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STATUTORY INSTRUMENTS

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**2005 No. 2903**

**The Greenhouse Gas Emissions Trading Scheme (Amendment)  
and National Emissions Inventory Regulations 2005**

**PART 3**

**PROJECT APPROVAL AND AUTHORISATION TO PARTICIPATE**

**Approval of and authorisation of participation in project activities**

5.—(1) A person wishing to have a proposed project activity approved shall, in accordance with this regulation, apply to the Secretary of State for approval of the proposed project activity.

(2) A person wishing to be authorised to participate in an Article 6 project activity shall, in accordance with this regulation, apply to the Secretary of State for such authorisation.

(3) An application under this regulation shall be made in the English language and shall contain the following information—

- (a) the applicant's name and address;
- (b) a description of the project activity or proposed project activity; and
- (c) any other information that the Secretary of State may require for the purpose of determining the application.

(4) Any application made under this regulation shall be made in such form as may be required by the Secretary of State.

(5) The Secretary of State may require any information included in an application under this regulation to be independently verified and a requirement under this paragraph may include a requirement for the verification to be provided by a person of a description specified by the Secretary of State.

(6) An application under paragraph (2) may be combined with an application under paragraph (1).

(7) An application made under this regulation may be withdrawn at any time before it is determined.

**Request for further information**

6.—(1) For the purposes of determining an application made under regulation 5, the Secretary of State may serve a notice on the applicant requesting further information as she considers necessary.

(2) The notice shall specify the information required and the time period for furnishing such further information.

(3) A notice under paragraph (1) may include a requirement for information furnished in connection with an application under regulation 5 to be independently verified and a requirement under this paragraph may include a requirement for the verification to be provided by a person of a description specified by the Secretary of State.

(4) If an applicant fails to comply with a request under paragraph (1), the Secretary of State may serve a notice on the applicant stating that the application is deemed to have been withdrawn.

### **Determination of application**

7.—(1) Where an application is duly made under regulation 5 the Secretary of State shall determine whether to approve the proposed project activity or to authorise the participation in accordance with this regulation.

(2) When determining an application duly made under regulation 5, the Secretary of State may attach such conditions to an approval or authorisation as she thinks necessary.

(3) The Secretary of State shall give notice of her determination to the person who made the application within a period of two months beginning on the date on which the application was received 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 on the date on which notice is served under regulation 6(1) and ending on the date on which the applicant furnishes the further information.

(5) The Secretary of State may not approve a proposed project activity to be carried out in the United Kingdom.

(6) The Secretary of State may only approve a proposed project activity if she is satisfied that—

- (a) where a proposed project activity is to be undertaken in a country which has signed a Treaty of Accession with the European Union, the baseline used for determining the emissions reductions from the project activity complies with the body of common rights and obligations which binds all Member States within the European Union, including the temporary derogations set out in that Treaty; and
- (b) in relation to a proposed project activity for the production of hydro-electric power with a generating capacity of more than 20 megawatts, the development of the proposed project activity will respect the criteria and guidelines identified in the Report produced by the World Commission on Dams on 16th November 2000 entitled “Dams and Development – A New Framework for Decision-Making(1)”.

(7) The Secretary of State may only authorise the applicant’s participation in a proposed project activity if she is satisfied that to do so would be consistent with article 11b(5) of the Emissions Trading Directive.

### **Agreement with devolved administrations on project approval**

8. The power of the Secretary of State to determine an application under regulation 7 is exercisable—

- (a) in so far as an application under regulation 5(1) relates to a Scottish applicant, only with the agreement of the Scottish Ministers;
- (b) in so far as an application under regulation 5(1) relates to a NI applicant, only with the agreement of the Department of the Environment; and
- (c) in so far as an application under regulation 5(1) relates to a Welsh applicant, only with the agreement of the National Assembly for Wales.

## Appeals

9.—(1) A person may appeal to the Secretary of State against the refusal of an application made under regulation 5 or against any conditions attached to an approval or authorisation notified under regulation 7.

(2) Where an appeal is made under this regulation, the Secretary of State may affirm, reverse or vary her decision.

(3) Schedule 2 of the 2005 Regulations shall apply in relation to an appeal under this regulation as if—

(a) the reference to “regulation 32 or 33” in paragraph 1 of that Schedule were to this regulation;

(b) references to “appeal body” were to the Secretary of State;

(c) paragraph 2(1) contained a new paragraph (h) as follows—

“(h) in the case of an appeal under regulation 9(1) of the Greenhouse Gas Emissions Trading Scheme (Amendment) and National Emissions Inventory Regulations 2005, before the expiry of 6 months beginning with the date of the notice which is the subject matter of the appeal.”; and

(d) the references to “regulation 33” in paragraph 3(2) and (6) were to this regulation.

(4) The Secretary of State may—

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

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

(5) Schedule 3 of the 2005 Regulations shall have effect with respect to appointments under paragraph (4)(a) as if references in paragraph 1 of that Schedule to “regulation 34(2)(a)” were references to paragraph (4)(a) of this regulation.