
STATUTORY INSTRUMENTS

2005 No. 925

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

PART 3

ALLOWANCES

National Allocation Plans

20.—(1) Subject to regulation 46, the Secretary of State shall develop a national allocation plan in respect of the second scheme phase and in respect of each subsequent scheme phase.

(2) 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), at least 18 months before the beginning of the scheme phase in respect of which it is developed;
- (b) 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
- (c) any amendment to the national allocation plan proposed by the Secretary of State as soon as practicable after its communication to the European Commission.

(3) The Secretary of State shall publish in England the national allocation plan developed for each scheme phase, at least 18 months before the beginning of the relevant phase.

(4) 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.

(5) Where the European Commission rejects a national allocation plan or any aspect of such 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.

(6) The Scottish Ministers shall publish in Scotland any plan, information or amendment sent to them by the Secretary of State under paragraph (2) as soon as practicable after it is received.

(7) The National Assembly for Wales shall publish in Wales any plan, information or amendment sent to it by the Secretary of State under paragraph (2) as soon as practicable after it is received.

(8) 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 (2) as soon as practicable after it is received.

Allocation and issue of allowances

21.—(1) Subject to regulation 46, for the second scheme phase and each subsequent scheme phase, the Secretary of State shall decide upon—

- (a) the total quantity of allowances to be allocated for that phase;
 - (b) the allocation of allowances in respect of 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 in respect of that installation under subparagraph (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 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; 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 a decision under paragraph (1), at least twelve months before the beginning of the scheme phase to which the decision relates.
- (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) 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 shall instruct the registry administrator to issue allowances in accordance with Article 43(1) of the Registries Regulation.
- (6) Where—
- (a) an approved national allocation plan provides that where conditions specified in the approved national allocation plan are met allowances allocated under these Regulations in respect of an installation for a particular scheme year in the scheme phase to which the plan relates should be issued to the operator of the installation after 28th February; and
 - (b) such conditions are met in respect of an installation,
- the relevant decision maker shall notify the registry administrator and the operator that the second sentence of Article 40 or 46 of the Registries Regulation applies to that installation in respect of the scheme year in which the notice is served.
- (7) A notice under paragraph (6) shall, in accordance with the approved national allocation plan, either—
- (a) specify the date after 28th February on which, in accordance with the approved national allocation plan, allowances should be issued in respect of the installation; or
 - (b) where the approved national allocation plan provides for such date to be determined by reference to when specified conditions have been met, specify the conditions and indicate that the relevant decision maker will further notify the registry administrator when those conditions have been met.
- (8) Where paragraph (7)(b) applies, the relevant decision maker shall periodically, or where requested by a notice served on the relevant decision maker by the operator, assess whether the conditions specified in the notice under paragraph (6) have been met and shall notify the operator and the registry administrator when the conditions have been met.
- (9) Where a notice is served under paragraph (6), the reference to “later date” in Article 40 or 46 of the Registries Regulation shall be to the date specified in accordance with paragraph (7)(a) or to the date of a notice under paragraph (8).
- (10) For the purposes of this regulation, “relevant decision maker” means—

- (a) where the conditions referred to in paragraph (6)(a) relate to an installation in respect of which an application for temporary exclusion under Article 27(2) of the Directive has been made, the responsible authority;
- (b) where the conditions referred to in paragraph (6)(a) relate to a supplementary decision of the Secretary of State under regulation 25(7), the Secretary of State;
- (c) in all other cases, the regulator.

Application for an allocation from the new entrant reserve

22.—(1) Where an approved national allocation plan provides for a new entrant reserve in the scheme phase to which it relates, an operator of an installation may apply to the regulator for an allocation of allowances in respect of that installation from the new entrant reserve.

(2) Subject to paragraph (3), an application under paragraph (1) shall be combined with an application for a greenhouse gas emissions permit under regulation 8(1) or an application for a variation of a greenhouse gas emissions permit under regulation 14(2).

(3) Paragraph (2) shall not apply where an application under paragraph (1) relates to—

- (a) an installation in respect of which an operator made an application for a greenhouse gas emissions permit under regulation 8(1) before the date on which the approved NAP Regulations enter into force; or
- (b) a change in operation in respect of which an operator made an application for a variation of a greenhouse gas emissions permit under regulation 14(2) before the date on which the approved NAP Regulations enter into force.

(4) An application under paragraph (1) shall contain such information as the regulator may reasonably require for the purpose of determining the application in accordance with the provisions of the approved national allocation plan and, except where paragraph (6) or (7) applies, shall be accompanied by the fee prescribed in Schedule 5 in respect of such application.

(5) Subject to paragraph (6), where—

- (a) before the date on which approved NAP Regulations for the first scheme phase enter into force; and
- (b) in the case of an application relating to an installation which was put into operation on or after 27th February 2005 or a change in operation which was made on or after 27th February 2005, on or after 10th January 2005,

an operator has made to the regulator an application which if made after the date on which the approved NAP Regulations enter into force 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 the approved NAP Regulations and where more than one application is deemed to have been received on that day, the applications shall be deemed to have been received on that day in the order in which they were originally received by the regulator.

(6) Except where paragraph (7) applies, paragraph (5) shall only apply to an application in respect of which the operator has before the expiry of a period of 15 working days beginning on the date on which these Regulations enter into force paid to the regulator the fee prescribed in Schedule 5 in respect of an application under paragraph (1).

(7) Where an application under paragraph (1), or deemed to have been made under paragraph (1) in accordance with paragraph (5), relates to an offshore installation, the fee prescribed in Schedule 5 in respect of the application shall be payable within the period of 28 days beginning on the date on which the regulator serves a notice on the operator requesting payment of the fee.

(8) If an operator fails to comply with paragraph (7) the regulator may refuse the application.

(9) 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.

(10) Subject to paragraph (11), the regulator shall give notice under paragraph (13) of its determination of an application under paragraph (1) within a period of two months beginning on the later of—

- (a) the date on which the application under paragraph (1) was received by the regulator; or
 - (b) the date of entry into force of the approved NAP Regulations for the first scheme phase,
- or within such longer period as may be agreed in writing with the applicant.

(11) For the purposes of calculating the period of two months mentioned in paragraph (10) no account shall be taken of—

- (a) any period beginning with the date on which notice is served on the applicant under paragraph (9) and ending on the date on which the applicant furnishes the information specified in the notice;
- (b) any period beginning with the date on which notice is served on the applicant under regulation 8(5) or 14(6) in respect of an application with which an application under paragraph (1) is combined in accordance with paragraph (2).

(12) If the regulator fails to give notice of its determination of an application under paragraph (1) within the period allowed by paragraph (10), the application shall, if the operator notifies the regulator that it treats the application as having been refused, be deemed to have been refused.

(13) Where an application under paragraph (1) is duly made to the regulator, the regulator shall, in accordance with the provisions of the approved national allocation plan—

- (a) determine the eligible allocation subject to such conditions as the regulator considers appropriate to comply with the approved national allocation plan;
- (b) determine the eligible allocation and, subject to paragraph (14), allocate allowances to the operator in respect of the installation to which the application relates; or
- (c) reject the application,

by serving a notice on the operator and, in the case of a determination under sub-paragraph (b), on the registry administrator.

(14) Where the eligible allocation is greater than the number of available allowances, a notice under paragraph (13)(b) shall allocate the available allowances and the regulator may make additional allocations of allowances under paragraph (13)(b) if additional allowances subsequently become available in the new entrant reserve in accordance with the approved national allocation plan until the number of allowances allocated under paragraph (13)(b) equals the eligible allocation.

(15) A notice under paragraph (13)(a) shall—

- (a) specify the conditions applying to the determination;
- (b) require the operator to notify the regulator if any of the information provided in the application or provided to the regulator in response to a request for further information under paragraph (9) changes; and
- (c) where the approved national allocation plan provides for allowances from the new entrant reserve to be reserved for an installation in respect of which an application under paragraph (1) has been made, indicate whether, and, if so, how many allowances have been reserved in respect of the installation.

(16) Where it appears to the regulator, whether as a result of a notification in accordance with a condition imposed pursuant to paragraph (13)(a) or otherwise, that the approved national allocation plan requires a variation of any of the provisions of the notice served on the operator under paragraph (13)(a), the regulator shall serve a further notice under paragraph (13)(a) on the operator varying the provisions of the previous notice.

(17) Where it appears to the regulator, whether as a result of a notification in accordance with a condition imposed pursuant to paragraph (13)(a) or otherwise, that it would no longer be consistent with the approved national allocation plan for an allocation of allowances to be made in respect of an installation to which a notice under paragraph (13)(a) relates, the regulator shall serve a further notice on the operator rejecting the application.

(18) Subject to paragraph (19), where the regulator is satisfied that all the conditions specified in a notice under paragraph (13)(a) are met, the regulator shall serve a notice on the operator and the registry administrator allocating allowances in respect of the installation.

(19) Where the eligible allocation is greater than the number of available allowances, a notice under paragraph (18) shall allocate the available allowances and the regulator may make additional allocations of allowances under paragraph (18) if additional allowances subsequently become available in the new entrant reserve in accordance with the approved national allocation plan until the number of allowances allocated under paragraph (18) equals the eligible allocation.

(20) A notice under paragraph (13)(b) or (18) shall specify—

- (a) the operator and installation identification code of the installation in respect of which the allocation is made and the permit identification code of the greenhouse gas emissions permit which relates to that installation;
- (b) the allocation of allowances to the operator in respect of the installation including the number of allowances to be issued in each remaining year or part year of the phase in relation to which the allocation is made and the date on which the allowances will be issued in the year in which the notice is served.

(21) A notice under paragraph (13)(b) or (18) shall be an instruction to the registry administrator for the purposes of Article 42 or 48 of the Registries Regulation.

(22) Where an application under regulation 15(1) specifies that an application under paragraph (1) in respect of the installation relates to the transferred unit, any allocation of allowances under paragraph (13)(b) or (18) made after the transfer takes effect shall be allocated to the proposed transferee.

(23) For the purposes of this regulation—

“eligible allocation” means the amount of allowances which may be allocated in respect of an installation under the provisions of the approved national allocation plan subject to the number of available allowances;

“available allowances” means allowances in the new entrant reserve which are available for allocation in accordance with the approved national allocation plan;

“proposed transferee” and “transferred unit” shall have the same meaning as in regulation 15(1) and (4).

Allowance allocation where permit surrendered or revoked

23.—(1) Where a greenhouse gas emissions permit is surrendered under regulation 16 or revoked by the regulator under regulation 17(1)—

- (a) the regulator shall notify the Secretary of State; and
- (b) where an allocation of allowances in respect of the installation to which the greenhouse gas emissions permit relates has been made under regulation 22(13)(b) or (18) for the phase in

which the permit is surrendered or revoked or the subsequent scheme phase, the regulator shall take such steps as it considers necessary to ensure that no further allowances are issued in respect of the installation from the date on which the notice of surrender or the revocation notice takes effect.

(2) Where the regulator notifies the Secretary of State that the greenhouse gas emissions permit in respect of an installation has been surrendered or revoked, the Secretary of State shall take such steps as she considers necessary to ensure that no further allowances are issued in respect of the installation from the date on which the notice of surrender or the revocation notice takes effect.

Applications to retain allocation

24.—(1) Where the approved national allocation plan provides that, if conditions specified in the approved national allocation plan are met, an operator which ceases to carry out a Schedule 1 activity in an installation may retain the allowances, or a proportion of the allowances, allocated in respect of that installation under these Regulations, the operator may apply to the regulator to retain its allocation.

(2) An application under paragraph (1) shall contain such information as the regulator may reasonably require for the purpose of determining the application in accordance with the provisions of the approved national allocation plan.

(3) Subject to paragraph (4), the regulator shall give notice under paragraph (7) of its determination of an application which is duly made under paragraph (1) within a period of two months beginning on the day on which the regulator received the application or within such longer period as may be agreed in writing with the applicant.

(4) For the purposes of calculating the period of two months mentioned in paragraph (3) no account shall be taken of any period beginning with the date on which notice is served on the applicant under paragraph (6) and ending on the date on which the applicant furnishes the information specified in the notice.

(5) If the regulator fails to give notice of its determination of an application under paragraph (1) within the period allowed by paragraph (3), the application shall, if the operator notifies the regulator that it treats the application as having been refused, be deemed to have been refused.

(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.

(7) Where an application is duly made under paragraph (1), the regulator shall, in accordance with the provisions of the approved national allocation plan—

- (a) accept the application and provide, subject to such conditions as the regulator considers appropriate, for either—
 - (i) all the allowances allocated in respect of the installation for the scheme phase to which the application relates to be retained, or
 - (ii) a proportion of the allowances allocated in respect of the installation for the scheme phase to which the application relates to be retained; or
- (b) refuse the application,

by serving a notice on the operator.

(8) A notice under paragraph (7)(a) (a “retention notice”) shall—

- (a) specify such variations to the provisions of the greenhouse gas emissions permit as the regulator considers appropriate which shall take effect from the date on which the notice takes effect;
 - (b) specify the number of hours which the regulator required to determine the application under paragraph (1) and shall require the operator to pay, within such period as may be specified in the notice, the fee prescribed in Schedule 5 in respect of the determination of the application.
- (9) Where—
- (a) a retention notice provides for only a proportion of the allowances allocated under regulation 22(13)(b) or (18) in respect of the installation to be retained, the regulator shall take such steps as are necessary to ensure that from the date on which the retention notice takes effect only such proportion of the allowances as is specified in the notice are issued in respect of the installation;
 - (b) a retention notice provides for only a proportion of the allowances allocated under regulation 21(1)(b) or, if applicable, (1)(c) in respect of the installation to be retained, the regulator shall notify the Secretary of State who shall take such steps as she considers necessary to ensure that from the date on which the retention notice takes effect only such proportion of the allowances as is specified in the notice are issued in respect of the installation.
- (10) Subject to regulation 32(10), where a retention notice provides for a proportion of the allowances allocated in respect of the installation to which the application relates to be retained, the provision of the notice specifying the proportion of the allowances to be retained shall take effect from the expiry of a period of 15 working days beginning on the date of the notice.
- (11) Where—
- (a) an application under paragraph (1) is withdrawn by the operator or refused by the regulator;
or
 - (b) any conditions specified in a notice under paragraph (7)(a) are no longer met,
- the regulator shall revoke the greenhouse gas emissions permit in accordance with regulation 17(1).

Supplementary decisions by the regulator or the Secretary of State

- 25.**—(1) Subject to paragraph (3), paragraph (2) shall apply where—
- (a) a person has made a false statement—
 - (i) in connection with an application under regulation 22(1); or
 - (ii) in connection with an application under regulation 24(1); and
 - (b) the statement resulted in an over-allocation in respect of an installation.
- (2) Where this paragraph applies, the regulator may make a supplementary decision by serving a notice on the operator.
- (3) Where a person has made a false statement in connection with an application under regulation 24(1) and the application would, in accordance with the approved national allocation plan, have been refused if the statement had not been false or misleading, the regulator shall revoke the greenhouse gas emissions permit in accordance with regulation 17(1).
- (4) A supplementary decision under paragraph (2) shall—
- (a) identify the false statement and specify the amount of the over-allocation;
 - (b) set out the steps which the regulator will take in accordance with paragraph (5) and, if applicable, paragraph (6),

and, subject to regulation 32(10), shall take effect from the expiry of a period of two months beginning on the date of the notice.

(5) Subject to paragraph (6), where the regulator makes a supplementary decision under paragraph (2), the regulator shall take such steps as it considers necessary to ensure that the amount of allowances issued pursuant to an allocation under regulation 22(13)(b) or (18) in respect of the installation to which the false statement relates are reduced by the amount of the over-allocation.

(6) Where paragraph (2) applies and—

- (a) all allowances allocated under regulation 22(13)(b) or (18) in respect of the installation for the scheme phase to which the false statement relates have been issued; or
- (b) the amount of such allowances which have not been issued is less than the amount of the over-allocation,

the regulator shall notify the Secretary of State specifying the amount of over-allocation or, where the regulator has made a supplementary decision under paragraph (2), the remaining over-allocation.

(7) Subject to regulation 46, where—

- (a) a person has made a false statement in response to a request for information from the Secretary of State for the purposes of developing a national allocation plan under regulation 20(1) or making a decision under regulation 21(1) and the statement has resulted in an over-allocation in respect of the installation; or
- (b) the regulator notifies the Secretary of State in accordance with paragraph (6),

the Secretary of State may make a supplementary decision by serving notice on the operator.

(8) A supplementary decision under paragraph (7) shall—

- (a) identify the false statement and specify the amount of the over-allocation;
- (b) set out the steps which the Secretary of State will take in accordance with paragraph (9),

and, subject to regulation 33(6), shall take effect from the expiry of a period of two months beginning on the date of the notice.

(9) Where the Secretary of State makes a supplementary decision under paragraph (7), the Secretary of State shall take such steps as she considers necessary to ensure that the number of allowances issued in respect of the installation to which the false statement relates for—

- (a) the phase to which the false statement relates; and
- (b) where the number of allowances allocated in respect of the installation in that scheme phase which have not been issued is less than the amount of the over-allocation or, if applicable, the remaining over-allocation, a subsequent scheme phase,

are reduced by the amount of the over-allocation or, if applicable, the remaining over-allocation.

(10) The steps which may be taken by the Secretary of State under paragraph (9) may include—

- (a) where the supplementary decision relates to an installation situated in England (other than an offshore installation), directing the regulator; or
- (b) where the supplementary decision relates to an installation, other than an offshore installation, situated in Scotland, Wales or Northern Ireland, arranging for the appropriate authority in relation to that installation to direct the regulator,

to take such steps as are necessary to reduce the amount of allowances issued pursuant to an allocation under regulation 22(13)(b) or (18).

(11) As soon as practicable after the Secretary of State makes a supplementary decision under paragraph (7), she shall publish her supplementary decision under paragraph (7) in England and notify the Scottish Ministers, the National Assembly for Wales and Department of the Environment of the decision.

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

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

(15) A regulator which has served a notice under paragraph (2) or the Secretary of State who has served a notice under paragraph (7), may before the date on which the notice takes effect withdraw the notice.

(16) For the purposes of this regulation—

“false statement” means a statement which is which is false or misleading in a material particular;

“over-allocation” means—

(i) the number of allowances by which an allocation under regulation 21(1)(b), or if applicable, (1)(c) or regulation 22(13)(b) or (18) in respect of an installation in the scheme phase to which a false statement relates exceeds the number of allowances which would have been allocated in accordance with the approved national allocation plan for that scheme phase if the statement had not been false or misleading;

(ii) in relation to an application under regulation 24(1), the number of allowances which are retained by the operator which would not have been retained in accordance with the approved national allocation plan if the statement had not been false or misleading;

“remaining over-allocation” means the difference between the over-allocation and the amount by which the number of allowances to be issued in respect of an installation is reduced by the supplementary decision under paragraph (2).

Registry

26.—(1) Subject to regulation 46, the Secretary of State shall establish a registry in accordance with the requirements of Article 19 of the Directive and the Registries Regulation.

(2) The Environment Agency shall—

(a) maintain the registry in accordance with the requirements of Article 19 of the Directive;

(b) act as registry administrator for the purposes of the Registries Regulation and these Regulations.

(3) Subject to paragraph (4), the regulator shall be the competent authority for the purposes of the Registries Regulation.

(4) The Secretary of State shall be the competent authority for the purposes of Articles 15, 38, 41, 43, 44, 47, 59 and 60 of the Registries Regulation.

(5) The Secretary of State shall be the relevant body for the purposes of Articles 12(1), 13, 50(1) and 63(1) of and paragraph 19 of Annex VI to the Registries Regulation.

(6) It shall be the duty of the operator to comply with the requirements of Article 15(1) and (3) of the Registries Regulation.

(7) A holder of an account in the Registry may nominate an additional authorised representative for that account in accordance with Article 23(2) of the Registries Regulation.

(8) Subject to paragraph (15), where an operator fails to comply with a condition imposed pursuant to regulation 10(3) in respect of an installation, the registry administrator shall ensure that an operator may not transfer any allowances out of the operator holding account for that installation

until the compliance status figure for that installation calculated in accordance with Article 55 of the Registries Regulation is greater than or equal to zero.

(9) If a person has failed to comply with any terms and conditions agreed in accordance with Article 19(4) of the Registries Regulation, the registry administrator may—

- (a) prevent, subject to paragraph (15), the transfer of any allowances out of any person holding accounts in the registry held in the name of that person until the person complies with the terms and conditions, or
- (b) if the person continues to fail to comply with the terms and conditions, serve a notice on the person indicating that, subject to regulation 32(10), any person holding accounts in the registry held in his name will be closed on the expiry of such period as may be specified in a notice.

(10) The registry administrator may, before the date on which the notice under paragraph (9)(b) takes effect, withdraw the notice.

(11) Subject to paragraph (15), if an operator has failed to comply with any terms and conditions agreed in accordance with Article 15(4) of the Registries Regulation, the registry administrator may prevent the transfer of any allowances out of any operator holding account in the registry held in the name of that operator until the operator complies with the terms and conditions.

(12) An application for the creation of a person holding account under Article 19(1) of the Registries Regulation shall be accompanied by the fee prescribed in respect of the application in Schedule 5.

(13) A notification under Article 19(3) of the Registries Regulation concerning a change to the authorised representatives for the account shall be accompanied by the fee prescribed in respect of the notification in Schedule 5.

(14) Where—

- (a) an operator fails to submit to the regulator the report required to be submitted to the regulator by the terms of a notice of surrender included pursuant to regulation 16(7)(a) or by the terms of a revocation notice included pursuant to regulation 17(5)(a) or the report submitted is incomplete; or
- (b) the report submitted to the regulator in accordance with the terms of a notice of surrender included pursuant to regulation 16(7)(a) or by the terms of a revocation notice included pursuant to regulation 17(5)(a) or part of such report cannot be verified in accordance with the relevant monitoring and reporting conditions,

the registry administrator shall ensure that, subject to paragraph (15), the operator or, where the installation is covered by a notice under regulation 27(10)(b) authorising a pool, the pool administrator, may not transfer allowances out of the operator holding account for the installation to which the notice of surrender or the revocation notice relates until the report has been submitted to the regulator and has been verified in accordance with the terms of a notice of surrender included pursuant to regulation 16(7)(a) or by the terms of a revocation notice included pursuant to regulation 17(5)(a) or the regulator has notified a determination in accordance with regulation 30(3).

(15) Paragraphs (8), (9)(a), (11) and (14) shall not prevent—

- (a) the surrender of allowances in accordance with Article 52 or 54 of the Registries Regulation; or
- (b) the cancellation and replacement of allowances in accordance with Articles 60 and 61 of the Registries Regulation.

(16) Where a registry administrator prevents the transfer of allowances out of an account under paragraphs (8), (9)(a), (11) or (14) or Article 27 of the Registries Regulation, the registry administrator shall notify the account holder specifying the reason why and the period during which transfers will be prevented.

Pooling

27.—(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 second scheme phase.

(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⁽¹⁾.

(3) An application under paragraph (1) shall be made at least 6 months before the start of the scheme 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; and
- (e) 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),

whether it considers it appropriate to allow the pool.

(6) If the European Commission rejects the application within three 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;
 - (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 within a period of four weeks beginning on the date of the notice under paragraph (6)(b) submit an amended application to the appropriate authority.

(1) OJNo. L 257, 10.10.1996, p.26; to which there are amendments not relevant to this regulation.

(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 three 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;
 - (iii) the person nominated to act as pool administrator under paragraph (3)(d); and
 - (iv) the registry administrator.

(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 operator of each installation referred to in paragraph (11)(a) shall ensure that the pool administrator is nominated as primary authorised representative for the operator holding account for the installation;
- (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 by any condition of a greenhouse gas emissions permit relating to an installation included in the pool imposed pursuant to regulation 10(4)) within four months of the end of the scheme year during which those emissions arose; and
- (c) regulation 39 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 of a greenhouse gas emissions permit 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, unless the notice is revoked, 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 39 by the due date determined in accordance with regulation 41(3), the appropriate authority shall serve a notice on the

persons specified in paragraph (10)(b) providing for the notice under paragraph (10)(b) authorising the pool to be revoked, subject to paragraph 33(6), from the date specified in the notice.

(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, subject to regulation 46, be the Secretary of State.

(16) Where a notice of surrender or a revocation notice is served in respect of an installation which is included in a pool, the appropriate authority shall serve on the persons on which the notice under paragraph (10)(b) in respect of the pool was served, a further notice amending the notice under paragraph (10)(b) to remove the installation from the list of installations included in the pool from the date on which the notice of surrender or revocation notice takes effect.

(17) Where the regulator effects a transfer under regulation 15 of a greenhouse gas emissions permit which relates to an installation included in a pool, the appropriate authority shall serve on the persons on which the notice under paragraph (10)(b) in respect of the pool was served, a further notice amending the notice under paragraph (10)(b) from the date on which the transfer takes effect to take account of the transfer in accordance with the provisions of the application for transfer under regulation 15(4)(d).

(18) Where—

- (a) the Secretary of State is the appropriate authority by virtue of paragraph (15);
- (b) no agreement has been reached under regulation 46 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 two weeks of the date of the notice under this paragraph.

(19) Where—

- (a) the Secretary of State is the appropriate authority by virtue of paragraph (15);
- (b) no agreement has been reached under regulation 46, in relation to a decision under paragraph (8); and
- (c) a period of four 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 two weeks of the date of the notice under this paragraph.