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STATUTORY INSTRUMENTS

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**2005 No. 925**

**The Greenhouse Gas Emissions  
Trading Scheme Regulations 2005**

**PART 1**

**GENERAL**

**Citation and commencement**

1. These Regulations may be cited as the Greenhouse Gas Emissions Trading Scheme Regulations 2005 and shall come into force on 21st April 2005.

**Interpretation**

2.—(1) In these Regulations—

“1995 Act” means the Environment Act 1995<sup>(1)</sup>;

“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 32 or 33;

“appropriate authority” means (except where regulation 27(15) or 32(14) apply)—

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

“approved national allocation plan” means, in respect of a scheme phase, a national allocation plan specified in approved NAP regulations as the approved national allocation plan for that scheme phase;

“approved NAP regulations” means, in relation to a scheme phase, regulations made by the Secretary of State under section 2(2) of the European Communities Act 1972 specifying as the approved national allocation plan a national allocation plan developed for that scheme phase which has not been rejected by the European Commission or in relation to which the European Commission has accepted amendments in accordance with Article 9(3) of the Directive;

“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(8)(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](#)(2), as amended by Directive [2004/101/EC](#);

“electronic communication” has the same meaning as in the Electronic Communications Act 2000(3);

“enforcement notice” has the meaning given by regulation 29(1);

“excluded installation” means an installation in respect of which the operator holds a valid certificate served under regulation 11(6);

“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;

“issue” means, in relation to allowances, the transfer in the registry of allowances allocated in respect of an installation from the party holding account to the operator holding account relating to that 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));

“the Monitoring and Reporting Decision” means Commission Decision [2004/156/EC](#) establishing guidelines for the monitoring and reporting of greenhouse gas emissions pursuant to Directive [2003/87/EC](#) of the European Parliament and of the Council(4);

“national allocation plan” means a plan developed in accordance with Articles 9 and 10 of and Annex III to the Directive;

“new entrant” has the meaning given in Article 3 of the Directive;

“new entrant reserve” means any reserve of allowances provided for in the approved national allocation plan for distribution to new entrants;

(2) OJNo. L 275, 25.10.03, p.32. The Directive is amended by Directive [2004/101/EC](#), OJ No. L 338, 13.11.2004, p.18.

(3) [2000 c. 7](#); the definition of electronic communication in section 15(1) was amended by the Communications Act [2003 \(c. 21\)](#), section 406(1) and Schedule 17, paragraph 158.

(4) OJ No. L 59 , 26.02.04, p.1.

“Northern Ireland Regulations” means the Pollution Prevention and Control Regulations (Northern Ireland) 2003<sup>(5)</sup>;

“notice of surrender” has the meaning given by regulation 16(6);

“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<sup>(6)</sup>; and
- (iii) those areas of sea in any area for the time being designated under section 1(7) of the Continental Shelf Act 1964<sup>(7)</sup>;

“Offshore Regulations” means the Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001<sup>(8)</sup>;

“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<sup>(9)</sup>;

“Registries Regulation” means Commission Regulation 2216/2004 of 21 December 2004 for a standardised and secured system of registries pursuant to Directive 2003/87/EC of the European Parliament and of the Council and Decision 280/2004/EC of the European Parliament and the Council<sup>(10)</sup> and, unless the context otherwise requires, expressions used in these Regulations which are also used in the Registries Regulation have the same meaning as they have in the Registries Regulation;

“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(4), the reportable emissions arising during any scheme year;

“responsible authority” has the meaning given by regulation 11(12);

“retention notice” has the meaning given by regulation 24(8);

“revocation notice” has the meaning given by regulation 17(1);

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

“scheme phase” means—

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<sup>(5)</sup> S.R. (NI) 2003 No 46, amended by S.I. 2003/496, S.I.2003/3311; there is another amending instrument which is not relevant.

<sup>(6)</sup> 1974 c. 40; section 30A(1) was inserted by section 169 of, and Schedule 23 to, the Water Act 1989 (c. 15).

<sup>(7)</sup> 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.

<sup>(8)</sup> S.I. 2001/1091, amended by S.I. 2003/3311.

<sup>(9)</sup> S.I. 1991/1220 (N.I.11); relevant amending instruments are S.I. 1999/663, 2003/430 (N.I.8).

<sup>(10)</sup> OJ No. L 386, 29.12.2004, p.1

- (i) the three year period beginning on 1st January 2005;
- (ii) the five year period beginning on 1st January 2008; or
- (iii) each subsequent five year period;

“scheme year” means a year beginning with 1<sup>st</sup> January;

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

“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 14(9).

(2) For the purposes of these Regulations—

- (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 relates to 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 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 38 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(11) 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;

(11) 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(S.I.2000/1973), regulation 39 and Schedule 10, Part 1, paragraphs 14 and 16 and the Anti-Social Behaviour Act 2003, section 55(6), (7), (8) and (9)and in relation to Scotland by the Pollution Prevention and Control (Scotland) Regulations 2000 (S.S.I. 2000/323), regulation 36, Schedule 10, Part 1, paragraph 5(1) and (3).

- (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; and
- (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, a responsible authority, the Secretary of State 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—
  - (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(12) (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 27 (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.