entry into force of these Regulations in response to a request for information from the Secretary of State expressed to be for the purpose of developing a national allocation plan, if the making of that statement after the entry into force of these Regulations in purported compliance with a requirement imposed by a notice under regulation 29(2) would have been an offence under sub-paragraph (f);
  - (h) intentionally to make a false entry in any record required to be kept under the condition of a greenhouse gas emissions permit;
  - (i) with intent to deceive, to forge or use a document issued or authorised to be issued under a condition of a greenhouse gas emissions permit or required for any purpose under a

condition of such a permit or to make or to have in his possession a document so closely resembling any such document as to be likely to deceive.

- (2) A person guilty of an offence under paragraph (1) shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding three months;
  - (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both.
- (3) Where an offence under this regulation committed by—
- (a) a body corporate (other than a limited liability partnership) is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director, manager, secretary, or other similar officer of the body corporate or a person who was purporting to act in any such capacity;
  - (b) a limited liability partnership and is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any member of the limited liability partnership or a person who was purporting to act as such; or
  - (c) in Scotland, a partnership (other than a limited liability partnership) (a “Scottish partnership”) is proved to have been committed with the consent or connivance of, or have been attributable to any neglect on the part of, any partner or a person who was purporting to act as such,

that person as well as the body corporate, the limited liability partnership or the Scottish partnership, as the case may be, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(4) Where the affairs of a body corporate (other than a limited liability partnership) are managed by its members, paragraph (3) shall apply in relation to the acts or defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(5) Where the commission by any person of an offence under this regulation is due to the act or default of some other person, that other person may be charged with and convicted of the offence by virtue of this paragraph whether or not proceedings for the offence are taken against the first-mentioned person.

### **Civil penalties: excess emissions**

**33.**—(1) Any operator who fails to comply with a condition imposed pursuant to regulation 10(3) in respect of an installation shall be liable to a penalty.

(2) The amount of the penalty to which the operator of an installation is liable under paragraph (1) shall be the excess emissions of the installation multiplied by the excess emissions penalty.

- (3) For the purpose of paragraph (2)—
- (a) “excess emissions” means, in respect of an installation, the amount in tonnes of carbon dioxide equivalent by which the annual reportable emissions from the installation exceeded the number of allowances surrendered for that installation;
  - (b) “excess emissions penalty” means—
    - (i) in respect of excess emissions which relate to reportable emissions which were released between 1st January 2005 and 31st December 2007, 40 Euro; and
    - (ii) in respect of excess emissions which relate to reportable emissions which were released on or after 1st January 2008, 100 Euro.

(4) In relation to paragraph (3)(b), the reference to an amount in Euro shall be taken to be a reference to the sterling equivalent of that number of Euro, converted by reference to the rate

of conversion published in the C series of the Official Journal of the European Communities in September of the scheme year preceding that in which the liability for the penalty arose.

**Civil penalties: understatement of reportable emissions**

34.—(1) Subject to paragraph (2), where—

- (a) in relation to an application for surrender of a greenhouse gas emissions permit under regulation 15, the report contained in the application in accordance with regulation 15(2)(c) understates the reportable emissions of the installation to which the report relates; or
- (b) in relation to the revocation of a greenhouse gas emissions permit under regulation 16, the report submitted in accordance with the requirements included in a revocation notice pursuant to regulation 16(6)(a) understates the reportable emissions from the installation to which the report relates,

the operator shall be liable to a penalty equal to the amount of the understatement of reportable emissions multiplied by the excess emissions penalty under regulation 33(3)(b) which applied to excess emissions in the year in which the understatement was made.

(2) Conduct falling with paragraph (1) shall not give rise to liability to a penalty under this regulation if the person who made the understatement—

- (a) surrenders or cancels allowances equal to the amount of the understatement; and
- (b) satisfies the appropriate authority, that he did not knowingly or recklessly understate the reportable emissions from the installation.

**Civil penalties: general**

35.—(1) In this regulation “civil penalty” means any penalty which—

- (a) is imposed by or under these Regulations; and
- (b) arises otherwise than in consequence of a person’s conviction for a criminal offence.

(2) Where it appears to the regulator that a person is or may be liable to a civil penalty, it shall notify the appropriate authority.

(3) Where a person is liable to a civil penalty, the appropriate authority shall—

- (a) assess the amount due by way of penalty; and
- (b) notify the person liable to the penalty of that amount.

(4) A penalty shall be due on the day (the “due date”) following the expiry of a period of 28 days beginning on the date on which the person is notified by the appropriate authority under paragraph (3)(b) and shall be paid to the appropriate authority.

(5) Where an appropriate authority makes an assessment under paragraph (3) of any penalty to which a person is liable the amount of that penalty shall carry interest for the period which—

- (a) begins on the due date; and
- (b) ends with the day before the day on which the assessed penalty is paid.

(6) Interest under this regulation shall be payable at a rate of one percentage point above LIBOR on a day to day basis.

(7) For the purposes of paragraph (6), “LIBOR” means the sterling three months London interbank offered rate in force during the period between the due date and the date on which the penalty is paid.

(8) Where an amount has been assessed and notified to any person under paragraph (3), the amount and any interest incurred under paragraph (5) shall be recoverable as if it were a civil debt.

## PART 8

### *Appropriate Authority's Powers*

#### **Directions to regulators**

**36.**—(1) Subject to paragraph (5), the appropriate authority may give directions to regulators of a general or specific character with respect to the carrying out of any of their functions under these Regulations.

(2) Without prejudice to the generality of the power conferred by paragraph (1), a direction under that paragraph may direct regulators—

- (a) to exercise any of their powers under these Regulations or to do so in such circumstances as may be specified in the directions or in such manner as may be so specified; or
- (b) not to exercise those powers, or not to do so in such circumstances or such manner as may be specified in the directions.

(3) Any direction given under these Regulations shall be in writing and may be varied or revoked by a further direction.

(4) It shall be a duty of a regulator to comply with any direction which is given to it under these Regulations.

(5) This regulation shall not apply in respect of offshore installations.

#### **Guidance to regulators**

**37.**—(1) The appropriate authority may issue guidance to regulators with respect to the carrying out of any of their functions under these Regulations.

(2) A regulator, in carrying out any of its functions under these Regulations, shall have regard to any guidance issued by the appropriate authority under this regulation.

## PART 9

### *Consequential Amendments*

#### **Consequential amendments**

**38.** The instruments mentioned in Schedule 5 shall have effect with the amendments there specified (being amendments consequential on provisions of these Regulations).

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

18th December 2003

## SCHEDULE 1

Regulations 2(1) and 7

## ACTIVITIES

## PART 1:

## ACTIVITIES AND SPECIFIED EMISSIONS

<i>Activities</i>	<i>Specified emissions</i>
<b>1.</b>	<b>Energy Activities</b>
1.1	Carbon dioxide
	Activities of combustion installations with a rated thermal input exceeding 20 megawatts (excluding hazardous or municipal waste installations).
1.2	Carbon dioxide
	Activities of mineral oil refineries.
1.3	Carbon dioxide
	Activities of coke ovens.
<b>2.</b>	<b>Production and processing of ferrous metals</b>
2.1	Carbon dioxide
	Activities of metal ore (including sulphide ore) roasting and sintering installations.
2.2	Carbon dioxide
	Activities of installations for the production of pig iron or steel (primary or secondary fusion), including continuous casting, with a capacity of more than 2.5 tonnes per hour.
<b>3.</b>	<b>Mineral Industries</b>
3.1	Carbon dioxide
	Activities of installations for the production of cement clinker in rotary kilns with a production capacity of more than 500 tonnes per day.
3.2	Carbon dioxide
	Activities of installations for the production of lime in rotary kilns or other furnaces with a production capacity of more than 50 tonnes per day.
3.3	Carbon dioxide
	Activities of installations for the manufacture of glass including glass fibre where the

<i>Activities</i>	<i>Specified emissions</i>	
3.4	<p>melting capacity of the plant is more than 20 tonnes per day.</p> <p>Activities of installations for the manufacture of ceramic products (including roofing tiles, bricks, refractory bricks, tiles, stoneware or porcelain) by firing in kilns where—</p> <p>(i) the kiln production capacity is more than 75 tonnes per day; or</p> <p>(ii) the kiln capacity is more than 4m<sup>3</sup> and the setting density is more than 300 kg/m<sup>3</sup>.</p>	Carbon dioxide
<b>4.</b>	<b>Other activities</b>	
4.1	Activities of industrial plants for the production of pulp from timber or other fibrous materials.	Carbon dioxide
4.2	Activities of industrial plants for the production of paper and board with a production capacity of more than 20 tonnes per day.	Carbon dioxide

## PART 2:

### INTERPRETATION OF SCHEDULE 1

1. The following rules apply for the interpretation of Part 1 of this Schedule.
2. An activity shall not be taken to be an activity falling within Part 1 if it is carried out for research, development or testing of new products or processes.
- 3.—(1) This paragraph applies for the purpose of determining whether an activity carried out in a stationary technical unit falls within the description of an activity in Part 1 which refers to capacity.
  - (2) Where a person carries out several activities falling within the same description in Part 1 in different parts of the same stationary technical unit or in different stationary technical units on the same site, the capacities of each part or unit, as the case may be, shall be added together and the total capacity shall be attributed to each part or unit for the purpose of determining whether the activity carried out in each part or unit falls within a description in Part 1.
  - (3) For the purposes of sub-paragraph (2), no account shall be taken of capacity when determining whether activities fall within the same description.

## SCHEDULE 2

Regulation 28

## APPEALS (OTHER THAN APPEALS TO WHICH SCHEDULE 4 APPLIES)

1.—(1) A person who wishes to appeal to the appeal body under regulation 26 or 27 shall give to the appeal body written notice of the appeal together with the documents specified in sub-paragraph (2) and shall at the same time send to the regulator a copy of that notice together with copies of the documents specified in sub-paragraph (2)(a) and (f).

(2) The documents mentioned in sub-paragraph (1) are—

- (a) a statement of the grounds of appeal;
- (b) a copy of any relevant application;
- (c) a copy of any relevant greenhouse gas emissions permit;
- (d) a copy of any relevant correspondence between the appellant and—
  - (i) in the case of an appeal under regulation 26, the regulator;
  - (ii) in the case of an appeal under regulation 27(1) or (2), the appropriate authority;
  - (iii) in the case of an appeal under regulation 27(3), the responsible authority; or
  - (iv) in the case of an appeal under regulation 27(4), the Secretary of State;
- (e) a copy of any decision or notice which is the subject matter of the appeal; and
- (f) a statement indicating whether the appellant wishes the appeal to be in the form of a hearing or to be disposed of on the basis of written representations.

(3) An appellant may withdraw an appeal by notifying the appeal body in writing and shall send a copy of that notification to the regulator.

2.—(1) Subject to sub-paragraph (2), notice of appeal in accordance with paragraph 1 is to be given—

- (a) in the case of an appeal under regulation 26(1)(a) to (e), before the expiry of the period of six months beginning with the date of the decision or deemed decision which is the subject matter of the appeal;
- (b) in the case of an appeal under regulation 26(2) against a revocation notice, before the date on which the revocation takes effect;
- (c) in the case of an appeal under regulation 26(2) against a variation notice or an enforcement notice, or of an appeal under regulation 27(1), before the expiry of the period of two months beginning with the date of the notice which is the subject matter of the appeal;
- (d) in the case of an appeal under regulation 26(1)(f) against a determination of reportable emissions, before the expiry of the period of two months beginning with the date of the notice which is the subject matter of the appeal;
- (e) in the case of an appeal under regulation 27(2) or 27(4), before the expiry of the period of 2 months beginning with the date of the decision which is the subject matter of the appeal;
- (f) in the case of an appeal under regulation 27(3), before the expiry of the period of 2 months beginning with the date of service of the certificate which is the subject matter of the appeal.

(2) The appeal body may in a particular case allow notice of appeal to be given after the expiry of the periods mentioned in sub-paragraph (1)(a) or (c).

3.—(1) In the case of an appeal under regulation 26, the regulator shall, within 14 days of receipt of the copy of the notice of appeal sent in accordance with paragraph 1, give notice of it to any person who appears to the regulator to have a particular interest in the subject matter of the appeal.

(2) In the case of an appeal under regulation 27, the appeal body shall, within 14 days of receipt of the copy of the notice of appeal sent in accordance with paragraph 1, give notice of it to any person who appears to the appeal body to have a particular interest in the subject matter of the appeal.

(3) A notice under sub-paragraph (1) or (2) shall—

- (a) state that notice of appeal has been given;
- (b) state the name of the appellant and the location of the installation concerned;
- (c) describe the application or greenhouse gas emissions permit to which the appeal relates;
- (d) state that representations with respect to the appeal may be made to the appeal body in writing by any recipient of the notice within a period of 21 days beginning with the date of the notice and that copies of any representations so made will be furnished to the appellant and to the regulator; and
- (e) state that if a hearing is to be held wholly or partly in public, a person mentioned in sub-paragraph (1) or (2) who makes representations with respect to the appeal and any person mentioned in sub-paragraph (1) will be notified of the date of the hearing.

(4) The regulator shall, within 14 days of sending a notice under sub-paragraph (1), notify the appeal body of the persons to whom and the date on which the notice was sent.

(5) In the event of an appeal under regulation 26 being withdrawn, the regulator shall give notice of the withdrawal to every person to whom notice was given under sub-paragraph (1).

(6) In the event of an appeal under regulation 27 being withdrawn, the appeal body shall give notice of the withdrawal to every person to whom notice was given under sub-paragraph (2).

4.—(1) Before determining an appeal under regulation 26, the appeal body may afford the appellant and the regulator an opportunity of appearing before and being heard by a person appointed by it (the “person holding the hearing”) and it shall do so in any case where a request is duly made by the appellant or the regulator to be so heard.

(2) A hearing held under sub-paragraph (1) may, if the person holding the hearing so decides, be held wholly or partly, in private.

(3) Where the appeal body causes a hearing to be held under sub-paragraph (1) it shall give the appellant and the regulator at least 28 days notice (or such shorter period of notice as they may agree) of the date, time and place fixed for the holding of the hearing.

(4) In the case of a hearing which is to be held wholly or partly in public, the appeal body shall, at least 21 days before the date fixed for the holding of the hearing—

- (a) publish a copy of the notice mentioned in sub-paragraph (3) in a newspaper circulating in the locality in which the installation is operated; and
- (b) serve a copy of that notice on every person mentioned in paragraph 3(1) who has made representations in writing to the appeal body.

(5) The appeal body may vary the date fixed for the holding of any hearing and sub-paragraphs (3) and (4) shall apply to the variation of a date as they applied to the date originally fixed.

(6) The appeal body may also vary the time or place for the holding of a hearing and shall give such notice of any such variation as appears to him to be reasonable.

(7) The persons entitled to be heard at a hearing are the appellant and the regulator.

(8) Nothing in sub-paragraph (7) shall prevent the person holding the hearing from permitting any other persons to be heard at the hearing and such permission shall not be unreasonably withheld.

(9) After the conclusion of a hearing, the person holding the hearing shall make a report in writing to the appeal body which shall include his conclusions and his recommendations or his reasons for not making any recommendation.

(10) Paragraph 4(5) and (6) of Schedule 3 shall apply to hearings held under this paragraph as if references to the appointed person in those paragraphs were references to the person holding the hearing under this paragraph.

**5.—**(1) Where an appeal under regulation 26 is to be disposed of on the basis of written representations, the regulator shall submit any written representations to the appeal body not later than 28 days after receiving a copy of the documents mentioned in paragraph 1(2)(a) and (f).

(2) The appellant shall make any further representations by way of reply to any representations from the regulator not later than 17 days after the date of submission of those representations by the regulator.

(3) Any representations made by the appellant or the regulator shall bear the date on which they are submitted to the appeal body.

(4) When the regulator or the appellant submits any representations to the appeal body they shall at the same time send a copy of them to the other party.

(5) The appeal body shall send to the appellant and the regulator a copy of any representations made to it by the persons mentioned in paragraph 3(1) and shall allow the appellant and the regulator a period of not less than 14 days in which to make representations on them.

(6) The appeal body may in a particular case—

- (a) set later time limits than those mentioned in this paragraph;
- (b) require exchanges of representations between the parties in addition to those mentioned in paragraphs (1) and (2).

**6.—**(1) The appeal body shall give notice to the appellant of its determination of the appeal and shall provide him with a copy of any report mentioned in paragraph 4(9).

(2) The appeal body shall at the same time send—

- (a) a copy of the documents mentioned in sub-paragraph (1) to the regulator; and
- (b) a copy of its determination of the appeal to any person mentioned in paragraph 3(1) who made representations to the appeal body and, if a hearing was held, to any other person who made representations in relation to the appeal at the hearing.

**7.** Where a determination of the appeal body on an appeal is quashed in proceedings before any court, the appeal body—

- (a) shall send to the persons notified of its determination under paragraph 6 a statement of the matters with respect to which further representations are invited for the purposes of its further consideration of the appeal;
- (b) shall afford to those persons the opportunity of making, within 28 days of the date of the statement, written representations in respect of those matters; and
- (c) may, as it thinks fit, cause a hearing to be held or reopened and, if it does so, paragraphs 4(2) to (10) shall apply to the hearing or the reopened hearing as they apply to a hearing held under paragraph 4(1),

and paragraph 6 shall apply to the re-determination of the appeal as it applies to the determination of an appeal.

## SCHEDULE 3

Regulation 28

### DELEGATION OF APPELLATE FUNCTIONS

1. In this Schedule—

“appointed person” means a person appointed under regulation 28(2)(a);

“appointment”, in the case of any appointed person, means appointment under regulation 28(2)(a).

2. An appointment must be in writing and—

(a) may relate to any particular appeal, matters or questions specified in the appointment or to appeals, matters or questions of a description so specified;

(b) may provide for any function to which it relates to be exercisable by the appointed person either unconditionally or subject to the fulfilment of such conditions as may be specified in the appointment; and

(c) may, by notice in writing to the appointed person, be revoked at any time by the appeal body in respect of any appeal, matter or question which has not been determined by the appointed person before that time.

3. Subject to the provisions of this Schedule, an appointed person shall, in relation to any appeal, matter or question to which his appointment relates, have the same powers and duties as the appeal body, other than any function of appointing a person for the purpose—

(a) of enabling persons to appear before and be heard by the person so appointed; or

(b) of referring any question or matter to that person.

4.—(1) If either of the parties to the appeal, matter or question expresses a wish to appear before and be heard by the appointed person, the appointed person shall give both of them an opportunity of appearing and being heard.

(2) Whether or not a party to an appeal, matter or question has asked for an opportunity to appear and be heard, the appointed person—

(a) may hold a local inquiry or other hearing in connection with the appeal, matter or question; and

(b) shall if the appeal body so directs, hold a local inquiry in connection with an appeal, matter or question.

(3) Where an appointed person holds a local inquiry or other hearing by virtue of this Schedule, an assessor may be appointed by the appeal body to sit with the appointed person at the inquiry or hearing and advise him on any matters arising, notwithstanding that the appointed person is to determine the appeal, matter or question.

(4) Subject to paragraphs (5) and (6), the costs of a local inquiry held under this Schedule shall be defrayed by the appeal body.

(5) Subject to sub-paragraph (6), subsections (2) to (5) of section 250 of the Local Government Act 1972(19) (local inquiries: evidence and costs) shall apply to hearings held under this Schedule by an appointed person as they apply to inquiries caused to be held under that section by a Minister, but with the following modifications, that is to say—

(a) with the substitution in subsection (2) (evidence) for the reference to the person appointed to hold the inquiry of a reference to the appointed person;

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(19) 1972 c. 70; section 250 has been amended by the Statute Law (Repeals) Act 1989 (c. 43), Schedule 1, Part IV, the Criminal Justice Act 1982 (c. 48), sections 37, 38 and 46 and the Housing and Planning Act 1986 (c. 63), Schedule 12, Part III.

- (b) with the substitution in subsection (4) (recovery of costs of holding the inquiry) for the references to the Minister causing the inquiry to be held of references to the appeal body;
  - (c) with the substitution for the reference in that subsection to a local authority of a reference to the regulator;
  - (d) with the substitution in subsection (5) (orders as to the costs of the parties) for the reference to the Minister causing the inquiry to be held of a reference to the appeal body.
- (6) In the case of an appeal to the Scottish Ministers, subsections (3) to (8) of section 210 of the Local Government (Scotland) Act 1973(20) (which relates to the costs of and holding of local inquiries) shall apply to hearings held under this Schedule by an appointed person as they apply to inquiries held under that section, but with the following modifications, that is to say—
- (a) with the substitution in subsection (3) (notice of inquiry) for the reference to the person appointed to hold the inquiry of a reference to the appointed person;
  - (b) with the substitution in subsection (4) (evidence) for the reference to the person appointed to hold the inquiry and, in paragraph (b), the reference to the person holding the inquiry of references to the appointed person;
  - (c) with the substitution in subsection (6) (expenses of witnesses etc) for the references to the Minister causing the inquiry to be held of a reference to the appointed person or the Scottish Ministers;
  - (d) with the substitution in subsection (7) (expenses)—
    - (i) for the first reference to the Minister of a reference to the Scottish Ministers; and
    - (ii) for the second reference to the Minister of a reference to the appointed person or the Scottish Ministers;
  - (e) with the substitution in subsection (7A) (recovery of entire administrative expense)—
    - (i) for the first reference to the Minister of a reference to the appointed person or the Scottish Ministers;
    - (ii) in paragraph (a), for the reference to the Minister of a reference to the Scottish Ministers; and
    - (iii) in paragraph (b), for the reference to the Minister holding the inquiry of a reference to the Scottish Ministers;
  - (f) with the substitution in subsection (7B) (power to prescribe daily amount)—
    - (i) for the first reference to the Minister of a reference to the Scottish Ministers;
    - (ii) in paragraphs (a) and (c), for the references to the person appointed to hold the inquiry of references to the appointed person; and
    - (iii) in paragraph (d), for the reference to the Minister of a reference to the appointed person or the Scottish Ministers; and
  - (g) with the substitution in subsection (8) (certification of expenses)—
    - (i) for the words “the Minister has”, of the words “the Scottish Ministers have”;
    - (ii) for the reference to him and the reference to the Crown of references to the appointed person or the Scottish Ministers.

5.—(1) Where under paragraph 2(c) the appointment of the appointed person is revoked in respect of any appeal, matter or question, the appeal body shall, unless it proposes to determine the appeal,

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(20) 1973 c. 65, section 210 was amended by the Criminal Procedure (Scotland) Act 1975 (c. 21), sections 289F and 289G (which were inserted into that Act by the Criminal Justice Act 1982 (c. 48), section 54) and the Housing and Planning Act 1986, Schedule 11, paragraph 39.

matter or question itself, appoint another person under regulation 28(2)(a) to determine the appeal, matter or question instead.

(2) Where such a new appointment is made, the consideration of the appeal, matter or question, or any hearing in connection with it, shall be begun afresh.

(3) Nothing in sub-paragraph (2) shall require any person to be given an opportunity of making fresh representations or modifying or withdrawing representations already made.

**6.—(1)** Anything done or omitted to be done by an appointed person in, or in connection with, the exercise or purported exercise of any function to which the appointment relates shall be treated for all purposes as done or omitted to be done by the appeal body in its capacity as such.

(2) Sub-paragraph (1) shall not apply—

- (a) for the purposes of so much of any contract made between the appeal body and the appointed person as relates to the exercise of the function; or
- (b) for the purposes of any criminal proceedings brought in respect of anything done or omitted to be done by an appointed person in, or in connection with, the exercise or purported exercise of any function to which the appointment relates.

#### SCHEDULE 4

Regulation 28

#### APPEALS UNDER REGULATION 26: NORTHERN IRELAND

**1.—(1)** A person who wishes to appeal to the Planning Appeals Commission (“the appeals commission”) under regulation 26 shall give to the appeals commission written notice of the appeal together with the documents specified in sub-paragraph (2) and shall at the same time send to the regulator a copy of that notice together with copies of the documents specified in sub-paragraphs (2)(a) and (f).

(2) The documents mentioned in sub-paragraph (1) are—

- (a) a statement of the grounds of appeal;
- (b) a copy of any relevant application;
- (c) a copy of any relevant greenhouse gas emissions permit;
- (d) a copy of any relevant correspondence between the appellant and the regulator;
- (e) a copy of any decision or notice which is the subject matter of the appeal; and
- (f) a statement indicating whether the appellant wishes the appeal to be in the form of a hearing or to be disposed of on the basis of written representations.

(3) An appellant may withdraw an appeal by notifying the appeal body in writing and shall send a copy of that notification to the regulator.

**2.—(1)** Subject to sub-paragraph (2), notice of appeal in accordance with paragraph 1 is to be given—

- (a) in the case of an appeal under regulation 26(1)(a) to (e), before the expiry of the period of six months beginning with the date of the decision or deemed decision which is the subject matter of the appeal;
- (b) in the case of an appeal under regulation 26(2) against a revocation notice, before the date on which the revocation takes effect;

- (c) in the case of an appeal under regulation 26(2) against a variation notice or an enforcement notice, before the expiry of the period of two months beginning with the date of the notice which is the subject matter of the appeal;
  - (d) in the case of an appeal under regulation 26(1)(f) against a determination of reportable emissions, before the expiry of the period of two months beginning with the date of the notice which is the subject matter of the appeal.
- (2) The appeals commission may in a particular case allow notice of appeal to be given after the expiry of the periods mentioned in sub-paragraph (1)(a) or (c).
- 3.—**(1) The regulator shall, within 14 days of receipt of the copy of the notice of appeal sent in accordance with paragraph 1, give notice of it to any person who appears to the regulator to have a particular interest in the subject matter of the appeal.
- (2) A notice under sub-paragraph (1) shall—
- (a) state that notice of appeal has been given;
  - (b) state the name of the appellant and the location of the installation concerned;
  - (c) describe the application or greenhouse gas emissions permit to which the appeal relates;
  - (d) state that representations with respect to the appeal may be made to the appeals commission in writing by any recipient of the notice within a period of 21 days beginning with the date of the notice and that copies of any representations so made will be furnished to the appellant and to the regulator; and
  - (e) state that if a hearing is to be held wholly or partly in public, a person mentioned in sub-paragraph (1) or (2) who makes representations with respect to the appeal and any person mentioned in sub-paragraph (1) will be notified of the date of the hearing.
- (3) The regulator shall, within 14 days of sending a notice under sub-paragraph (1), notify the appeals commission of the persons to whom and the date on which the notice was sent.
- (4) In the event of an appeal under regulation 26 being withdrawn, the regulator shall give notice of the withdrawal to every person to whom notice was given under sub-paragraph (1).
- 4.—**(1) The appeals commission shall determine the appeal and paragraphs (1), (3), (4) and (5) of Article 111 of the Planning (Northern Ireland) Order 1991 shall apply in relation to the determination of the appeal as they apply in relation to the determination of an appeal under that Order.
- (2) If either party to the appeal so requests, the appeals commission shall afford to each of them an opportunity of appearing before and being heard by the appeals commission.
- (3) A hearing held under sub-paragraph (2) may, if the appeals commission so decides, be held wholly or partly, in private.

## SCHEDULE 5

Regulation 38

## CONSEQUENTIAL AMENDMENTS

*The Pollution Prevention and Control (England and Wales) Regulations 2000*

- 1.** In regulation 12 (conditions of permits: specific requirements) of the England and Wales Regulations—
- (a) in paragraph (2), delete “paragraph (8)” and insert “paragraphs (8) and (8A)”; and
  - (b) in paragraph (8), after “Where appropriate” insert “subject to paragraph (8A)”; and

- (c) after paragraph (8), insert—

“(8A) Subject to paragraph (8B), where emissions of a pollutant from an installation are the subject of conditions imposed pursuant to regulation 10(2) and (3) of the Greenhouse Gas Emissions Trading Scheme Regulations 2003, the permit shall not include an emission limit value, equivalent parameter or technical measure in respect of those emissions unless the regulator considers that the value, parameter or technical measure concerned is necessary to ensure that no significant local pollution is caused.

(8B) Paragraph (8A) shall not apply where the relevant installation is an excluded installation for the purposes of the Greenhouse Gas Emissions Trading Scheme Regulations 2003.”

*The Pollution Prevention and Control (Scotland) Regulations 2000*

2. In regulation 9 (conditions of permits: specific requirements) of the Scotland Regulations—

- (a) in paragraph (3), delete “paragraph (9)” and insert “paragraphs (9) and (9A)”;  
(b) in paragraph (9), after “Where appropriate” insert “subject to paragraph (9A)”; and  
(c) after paragraph (9), insert—

“(9A) Subject to paragraph (9B), where emissions of a pollutant from an installation are the subject of conditions imposed pursuant to regulation 10(2) and (3) of the Greenhouse Gas Emissions Trading Scheme Regulations 2003, the permit shall not include an emission limit value, equivalent parameter or technical measure in respect of those emissions unless the regulator considers that the value, parameter or measure concerned is necessary to ensure that no significant local pollution is caused.

(9B) Paragraph (9A) shall not apply where the relevant installation is an excluded installation for the purposes of the Greenhouse Gas Emissions Trading Scheme Regulations 2003.”

*The Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001*

3. In regulation 4 (grant of permit; contents of permit; publication of grant of permit) of the Offshore Regulations—

- (a) in paragraph (2), delete “paragraphs (3) and (4)” and insert “paragraphs (3), (4) and (4A)”;  
(b) after paragraph (4), insert—

“(4A) Subject to paragraph (4B), where emissions of a pollutant from an installation or a part of an installation are the subject of conditions imposed pursuant to regulation 10(2) and (3) of the Greenhouse Gas Emissions Trading Scheme Regulations 2003, the Secretary of State shall not under paragraph (2)(g) attach to a permit an emission limit value, equivalent parameter or technical measure in respect of those emissions unless the regulator considers that the value, parameter or measure concerned is necessary to ensure that no significant local pollution is caused.

(4B) Paragraph (4A) shall not apply where the relevant installation or part of an installation is an excluded installation for the purposes of the Greenhouse Gas Emissions Trading Scheme Regulations 2003.”

*The Pollution Prevention and Control Regulations (Northern Ireland) 2003*

- 4.—(1) The Northern Ireland Regulations are amended as follows—

- (a) in regulation 12 (conditions of permits: specific requirements)—

- (i) in paragraph (2), delete “paragraph (8)” and insert “paragraphs (8) and (8A)”;
- (ii) in paragraph (8), after “Where appropriate” insert “subject to paragraph (8A)”;
- (iii) after paragraph (8), insert—

“(8A) Subject to paragraph (8B), where emissions of a pollutant from an installation are the subject of conditions imposed pursuant to regulation 10(2) and (3) of the Greenhouse Gas Emissions Trading Scheme Regulations 2003, the permit shall not include an emission limit value, equivalent parameter or technical measure for those emissions unless the enforcing authority considers that the value, parameter or measure is necessary to ensure that no significant local pollution is caused.

(8B) Paragraph (8A) shall not apply where the relevant installation is an excluded installation for the purposes of the Greenhouse Gas Emissions Trading Scheme Regulations 2003.”

- (b) in regulation 27 (powers of inspectors and others)—
  - (i) delete “and” at the end of paragraph 2(a);
  - (ii) at the end of paragraph 2(b) insert “and” and insert—
    - “(c) to premises on which activities listed in Schedule 1 to the Greenhouse Gas Emissions Trading Regulations 2003 are or have been, or are believed to be or to have been, carried out”;
  - (iii) in the definition of “pollution control statutory provisions” in paragraph (12), delete “and” at the end of sub-paragraph (b) and insert—
    - “(bb) the Greenhouse Gas Emissions Trading Scheme Regulations 2003; and”.

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## EXPLANATORY NOTE

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

These Regulations are made under section 2(2) of the European Communities Act 1972. They provide the framework for a greenhouse gas emissions trading scheme for the purpose of implementing Directive [2003/87/EC](#) of the European Parliament and the Council establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive [96/61/EC](#) (the “Emissions Trading Directive”). The Regulations apply to the United Kingdom. *Regulation 2* provides for the Scottish Ministers, Department of the Environment in Northern Ireland and National Assembly for Wales to act as appropriate authority for installations situated in their area (other than installations falling within the definition of offshore installation).

The Regulations control emissions of carbon dioxide from any of the activities listed in *Schedule 1 to the Regulations*. *Part 2 of Schedule 1* sets out rules for the interpretation of *Part 1 of Schedule 1*. *Part 1 of the Regulations (regulations 1 to 6)* sets out general provisions. *Regulation 2* contains definitions including designating the regulators for installations under the scheme. The other regulations in Part 1 deal with general matters such as the service of notices under the Regulations.

Part 2 deals with the need for a permit to operate an installation covered by the Regulations (*regulation 7*), the procedure for granting permits and the contents of permits (*regulations 8 to*

10), and the treatment of permits once granted (*regulations 12 to 16*). The conditions of permits (*regulation 10*) must ensure that the emissions of the installation are properly monitored and reported and that the operator surrenders within 4 months of the end of each scheme year allowances equal to the annual reportable emissions from the installation during that year.

*Regulation 11* enables an installation in respect of which the European Commission has provided for temporary exclusion to apply for a certificate excluding it from the scheme. *Regulations 13 to 16* deal with the variation, transfer, surrender and revocation of permits. *Regulation 17* provides for fees to be paid on application for a permit and in relation to the variation, transfer or surrender of permits.

*Part 3* deals with the allocation of allowances. *Regulation 18* requires the Secretary of State to develop a national allocation plan for each phase of the scheme and *Regulation 19* provides for the Secretary of State to make a final allocation decision. This power may only be exercised with the agreement of the devolved administrations in relation to installations situated in their area (other than installations falling within the definition of offshore installations). There is a default power for the Secretary of State to act where no agreement is reached if it is necessary to ensure that the United Kingdom complies with its obligations under the Emissions Trading Directive. *Regulation 20* makes provision for a registry. *Regulation 21* enables operators of certain installations to apply to form a pool.

*Part 4 (regulations 22 to 25)* contains the enforcement powers under the Regulations. *Part 5 (regulations 26 to 28) and Schedules 2 to 4* provide for appeals against decisions of the regulator and for appeals for the appropriate authority, responsible authority or the Secretary of State to reconsider decisions under the Regulations. *Part 6 (regulations 29 to 31)* sets out information gathering powers and publicity requirements. *Part 7 (regulations 32 to 35)* sets out offences for contraventions of the Regulations and civil penalties where an operator fails to surrender sufficient allowances to cover its specified emissions. *Part 8 (regulations 36 to 37)* enables the appropriate authority to give directions and guidance to regulators. *Part 9 (regulation 38) and Schedule 5* deal with consequential amendments required by the introduction of the emissions trading scheme in the Regulations.

A regulatory impact assessment has not been prepared for these Regulations. It is intended to prepare a full regulatory impact assessment in conjunction with the national allocation plan for the first phase of the greenhouse gas emissions trading scheme.