EXPLANATORY MEMORANDUM TO

THE GREENHOUSE GAS EMISSIONS TRADING SCHEME (AMENDMENT) (FEES) AND NATIONAL EMISSIONS INVENTORY REGULATIONS 2011

2011 No. 727

1. This explanatory memorandum has been prepared by the Department of Energy and Climate Change and is laid before Parliament by Command of Her Majesty.

   This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1. The Kyoto Protocol and international rules under that Protocol (namely, the Marrakech Accords) create a framework whereby Parties to the Protocol and/or private investors are able to invest in projects ("project activities") which reduce carbon emissions and which generate carbon credits which can in turn be used for meeting carbon reduction obligations under the Protocol. Participation in project activities must be approved in each case for the Parties involved. Such approval is granted by entities called "Designated National Authorities" ("**DNA**") and "Designated Focal Points" ("**DFP**" (depending on the type of project). EU law also imposes various obligations in relation to the way in which such approval functions are exercised

2.2. The Secretary of State is currently responsible for approving the above projects under UK law pursuant to Part 3 of the Greenhouse Gas Emissions Trading Scheme (Amendment) and National Emissions Inventory Regulations 2005 ("**the 2005 Regulations**"). The Government would like the Environment Agency to take on this function from 1st June 2011 (save in certain circumstances where the Secretary of State will continue to exercise the function). The 2005 Regulations do not currently impose any fee in relation to the exercise of functions under Part 3 of those Regulations. The Government would like to impose a fee for the determination of applications (by the Secretary of State or the Environment Agency).

2.3. Accordingly, the purpose of these Regulations is to do the following:

a) Provide that the Environment Agency should determine applications for the approval and/or authorisation of projects under Part 3 of the 2005 Regulations from 1st June 2011;
b) Require all applications for the approval and/or authorisation of projects under Part 3 of the 2005 Regulations to be accompanied by a fee specified in the Regulations.

2.4. The Secretary of State will continue to determine all applications until 31st May 2011. The Environment Agency will determine applications submitted after that date except as

provided in the Regulations. Fees must be paid to the Secretary of State until 31st May 2011 and to the Environment Agency after that date. The requirment to pay a fee will only apply until 6th April 2012.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1. The Regulations are being made under section 2(2) European Communities Act 1972 and section 56 of the Finance Act 1973.

3.2. The Regulations make amendments to Part 3 of the 2005 Regulations. That Part gives effect to requirements under international law and also to various requirements under EU law. In particular, regulations 5-8 all implement EU obligations to varying degrees. A Transposition Note was prepared for the 2005 Regulations. That Transposition Note has been amended to include an Addendum to indicate which parts of the existing transposition of EU obligations have been amended by these Regulations. The amended Transposition Note is annexed to this Explanatory Memorandum. Since these Regulations modify provisions which implement EU obligations and/or deal with matters arising out of such obligations, we are satisfied that the section 2(2) can be relied upon here.

3.3. Section 56 of the Finance Act 1973 enables a Government department to require payment of fees in certain circumstances where the Government department provides any services or facilities or issues any authorisation, certificate or other document. However, section 56 does not enable such fees to be required where the relevant service or facility is provided by an entity other than a Government department. In the present case, the Secretary of State will continue to determine all applications under Part 3 of the 2005 Regulations submitted before 1st June 2011 and as such, fees will need to be paid to him. From 1st June 2011, applications under Part 3 will need to be submitted to the Environment Agency and the relevant fee should then be paid to the Environment Agency. Section 56 is therefore only being relied upon to the extent that fees will be payable to the Secretary of State during the period up to 31st May 2011. Section 2(2) European Communities Act 1972 is being relied upon to the extent that the Regulations require payment of fees to the Environment Agency.

3.4. We are satisfied that the relevant fees do not constitute a tax and as such, the Regulations do not infringe paragraph 1(1)(a) of Schedule 2 to the European Communities Act 1972.

3.5. The definition of the “Emissions Trading Directive” in regulation 2 is ambulatory. Regulation 2 requires the Secretary of State to undertake a review of Part 3 of the 2005 Regulations and to lay a report before Parliament. In undertaking that review the Secretary of State is required, so far as is reasonable, to compare the implementation of articles 11b and 18 of the Emissions Trading Directive with implementation of the obligations under those articles in other EU Member States. The purpose of the ambulatory reference is to ensure that when undertaking that review, the Secretary of State must consider the current versions of the above articles (rather than those at the

time these Regulations are made). If the ambulatory reference were not included, it would be necessary to make minor amendments to these Regulations each time the above articles are amended. In view of the narrow scope of the ambulatory reference, it is considered both necessary and expedient in the present case.

4. Legislative Context

4.1. The UN Framework Convention on Climate Change ("UNFCCC") and the Kyoto Protocol ("KP") set out a range of measures in relation to climate change. Articles 6 and 12 of the KP set out provisions in relation to the "flexible mechanisms" which enable Parties (and private entities) to invest in projects which reduce carbon emissions and generate carbon credits in respect of every tonne of carbon reductions which result from those projects[1]. Those credits can be used for compliance with the emission reduction obligations under the KP and can also be traded between countries and private entities.

4.2. The flexible mechanisms include the Clean Development Mechanism ("CDM" - whereby countries listed in Annex 1 to the UNFCCC (A1 Countries) or private entities invest in projects in countries which are not listed in Annex 1) and Joint Implementation ("JI" - whereby A1 Countries or private entities invest in projects in other A1 countries). The rules governing the operation of the flexible mechanisms are set out in articles 6 and 12 of the KP (in relation to JI and CDM respectively) with the detail being set out in "decisions" taken by the Parties under the KP (in this case, the Marrakech Accords[2]).

4.3. The rules governing JI require that the relevant project has been "approved" by the Parties involved. The rules also provide that certain A1 Countries may authorise private entities to participate in JI projects. Such approval and/or authorisations where applicable are granted through a "**Designated Focal Point**" ("DFP").

4.4. The rules governing CDM require that the Parties involved in a CDM project must approve participation in the project. Such approval is granted through a "**Designated National Authority**" ("DNA").

4.5. EU Law also imposes obligations in relation to the approval and authorisation of project activities. In particular, article 1(2) of Directive 2004/101/EC ("the Linking Directive") amends Directive 2003/87/EC[3] ("the EU ETS Directive") to insert a new article 11b. Article 11b(1)-(6) imposes various requirements in relation to how and which types of projects a DNA or DFP may approve or authorize.

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[1] provided those reductions are "in addition" to what would have happened under a business as usual scenario

[2] Decision 3/CMP.1

[3] OJ No L 275, 25.10.03, p 32. The Directive is amended by European Parliament and Council Directives 2004/101/EC (OJ No L 338, 13.11.2004, p 18), 2008/101/EC (OJ No L 8, 13.1.2009, p 3) and 2009/29/EC (OJ No L 140, 5.6.2009, p 63), and by Regulation (EC) No 219/2009 of the European Parliament and of the Council (OJ No L 87, 31.3.2009, p 109).

4.6. The UK has given effect to the relevant provisions under the Kyoto Protocol and Marrakech Accords in relation to the approval and/or authorisation of projects through Part 3 of the 2005 Regulations. Part 3 provides that applications for the approval and/or authorisation of projects may be submitted to the Secretary of State who is required to determine such applications. Part 3 also implements the requirements under article 11b of the EU ETS Directive in the UK by imposing various obligations on the Secretary of State when determining applications under Part 3 of the 2005 Regulations. As mentioned above, the Transposition Note prepared in relation the 2005 Regulations is annexed with an addendum to indicate the changes to the UK's existing transposition of the above EU obligations made by these Regulations.

5. Territorial Extent and Application

5.1. This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1. As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1. Secretary of State has a statutory obligation under domestic legislation implementing the Kyoto Protocol to consider applications from third parties for the approval of participation in CDM and Joint Implementation (JI) projects. This function is performed through the UK DNA and DFP which reviews the applications against the relevant CDM and JI rules and legislation, and decides whether or not to issue a letter of approval (LOA). CDM and JI projects must receive a letter of approval from an Annex I country in order to get credits transferred into their registry account.

7.2. The Government wishes to transfer the Secretary of State's functions in relation to the determination of applications for the grant of approval or authorisation of projects under Part 3 of the 2005 Regulations to the Environment Agency. This is because the relevant functions primarily comprise delivery rather than policy-making functions and as such, it would be more appropriate and efficient for the Environment Agency rather than DECC to perform these functions. DECC is predominantly a policy making department. The DNA/DFP approval and assessment functions are to a large extent administrative decisions. Many delivery agencies have more specialist, technical skills and so are better suited to these kind of functions. A number of similar delivery functions have been delegated to Government delivery partners including the EU Emissions Trading System (EU ETS) and the Carbon Reduction Commitment (CRC). Additionally, there is an international precedent to transfer this work with four of the top six international DNA/DFP's having already transferred this work outside of central government to a delivery body - Switzerland, Netherlands, Germany and Sweden.

7.3. The Environment Agency (EA) was selected as the work of the DNA/DFP fits closely with their current remit and other functions already delivered by the Agency (e.g. in relation to the EU ETS).

7.4. The transfer will take effect on 1st June 2011 which is the date on which the Environment Agency has agreed to take on the exercise of the relevant functions.

7.5. Whilst we would expect the Environment Agency to determine the majority of applications, we would also like to ensure that the Secretary of State retains the ability to determine applications in relation to projects under Part 3 of the 2005 Regulations. This is because applications may in some cases raise broader policy issues and/or have wider implications for HMG's policy in relation to international carbon markets. Accordingly, the proposed Regulations will amend the 2005 Regulations to provide that from 1st June 2011 those functions must be exercised by the Environment Agency except in certain circumstances specified in the Regulations. The Environment Agency will be required to consult the Secretary of State before determining certain types of application and must refer an application to the Secretary of State for decision if the latter requests the Environment Agency to do so.

7.6. The 2005 Regulations do not currently permit the Secretary of State to require the payment of a fee in respect of the exercise of functions under that Part. With the exception of applications in relation projects in Least Developed Countries ("LDCs"), the Government would like to require applications under Part 3 of the 2005 Regulations to be accompanied by a fee. The policy justification for this is set out further below. Accordingly, the proposed Regulations amend Part 3 of the 2005 Regulations to provide that applications under that Part must be accompanied by a fee save where the application relates to a project in a LDC. This provision will cease to have effect on 6th April 2012. We currently propose to confer powers on the Environment Agency to enable it to make a charging scheme to cover the transferred functions later this year.

7.7. Finally, regulation 9 of the 2005 Regulations also provides that determinations under Part 3 may be appealed to the Secretary of State or to a person appointed by the Secretary of State for that purpose. We are not proposing to transfer this function to the Environment Agency and accordingly, regulation 9 of the 2005 Regulations is not amended by the proposed Regulations.

7.8. The Department has considered whether it would be possible to give effect to the proposals without the need for legislation. In particular, we have considered whether it would be possible to give effect to the delegation by means of an agreement under section 38 of the Environment Act 1995. However, given that the 1995 Act has limited application to Northern Ireland and the proposals relate to the entire UK, we have concluded that it is necessary to legislate.

7.9. Participants of the CDM and JI applying to the UK DNA are limited to but not exclusive to a small group of stakeholders. In 2010 we received 445 applications from approx 75 different companies. The costs incurred to these stakeholders as a result of the fees for

applications would be minor, especially in relation to overall costs and returns of the projects they are applying for.

7.10. As this is such a small function, our proposed changes to the administration of the DNA/DFP including the transfer and introduction of fees has a relatively minor impact. There has been no media interest or particular sensitivities in these changes nor do we expect there to be any.

- Consolidation

7.11. The Regulations amend Part 3 of the 2005 Regulations. Whilst, Part 2 of the 2005 Regulations amends another set of Regulations (the), Part 3 has not been amended before. In view of this and given the relatively minor nature of the proposed amendments, the Department does not think it is necessary to make an entirely new set of Regulations for the purpose of implementing the proposals. Similarly, the Department does not consider it appropriate to undertake a consolidation exercise since Part 3 of the 2005 Regulations has never been amended before.

8. Consultation outcome

8.1. In February 2011 DECC conducted an informal consultation with the main stakeholders who use the UK's DNA and DFP. This consultation exercise asked stakeholders for their views on the introduction of fees for applications to the DNA/DFP (set at the level included in these regulations) and on the proposed transfer to the Environment Agency. We also asked for their views on our proposal to have a fee exemption for applications in relation to projects in Least Developed Countries.

8.2. We received 7 responses in total, which were broadly positive of both the fees and the exemption policy for Least Developed Countries. We did not receive any negative responses. Responding companies asked that service levels were maintained or improved once the fee was put in place. This is concurrent with plans to standardise responding times to applications, including acknowledgement of received applications and timely responses to all queries.

9. Guidance

9.1. DECC currently provides extensive guidance on the exercise of functions under Part 3 on its website. That guidance will be updated by Environment Agency to reflect the changes made by the Regulations. In addition to this, the Department will contact major stakeholders to alert them to the proposed changes set out in this EM. As set out in the previous section, our main stakeholders have already been consulted on these plans.

10. Impact

10.1. The introduction of a charging scheme will transfer costs from government and the taxpayer to business. The proposed fees range from a £250-£700 fee per application

depending on the type of application. These fees are estimated to cover the direct and indirect costs of the EA delivering the UK DNA/DFP function of processing applications for CDM and JI projects. These costs distributed across companies applying for the service of DNA/DFP are considered to be minor. The level of fees will be reviewed on an annual basis to ensure they are at the appropriate level for full cost recovery. Applications sent to the DNA/DFP are done so on a voluntary basis, those companies wishing to avoid a fee can use the DNA/DFP of another country. Other countries also charge for applications including Germany, Netherlands and Belgium.

10.2. The transferral of the DNA/DFP and the introduction of the proposed fees will enable DECC to follow best practice and outsource this delivery function to the Environment Agency (EA) whilst making overall administrative reductions to government. This is 100% cost recovery mechanism, which will save the UK government £70k per year. In transferring this function DECC would be ensuring a better division of functions between policy and implementation in DECC and the Environment Agency. Business would meet the costs of the this function, however, the outsourcing of this function to a delivery body is likely to increase efficiency of processing applications.

10.3. An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk .

11. Regulating small business

11.1. We have not put in place any additional requirements or taken specific action related to small businesses. We believe that the overall impacts of this legislation will not be significant and will not disproportionally impact small businesses. We have not received any responses in our consultation exercise that go against that assessment. Some firms mentioned that they would be able to pass on the costs of any fee introduced on to their business partners. The fees as set would only be a very small part of any overall CDM/JI project application.

12. Monitoring & review

12.1. Regulation 3 requires the Secretary of State to review the Regulations within 5 years and provide a report to Parliament.

12.2. In addition to the review required by regulation 2 of these Regulations, the DNA/DFP once transferred to Environment Agency will be reviewed after 12 months and at each 12 month interval thereafter. The review will measure the quantity of applications received and monitor the resource and time taken to process them as well as the funds received from the prescribed fees. Where possible, the review will cover an assessment of stakeholder satisfaction with the functioning of the DNA/DFP.

13. Contact

David Kinder at the Department of Energy and Climate Change Tel: 0300 068 6200 or email: David.Kinder@decc.gsi.gov.uk can answer any queries regarding the instrument.

TRANSPOSITION NOTE

Addendum to the Transposition Note in relation to the Greenhouse Gas Emissions Trading Scheme (Amendment) and National Emissions Inventory Regulations 2005 to incorporate the changes made by the Greenhouse Gas Emissions Trading Scheme (Amendment) (Fees) and National Emissions Inventory Regulations 2011

This Transposition Note reproduces the Transposition Note in relation to the transposition of Directive 2004/101/EC by the Greenhouse Gas Emissions Trading Scheme (Amendment) and National Emissions Inventory Regulations 2005 ("the 2005 Regulations") to indicate the changes to that transposition made by the Greenhouse Gas Emissions Trading Scheme (Amendment) (Fees) and National Emissions Inventory Regulations 2011 ("the 2011 Regulations").

Transposition of Directive 2004/101/EC[1] of the European Parliament and of the Council amending Directive 2003/87/EC[2] establishing a scheme for greenhouse gas emission allowance trading within the Community, in respect of the Kyoto Protocol's project mechanisms

Article	**Objective**	**Transposition by the 2005 Regulations**	**Changes to transposition made by the 2011 Regulations**
Article 1(1)	This article inserts new interpretation provisions into Directive 2003/87/EC which have no operative effect.	No transposition necessary	Not applicable
Article 1(2) – inserting Article	Allows Member States to permit operators	Regulation 4(b) inserts regulation 26(17) into	None

[1] Council Directive 2004/101/EC (OJ No L 338, 13.11.2004, p 18)

[2] OJ No L 275, 25.10.03, p 32. The Directive is amended by European Parliament and Council Directives 2004/101/EC (OJ No L 338, 13.11.2004, p 18), 2008/101/EC (OJ No L 8, 13.1.2009, p 3) and 2009/29/EC (OJ No L 140, 5.6.2009, p 63), and by Regulation (EC) No 219/2009 of the European Parliament and of the Council (OJ No L 87, 31.3.2009, p 109).

11a(1) into Directive 2003/87/EC	to use CERs and ERUs in order to secure compliance with their obligations under the EU Emissions Trading Scheme in the second and subsequent phases of the Scheme, up to the limit provided for in the national allocation plan.	the Greenhouse Gas Emissions Trading Scheme Regulations 2005 ("the 2005 regulations"), which enables an operator to hold CERs and ERUs in its registry accounts. Regulation 27A(1) permits an operator to use CERs and ERUs to comply with its obligations to surrender allowances under the Scheme. Regulation 27A(4) provides an exception to this by limiting the use of CERs and ERUs to the limit set out in the approved national allocation plan for that period.	
Article 1(2) – inserting Article 11a(2) into Directive 2003/87/EC	Allows Member States to permit operators to use CERs in order to secure compliance with their obligations under the EU Regulation 4(b) inserts regulation 26(17) into the 2005 regulations, which enables an operator to hold CERs and ERUs in its registry accounts. Emissions Trading Scheme in the first phase	Regulation 27A(1) permits an operator to use CERs and ERUs to comply with its obligations to surrender allowances under the Scheme. Regulation 27A(2) makes an exception to this by providing that ERUs may not be used in the first phase.	None

	of the Scheme.		
Article 1(2) – inserting Article 11a(3) into Directive 2003/87/EC	Provides an exception to Article 11a(1) and 11a(2) so that CERs and ERUs generated from nuclear facilities and land use, land use change and forestry activities may not be used in the first and second phase of the Scheme.	Regulation 27A(3) provides an exception to regulation 27A(1) that CERs and ERUs generated from nuclear facilities, land use, land use change and forestry activities may not be used by an operator to comply with its obligations under the Scheme.	None
Article 1(2) – inserting Article 11b(1) into Directive 2003/87/EC	Require that when Member States are approving Kyoto project activities to be undertaken in countries having signed an EU Treaty of Accession, they ensure that baselines for those project activities fully comply with the *acquis communautaire* including the temporary derogations set out in that Treaty of Accession.	Regulations 5-8 generally sets out the application procedure which an applicant must go through in order to obtain approval for a project activity. In particular, regulation 7(6)(a) provides that the Secretary of State may only approve a proposed project activity which is to be carried out in a country which has signed a Treaty of Accession where she is satisfied that the baseline complies with the bodies of common rights and obligations which bind Member States within the European Union subject only to the	No change save that DNA/DFP functions will in most cases be exercised by the Environment Agency rather than the SoS. Regulation 5 amends the 2005 Regulations to insert a new Regulation 8A which provides that the Secretary of State's functions under Regulations 5-8 of the 2005 Regulations must be exercised by the Environment Agency except in the circumstances specified in the

		temporary derogations set out in that Treaty of Accession.	new Regulation 8A. Regulation 4 amends the 2005 Regulations to require applications for approval under regulation 5 of the 2005 Regulations to be accompanied by a fee set out in the 2005 Regulations (as amended by the 2011 Regulations). This provision will cease to have effect on 6th April 2012.
Article 1(2) – inserting Article 11b(2) into Directive 2003/87/EC	Requires that, apart from the exceptions in paragraphs 3 and 4, Member States are to ensure certain things when hosting project activities.	Regulation 7(5) prohibits the Secretary of State from approving a project activity to be carried out in the UK. The UK will therefore not host project activities, so the circumstances which Article 11b(2) seeks to avoid will not arise.	No change save that prohibition now applies to the Environment Agency as well to the extent that it exercises the Secretary of State's functions under regulation 5-8 of the 2005 Regulations pursuant to the new Regulation 8A inserted into the 2005 Regulations by the 2011 Regulations.
Article 1(2) – inserting Article 11b(3) into	Provides an exception to Article 11b(2)	Does not require transposition as regulation	None

Directive 2003/87/EC		7(5) ensures that the situation giving rise to article 11b(2) will not arise.	
Article 1(2) – inserting Article 11b(4) into Directive 2003/87/EC	Provides an exception to Article 11b(2)	Does not require transposition as regulation 7(5) ensures that the situation giving rise to article 11b(2) will not arise.	None
Article 1(2) – inserting Article 11b(5) into Directive 2003/87/EC	Requires Member States that authorise entities to participate in project activities to remain responsible for the fulfilment of its obligations under UNFCCC and Kyoto and shall ensure that such participation is consistent with the relevant guidelines, modalities and procedures adopted pursuant to the UNFCCC or Kyoto.	Regulation 7(7) prohibits the Secretary of State from authorising the participation of the applicant in a project unless she is satisfied that to do so would be consistent with Article 11b(5).	No change save that prohibition now applies to the Environment Agency as well to the extent that it exercises the Secretary of State's functions under regulation 5-8 of the 2005 Regulations pursuant to the new Regulation 8A inserted into the 2005 Regulations by the 2011 Regulations.
Article 1(2) – inserting Article 11b(6) into Directive 2003/87/EC	Requires Member States to ensure that certain criteria and guidelines are adhered to when approving hydro-electric power production project activities	Regulation 7(6)(b) prohibits the Secretary of State from approving such project activities unless she is satisfied that the relevant criteria and guidelines will be respected.	No change save that prohibition now applies to the Environment Agency as well to the extent that it exercises the Secretary of State's functions under regulation 5-8 of the 2005 Regulations pursuant to the new Regulation

			8A inserted into the 2005 Regulations by the 2011 Regulations. Regulation 4 amends the 2005 Regulations to require applications for approval under regulation 5 of the 2005 Regulations to be accompanied by a fee set out in the 2005 Regulations (as amended by the 2011 Regulations). This provision will cease to have effect on 6th April 2012.
Article 1(2) – inserting Article 11b(7) into Directive 2003/87/EC	Sets out a procedure for adopting further provisions	Does not require transposition	Not applicable
Article 1(3) – replacing Article 17 of Directive 2003/87/EC	Requires certain information to made available to the public in accordance with Directive 2003/4/EC	Already transposed through Environmental Information Regulations 2004 (S.I. 2004/3391)	None
Article 1(4) – inserting new sub-paragraph in Article 18 of Directive 2003/87/EC	Requires co-ordination between body approving Article 6 project activities and Article 12 project activities.	Regulation 5 requires both types of application to be made to, and determined by, the Secretary of State. This ensures co-ordination.	The new Regulation 8A inserted into the 2005 Regulations by regulation 5 of the 2011 Regulations will

			in future require both types of application to be submitted to the Environment Agency. Both types of application must be determined by the Environment Agency pursuant to the new Regulation 8A except in the circumstances specified in that Regulation. As such, co-ordination will still be ensured. Regulation 4 amends the 2005 Regulations to require applications for approval under regulation 5 of the 2005 Regulations to be accompanied by a fee set out in the 2005 Regulations (as amended by the 2011 Regulations). This provision will cease to have effect on 6th April 2012.
Article 1(5) – inserting new sentence into	Clarifies a Commission duty to adopt a Regulation	Does not require transposition	Not applicable

Article 19(3) of Directive 2003/87/EC			
Article 1(6) – amending Article 21 of Directive 2003/87/EC	Sets out the subject matter which must be included in an annual Member State report to the Commission and places a duty on the Commission to organise an exchange of information	Does not require transposition	Not applicable
Article 1(7) – inserting new Article 21a into Directive 2003/87/EC	Requires Commission and Member States to endeavour to support capacity building activities in developing countries and countries with economies in transition	Does not require transposition	Not applicable
Article 1(8)(a) and (b) – amending Article 30(2)	Amends and expands upon the subject matter which must be covered by a report by the Commission.	Does not require transposition	Not applicable
Article 1(8)(c) – replacing Article 30(3), first paragraph	Requires each Member State to include details of its intended use of ERUs and CERs	Regulation 20 of the 2005 regulations requires the Secretary of State to develop a national allocation plan in respect of the second and subsequent scheme phase and to publish it at least 18 months before the beginning of the relevant phase. The definition of "national allocation plan" in regulation 2(1) of the	None

		2005 regulations is amended so as to mean a plan developed in accordance with Articles 9, 10 and 30 of and Annex III to the Directive.	
Article 1(8)(c) – replacing Article 30(3), second paragraph	Requires Member States to report to the Commission, and the Commission to report in consequence	Does not require transposition	Not applicable
Article 1(9) – replacing Article 30(3), second paragraph	Inserts an additional criteria into Annex III, with which national allocation plans must comply	Already transposed through the 2005 regulations. Regulation 20 requires the Secretary of State to develop a national allocation plan in respect of the second and subsequent scheme phase. The definition of "national allocation plan" in regulation 2(1) of the 2005 regulations is a plan developed in accordance with Articles 9 and 10 of Annex III to the Directive. In turn, "the Directive" is defined as meaning Directive 2003/87/EC as amended by Directive 2004/101/EC.	None
Article 2 and 3	Implementation and entry into force provisions	Does not need transposition	Not applicable

Title:	Impact Assessment (IA)
Introduction of Charges for Designated National Authority (DNA) and Designated Focal Point (DFP) and Transferral to Environment Agency.	**IA No:** DECC 0055
Lead department or agency: DECC	**Date: 11/02/2011**
Other departments or agencies:	**Stage:** Final
	Source of intervention: Domestic
	Type of measure: Secondary legislation
	Contact for enquiries: laura.blizzard@decc.gsi.gov.uk

Summary: Intervention and Options

What is the problem under consideration? Why is government intervention necessary?

Currently the UK's Designated National Authority (DNA)/Designated Focal Point (DFP) does not charge a fee to companies applying for a Letter of Approval for CDM and JI projects. Introducing fees via secondary legislation will enable DECC to follow best practice in line with HMT's request to move to full cost recovery, whilst making overall administrative reductions to government. This is a 100% cost recovery mechanism, which will save the UK government approximately £70k per year. We will also be able to transfer the running of the DNA/DFP to one of DECC's delivery bodies - the Environment Agency,

What are the policy objectives and the intended effects?

The purpose of this policy is to introduce fees to recover the costs of running one of the statutory functions that the UK has to operate under the Kyoto Protocol i.e. processing and issuing approvals. Applications for projects in Least Developed Countries will be exempt from these charges. The requirement to pay fees will enable DECC to make overall administrative reductions to government and the tax payer. This will also create certainty for applicants as with the introduction of a fee we would ensure applications are processed within a set time. We also plan to transfer this function to the Environment Agency from 1st June in order to transfer this delivery function to a delivery body, creating greater efficiency for the DNA/DFP application

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Option one is to do nothing and continue to process voluntary applications for Clean Development Mechansim (CDM) and Joint implementation (JI) free of charge.

Our preferred option is to introduce a fee to make the function self-sustaining (recover costs) thereby reducing cost to government, and to outsource this function to the EA. All applicants would be asked to cover the cost of processing their voluntary applications to DNA/DFP. Stakeholder views collected to date show that they are happy to meet the costs proposed for the fee as long as service levels are maintained.

Will the policy be reviewed? It will be reviewed. **If applicable, set review date:** 06/2012	
What is the basis for this review? Duty to review. **If applicable, set sunset clause date:** Month/Year	
Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?	Yes

SELECT SIGNATORY Sign-off For consultation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible SELECT SIGNATORY: ..... Date: .....

Summary: Analysis and Evidence

Policy Option 1

Description:

Price Base Year 2011	PV Base Year 2011	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	**High:** Optional	**Best Estimate: -0.1**

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	1	Optional	**Optional**
High	Optional		Optional	**Optional**
Best Estimate	0.009		0.082	**0.7**

Description and scale of key monetised costs by 'main affected groups'

The introduction of fees will transfer costs from government and the taxpayer to business. The proposed fees range from a £250-£700 charge per application depending on the type of application. These fees are estimated to cover the direct and indirect costs of the EA delivering the UK DNA/DFP function of processing Letter of Approval applications for CDM and JI projects. These costs distributed across all companies applying for the service of DNA/DFP are considered to be minor. The level of fees will be reviewed on an annual basis to ensure they are at the appropriate level for full cost recovery.

Other key non-monetised costs by 'main affected groups'

N/A

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional		Optional	**Optional**
High	Optional		Optional	**Optional**
Best Estimate	0		0.07	**0.6**

Description and scale of key monetised benefits by 'main affected groups'

Key benefit is a cost saving to government and the tax payer.

Other key non-monetised benefits by 'main affected groups'

1.Greater efficiency to the DNA/DFP function where applications for CDM/JI projects are processed more quickly under the new regulation i.e. a timeline of 2 weeks (CDM excl large hydro) and within 2 months for CDM (large hydro) and JI applications. Allows companies to progress CDM/JI projects more efficiently.
2. Reputational Value of UK Letter of Approval (LOA).
3. Applications to develop projects in Least Developed Countries (LCD) will be free of charge.

Key assumptions/sensitivities/risks **Discount rate (%)**

Risks:
1. That the rate of applications coming to UK DNA/DFP will decline.
2. Applications for projects in LCD's increase and costs are not recovered.

Direct impact on business (Equivalent Annual) £m):						In scope of OIOO?	Measure qualifies as
Costs:	0.08	**Benefits:**	0	**Net:**	-0.08	No	NA

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			Options UK		
From what date will the policy be implemented?			06/04/2011		
Which organisation(s) will enforce the policy?			DECC		
What is the annual change in enforcement cost (£m)?			NIL		
Does enforcement comply with Hampton principles?			Yes		
Does implementation go beyond minimum EU requirements?			Yes		
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)			**Traded:**	**Non-traded:**	
Does the proposal have an impact on competition?			No		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			**Costs:**	**Benefits:**	
Distribution of annual cost (%) by organisation size (excl. Transition) (Constant Price)	**Micro**	**< 20**	**Small**	**Medium**	**Large**
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on…?	**Impact**	**Page ref within IA**
Statutory equality duties[1] Statutory Equality Duties Impact Test guidance	No	
Economic impacts		
Competition Competition Assessment Impact Test guidance	No	
Small firms Small Firms Impact Test guidance	No	
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	
Human rights Human Rights Impact Test guidance	No	
Justice system Justice Impact Test guidance	No	
Rural proofing Rural Proofing Impact Test guidance	No	
Sustainable development Sustainable Development Impact Test guidance	No	

[1] Public bodies including Whitehall departments are required to consider the impact of their policies and measures on race, disability and gender. It is intended to extend this consideration requirement under the Equality Act 2010 to cover age, sexual orientation, religion or belief and gender reassignment from April 2011 (to Great Britain only). The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

References

Include the links to relevant legislation and publications, such as public impact assessments of earlier stages (e.g. Consultation, Final, Enactment) and those of the matching IN or OUTs measures.

No.	Legislation or publication
1	The Secretary of State acts as the UK's Designated National Authority (DNA) for the Clean Development Mechanism (CDM) and Designated Focal Point (DFP) for Joint Implementation (JI) under the Kyoto Protocol. In its capacity as the DNA, the Secretary of State for Energy & Climate Change issues Letters of Approval (LOA) to entities who wish to become participants in CDM and JI projects. The Secretary of State's functions in relation to the above approvals are conferred by Part 3 of the Greenhouse Gas Emissions Trading (Amendment) and National Emissions Inventory Regulations 2005 (S.I. 2005/2903) ("the 2005 Regulations").
2	
3	
4	

+ Add another row

Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

Annual profile of monetised costs and benefits* - (£m) constant prices

	Y_0	Y_1	Y_2	Y_3	Y_4	Y_5	Y_6	Y_7	Y_8	Y_9
Transition costs	0.009	0	0	0	0	0	0	0	0	0
Annual recurring cost	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082
Total annual costs	0.091	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082
Transition benefits										
Annual recurring benefits	0.07		0.07	0.07	0.07	0.07	0.07	0.07	0.07	0.07
Total annual benefits	0.07	0.07	0.07	0.07	0.07	0.07	0.07	0.07	0.07	0.07

* For non-monetised benefits please see summary pages and main evidence base section

Evidence Base (for summary sheets)

There is discretion for departments and regulators as to how to set out the evidence base. However, it is desirable that the following points are covered:

Problem under consideration;

The Secretary of State has a statutory obligation under domestic legislation implementing the Kyoto Protocol to consider applications from third parties for the approval of participation in Clean Development Mechanism (CDM) and Joint Implementation (JI) projects. This function is performed in DECC through the UK DNA and DFP which reviews the applications against the relevant CDM and JI rules and legislation, and decides whether or not to issue a letter of approval (LOA). CDM and JI projects must receive a letter of approval from an Annex I country in order to get credits transferred into their registry account.

The running of the DNA/DFP is currently approximately £70k per annum. We have one member of staff processing applications full time - in 2010 we received 445 from approx 75 different companies. We will be asking the private sector to cover the costs of running this service by requesting applicants to pay a small fee before making an application (of between £250 to 700 per application). The introduction of a fee will save money for government and will transfer these costs to business. Total costs currently incurred to DECC are approximately £70,000 per year. Compared to the total cost of business processing a CDM application (up to £20,000) the proposed charges are very small.

Rationale for intervention;

We previously offered LOA's free of charge to encourage participation in the carbon market, however the market has now matured and The City of London is the global hub of the carbon market (over 80% of total carbon trades). Other EU countries already charge, including Germany, Netherlands and Belgium. We are now proposing to introduce charges to recover the administrative costs of determining applications for the approval of CDM and JI projects. We have carried out an informal consultation with our main stakeholders who have been supportive of our proposal. The charges will need to be set out in secondary legislation.

The introduction of the proposed secondary legislation will enable DECC to follow best practice (charging for publicly provided good and services) and outsource this delivery function to the Environment Agency (EA) whilst making overall administrative reductions to government. This is 100% cost recovery mechanism, which will save the UK government £70k per year.

Policy objective;

DECC would like to outsource this policy function to the EA in mid 2011. As part of that work we also would like to introduce a fee to recover the administrative costs of this mainly process-driven task. EA and DECC have a common interest in ensuring that we act to reduce climate change and its consequences and we play a full part in meeting our greenhouse gas targets in ways that minimise other environmental impacts. The transfer of the DNA & DFP to EA will facilitate closer co-operation in these areas and separate the delivery function of the DNA & DFP from policy making in DECC.

Description of options considered (including do nothing);

Option 1 is to do nothing and continue to process voluntary applications for CDM and JI free of charge, with a continued cost to the DECC and the tax payer.

Option 2 - our preferred option - is to introduce a fee as it will make the function self-sustaining and reduce cost to government/tax payer. There will be an exemption for CDM projects in Least Developed Countries (LDCs) in order to continue to encourage greater take up in these regions. The cost to be recovered from other applications is expected to be minimal as we have only ever received 8 applications for projects in LDCs. This exemption is consistent with UK policy and the actions of the Clean Development Executive Board. Consequently, a proportion of external stakeholders involved in the project development business would be asked to cover the cost of processing their voluntary applications to DNA/DFP. Stakeholder views collected from an informal consultation to date show that

they are happy to meet the costs proposed for the fees as long as the DNA/DFP maintains current service levels.

Costs and benefits of each option (including administrative burden);

Option 1:

DECC would continue to incur costs of approximately £70k per year to cover the cost of delivering the DNA/DFP function. DECC calculations show that the cost of delivering the DNA/DFP function are the equivalent of one member of staff working at Executive Officer (EO) level. These calculations based on the various costs that incurred on employing, supporting and providing the staff member with desk, equipment, pension contributions etc, these costs totalling approximately 70k per annum.

Under this option applicants will continue to benefit from being able to submit their applications in the UK free of charge.

Option 2:

DECC would recover the costs through the introduction of fees, which would then be transferred to a delivery body the Environment Agency (EA), who would recover the costs of running the function.

The EA have estimated the cost of delivering the DNA/DFP function in the first year at £91,005. This includes a set up cost of £9,000.

To recover these costs, the following fee structure has been proposed.

1. CDM (non large hydro) £250
2. CDM (large hydro) and JI £700
3. Least Developed Countries Free

It is estimated that this charging structure will generate £90,822. This estimate is based on an assessment of the average number of applications received each year to date.

The main benefit will be the annual saving of approximately £70k that is currently incurred by DECC.

The administrative burden to applicants of paying a fee for processing their applications is considered to be negligible. Compared to the total cost of business processing a single CDM application (up to £20,000) the proposed charges are relatively small.

The policy (and charging structure) will be reviewed on an annual basis.

Risks and assumptions;

1. The rate of applications coming to UK DNA/DFP will decline and the charges do not cover the costs.

To mitigate this we have projected figures based on a 17% decline of applications throughout 2011. Costs can then be reviewed after 12 months and adjusted accordingly.

2. Applications for projects in LCDs increase and costs are not recovered because we have set the charge for LCD applications as free of charge.

If applications increase, this will have met a key objective of the carbon markets workstream; 'to increase carbon market flows to least developed countries'. Charges can be reviewed and amended accordingly.

Direct costs and benefits to business calculations (following OIOO methodology);

N/A – it has been agreed with the Better Regulation Executive that this measure is not subject to OIOO due to its low impact.

Wider impacts;

These are considered to be negligible. Applications for CDM and JI are voluntary and approval authorities operate in a number of other countries

Summary and preferred option with description of implementation plan.

The purpose of this legislation is to require payment of fees to recover the costs of running one of the small statutory functions that the UK has to operate under the Kyoto Protocol. This will enable DECC to follow best practice and outsource this delivery function to the Environment Agency whilst making overall administrative reductions to government.

1. DECC plans to pass legislation to require payment of fees in time for the common commencement date of 6th April 2011. This legislation will prescribe the charges which applicants must pay for an LOA. There are two important things to note:
   - There will be a gap between the date the legislation starts and the transfer of responsibilities to EA (likely to be June 2011), which means that DECC will start charging before the relevant functions are transferred to EA.
   - Over the longer term, we would propose giving the EA a free-standing power to make charging schemes itself to cover the costs of the relevant functions (as opposed to prescribing the charges in legislation).

2. In addition, in order to encourage greater take up of CDM projects in Least Developed Countries (LDCs), we would propose that no fee would be charged for an LOA granted for these projects. The cost to be recovered from other applications would be minimal as we have only ever received 8 applications for projects in LDCs. This is consistent with UK policy and the actions of the Clean Development Mechanism Executive Board and could be reviewed after 12 months.

Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added where the Specific Impact Tests yield information relevant to an overall understanding of policy options.

Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. If the policy is subject to a sunset clause, the review should be carried out sufficiently early that any renewal or amendment to legislation can be enacted before the expiry date. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

Basis of the review: [The basis of the review could be statutory (forming part of the legislation), i.e. a sunset clause or a duty to review , or there could be a political commitment to review (PIR)]; There will be an informal monthly assessment to assess number of applications, funds recovered and time it takes to process the applications, this will lead to a formal review at 12 months.
Review objective: [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?]
Review approach and rationale: [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach] There will be an informal monthly assessment to assess number of applications, funds recovered and time it takes to process the applications, this will lead to a formal review at 12 months.
Baseline: [The current (baseline) position against which the change introduced by the legislation can be measured] We have one member of staff processing applications full time - in 2010 we received 445 from approx 75 different companies, costs to DECC totalled 70k.
Success criteria: [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives] Administrative cost to DECC has reduced and DECC can focus on policy development rather than deliverying and overseeing this mainly process driven task
Monitoring information arrangements: [Provide further details of the planned/existing arrangements in place that will allow a systematic collection systematic collection of monitoring information for future policy review] Monthly reports will be expected from Environment Agency to assess number of applications, funds recovered and time it takes to process the applications, so that we can get early indications of change in trends.
Reasons for not planning a review: [If there is no plan to do a PIR please provide reasons here]

Add annexes here.