STATUTORY INSTRUMENTS

2006 No. 737

The Greenhouse Gas Emissions Trading Scheme (Amendment) Regulations 2006

Title and commencement

1. These Regulations may be cited as the Greenhouse Gas Emissions Trading Scheme (Amendment) Regulations 2006 and come into force on 6th April 2006.

Amendment of the Greenhouse Gas Emissions Trading Scheme Regulations 2005

2. The Greenhouse Gas Emissions Trading Scheme Regulations 2005(**1**) are amended in accordance with the provisions of these Regulations.

3. In paragraph (1) of regulation 2 (Interpretation)—

(a) at the end of the definition of "new entrant reserve", insert "but shall not include any allowances removed from the reserve by virtue of a correction to the national allocation plan table made under Article 38(2) or 44(2) of the Registries Regulation"; and

(b) at the end, add—

> ""working day" means any day other than a Saturday, Sunday, Good Friday, Christmas Day or day which is a bank holiday within the meaning of the Banking and Financial Dealings Act 1971(**2**)

4. In paragraph (4) of regulation 15 (Transfer of greenhouse gas emissions permits)—

(a) delete "and" at the end of sub-paragraph (c);

(b) insert "; and" at the end of sub-paragraph (d); and

(c) at the end, add—

> "(e) where an application for an allocation of allowances from the late installation element of the new entrant reserve has been made under regulation 22A in respect of the installation to which the permit relates and the Secretary of State has not determined the application in accordance with regulation 22A(5), specify whether the application under regulation 22A relates to the transferred unit".

5. In paragraph (3) of regulation 16 (Applications to surrender a greenhouse gas emissions permit)—

(a) delete "or" at the end of sub-paragraph (a);

(b) insert "; or" at the end of sub-paragraph (b); and

(c) at the end, add—

> "(c) the greenhouse gas emissions permit applies to more than one installation, the operator continues to carry out a Schedule 1 activity in one of those installations,

(**1**) S.I. 2005/925.
(**2**) 1971 c. 80.

and the operator has applied to vary the permit so that it no longer applies to the installation in which he has ceased to carry out a Schedule 1 activity".

6. In paragraph (6) of regulation 16 (Applications to surrender a greenhouse gas emissions permit), for "notice of the surrender of its greenhouse gas emissions permit ("a notice of surrender")", substitute "notice of its determination of the application (which, if approving the application, shall be known as a "notice of surrender")".

7. In sub-paragraph (7)(a) of regulation 16 (Applications to surrender a greenhouse gas emissions permit)—

(a) for "up to the date on which the notice is served", substitute "up to the date on which the notice takes effect"; and

(b) each time it appears, for "which the notice of surrender is served" substitute "which the notice of surrender takes effect".

8. In paragraph (9) of regulation 16 (Applications to surrender a greenhouse gas emissions permit), after "Schedule 1 activity", insert "and to require the monitoring of emissions".

9. In sub-paragraph (5)(a) of regulation 17 (Revocation of greenhouse gas emissions permits)—

(a) for "up to the date on which the notice is served" substitute "up to the date on which the notice takes effect"; and

(b) each time it appears, for "which the revocation notice is served" substitute "which the revocation notice takes effect".

10. In sub-paragraph (7) of regulation 17 (Revocation of greenhouse gas emissions permits), delete "and reporting".

11. In paragraph (1) of regulation 19 (Charging scheme for offshore installations)—

(a) delete "and" at the end of sub-paragraph (b);

(b) at the end, add—

"(d) charges payable in respect of, or in respect of applications for, the allocation of allowances to an operator of an offshore installation;

(e) charges payable in respect of, or in respect of applications for, the retention of allowances by an operator of an offshore installation ceasing to carry on an activity to which they relate;

(f) charges payable in respect of the revocation of a greenhouse gas emissions permit for an offshore installation; and

(g) charges payable in respect of the subsistence of an account required to be held in the registry established under regulation 26 by an operator of an offshore installation".

12. In paragraph (23) of regulation 22 (Application for an allocation from the new entrant reserve), after the definition of "available allowances" insert—

""new entrant reserve" does not include any late installation element (as defined in an approved national allocation plan) of the new entrant reserve;".

13. After regulation 22, insert the following regulations—

"**Application for an allocation for late installations**

22A.—(1) Before 1st March 2007, an operator of an installation may apply to the Secretary of State for an allocation of allowances from the element of the new entrant reserve

which, in accordance with an approved national allocation plan, has been set aside for late installations.

(2) An application shall contain such information as the Secretary of State may reasonably require for the purpose of determining the application in accordance with the approved national allocation plan.

(3) Where an operator has made to the Secretary of State an application before 6th April 2006 which, if made on or after that date would have complied with paragraph (2), it shall be deemed to be an application made and received by the Secretary of State on 6th April 2006.

(4) The Secretary of State may, by notice to the applicant, require him to furnish to her, within 5 working days or such longer period as may be specified in the notice, such further information as she may require for the purpose of determining the application; and if the applicant fails to furnish the further information within the relevant period, the application shall, if the Secretary of State gives notice to the applicant that she treats the application as having been withdrawn, be deemed to have been withdrawn at the end of that period.

(5) The Secretary of State shall approve an application unless—

(a) the installation in question was put into operation on or after 1st January 2004;

(b) the installation in question is not the subject of a greenhouse gas emissions permit;

(c) the installation in question was the subject of a greenhouse gas emissions permit before 1st January 2005;

(d) the installation in question was allocated allowances in a decision made under regulation 19(1)(b) of the Greenhouse Gas Emissions Trading Scheme Regulations 2003(**3**); or

(e) the application is made more than 30 working days after whichever is the later of the installation being granted a greenhouse gas emissions permit under regulation 9, and 6th April 2006,

in which case she shall refuse the application.

(6) The Secretary of State shall notify the operator of her determination of the application by serving a notice upon him, and if she has approved the application, the notice shall state the eligible allocation for the installation to which the application relates.

(7) For the purposes of calculating the period of 30 working days mentioned in paragraph (5)(e) no account shall be taken of any period beginning with the date on which the applicant requests information from the Secretary of State relating to the manner in which he should compile and submit information as part of an application under paragraph (1), and ending on the date on which the Secretary of State furnishes that information.

(8) The Secretary of State shall give notice of her determination of an application as required by paragraph (6)—

(a) within a period of 20 working days beginning with the date on which the application is received by the Secretary of State; or

(b) within such longer period as may be agreed in writing with the applicant.

(9) For the purposes of calculating the period of 20 working days mentioned in paragraph (8) no account shall be taken of any period beginning with the date on which notice is served on the applicant under paragraph (4) and ending on the date on which the applicant furnishes the information specified in the notice.

(**3**) S.I. 2003/3311. Regulation 47 revokes these regulations subject to certain savings.

(10) If the Secretary of State fails to give notice of her determination of an application within the period allowed by paragraph (8), the application shall, if the operator notifies the Secretary of State that he treats the application as having been refused, be deemed to have been refused.

(11) Subject to paragraphs (12) to (15), the Secretary of State shall allocate allowances equal to the eligible allocation in respect of each application that she has approved within a period of 15 working days beginning with the day on which she served a notice on the operator under paragraph (6) by serving a notice on the operator and the registry administrator.

(12) Where the Secretary of State becomes aware that if she were to approve all of the applications that she has received under paragraph (1) of this regulation but which she has not determined, the total of—

(a) the eligible allocations relating to those applications; and

(b) the eligible allocations relating to all of the applications which she has approved but in respect of which she has not yet allocated allowances,

would exceed the number of available allowances, she shall not allocate any allowances until she has determined all of those applications.

(13) Where paragraph (12) applies, once the Secretary of State has determined all of the applications that she has received, for the purpose of allocating allowances in respect of those applications she shall prioritise those applications according to the order in which an application for a greenhouse gas emissions permit in relation to the installation which is the subject of the application was duly made, giving the highest priority to the installation in relation to which the earliest application for a greenhouse gas emissions permit was duly made.

(14) Where paragraph (12) applies, the Secretary of State shall allocate allowances equal to the eligible allocation in respect of each application that she has approved in the order of priority established under paragraph (13), until she has available allowances to cover the next eligible allocation in respect of an application in part only, in which case she shall allocate the remainder of the available allowances in respect of that application, and shall not allocate any allowances in respect of any subsequent applications.

(15) If—

(a) by virtue of paragraph (14) the Secretary of State has not allocated the eligible allocation in respect of an application that she has approved; and

(b) in accordance with an approved national allocation plan, she has subsequently added further allowances to the late installation element of the new entrant reserve,

she shall repeat the process set out in paragraphs (13) and (14) as if paragraph (12) applied, except that when allocating in relation to an application in respect of which she has already allocated part of the eligible allocation, she shall only allocate the remainder of the eligible allocation.

(16) The Secretary of State shall allocate allowances under paragraph (14) by serving a notice on the operator and the registry administrator.

(17) A notice under paragraph (11) or (16) 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; and

(b) the allocation of allowances to the operator in respect of the installation including, subject to regulations 22C and 23(2), 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.

(18) A notice under paragraph (11) or (16) shall set out the date or dates upon which allowances are to be issued to the operator and such notice shall be an instruction from the competent authority to the registry administrator for the purposes of Article 42 or 48 of the Registries Regulation.

(19) 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 this regulation made after the transfer takes effect shall be allocated to the transferee.

(20) For the purposes of this regulation the eligible allocation shall be calculated in accordance with regulation 22B.

(21) For the purposes of this regulation—

"available allowances" means allowances—

(a) in the late installation element of the new entrant reserve as set out in an approved national allocation plan, or

(b) which have been added to that element of the reserve by the Secretary of State,

which have been neither allocated in accordance with this regulation nor removed from the reserve by virtue of a correction to the national allocation plan table made under Article 38(2) or 44(2) of the Registries Regulation; and

"transferred unit" has the same meaning as in regulation 15(4).

Eligible allocations

22B.—(1) For the purposes of regulation 22A the eligible allocation shall be the allocation for the year in which the permit is issued plus—

(a) where the installation first became the subject of a greenhouse gas emissions permit in 2005, twice the annual allocation;

(b) where the installation first became the subject of a greenhouse gas emissions permit in 2006, the annual allocation;

(c) where the installation first became the subject of a greenhouse gas emissions permit in any other year, zero.

(2) For the purposes of paragraph (1), the allocation for the year in which the permit is issued shall be calculated using the following formula:

$$Z - \frac{D}{365} x . Y$$

Where:

Z is the allocation for the year in which the permit is issued;

X is the annual allocation calculated in accordance with paragraphs (3) or (4);

D (permitted days) is the number of days comprised in the period beginning on the date upon which the installation became the subject of a greenhouse gas emissions permit and ending at the end of the same calendar year.

(3) Except where paragraph (4) applies, the annual allocation shall, for the purposes of paragraph (1), be calculated using the following formula:

$$X = \left(\frac{T}{Y} - \frac{A}{1} \right) x S x L$$

Where:

X is the annual allocation;

T (total baseline emissions) is the total verified emissions of the installation in question during the period 1998 to 2003 inclusive;

A (lowest year emissions) is the verified emissions of the installation in question for the year in which its emissions were lowest during the period 1998 to 2003 inclusive, excluding years in which its emissions were zero;

Y (number of years) is the number of years in which the verified emissions for the installation in question were greater than zero;

S (sector reduction factor) is the number listed as the sector reduction factor in the table in Schedule 7 adjacent to the sector in which, in accordance with the approved national allocation plan the Secretary of State considers the installation should be classified;

L (late installation reduction factor) is—

(a) where an application for a greenhouse gas emissions permit in respect of the installation was made on or before 31st August 2005, and a statement of verified emissions for the installation was submitted to the Secretary of State on or before 28th February 2005, 100%;

(b) where an application for a greenhouse gas emissions permit in respect of the installation was made on or before 31st August 2005, but a statement of verified emissions for the installation was not submitted to the Secretary of State on or before 28th February 2005, 90%;

(c) where an application for a greenhouse gas emissions permit in respect of the installation is made after 31st August 2005, 75%.

(4) For the purposes of paragraph (1), where the installation in question was put into operation on or after 1st January 2003, the annual allocation shall be calculated using the following formula:

$$B x N x L$$

Where:

X is the annual allocation;

B (benchmarked allocation) is the annual allocation for which the installation would have been eligible had it been a new entrant, calculated in accordance with the approved national allocation plan;

N (new entrant reserve reduction) is the number listed as the new entrant reserve reduction factor in the table in Schedule 7 adjacent to the sector in which, in accordance with the approved national allocation plan the Secretary of State considers the installation should be classified;

L (late installation reduction factor) is—

(a) where an application for a greenhouse gas emissions permit in respect of the installation was made on or before 31st August 2005, and a statement of verified emissions for the installation was submitted to the Secretary of State on or before 28th February 2005, 100%;

(b) where an application for a greenhouse gas emissions permit in respect of the installation was made on or before 31st August 2005, but a statement of verified

emissions for the installation was not submitted to the Secretary of State on or before 28th February 2005, 90%;

(c) where an application for a greenhouse gas emissions permit in respect of the installation is made after 31st August 2005, 75%.

(5) In this regulation, "verified emissions" means the reportable emissions from the installation in question for the period 1998 to 2003 inclusive, as set out in the application made under regulation 22A and verified in accordance with the guidance issued by the Secretary of State on 5th August 2005 entitled "EU Emissions Trading Scheme Guidance on Annual Verification, version 1(**4**)".

Power to withhold allowances

22C.—(1) Where—

(a) an approved national allocation plan provides that where conditions specified in the 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 not be issued to the operator of the installation on or before 28th February of that scheme year; and

(b) such conditions are met in respect of an installation in relation to which allowances have been allocated under regulation 22 or 22A,

the regulator shall serve a notice on the registry administrator and the operator stating that for the scheme year in question, the allocation of allowances shall be withheld.

(2) A notice under paragraph (1) 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 regulator will further notify the registry administrator when those conditions have been met.

(3) Where a notice under paragraph (1) contains the information required by sub-paragraph (2)(b), the regulator shall periodically, or when requested by a notice served on the regulator by the operator, assess whether the conditions specified in the notice under paragraph (1) have been met and shall notify the operator and the registry administrator when the conditions have been met.

(4) A notice under paragraph (1) containing the information required by sub-paragraph (2)(a) shall be an instruction to the registry administrator for the purposes of Article 42 or 48 of the Registries Regulation and shall supersede a previous instruction issued for the installation and scheme year in question.

(5) A notice under paragraph (1) containing the information required by sub-paragraph (2)(b) shall revoke a previous instruction to the registry administrator for the purposes of Article 42 or 48 of the Registries Regulation for the installation and scheme year in question.

(6) A notice served by the regulator in accordance with paragraph (3) shall be an instruction to the registry administrator for the purposes of Article 42 or 48 of the Registries Regulation for the installation and scheme year in question.".

(**4**) Available on the Defra website at http://defraweb/environment/climatechange/trading/eu/permits/pdf/annverifguide.pdf.

14.—(1) For regulation 23 (Allowance allocation where permit surrendered or revoked) substitute—

"**Allowance allocation where permit varied, surrendered or revoked**

23.—(1) Where a greenhouse gas emissions permit is varied under regulation 14 so that it no longer applies to an installation in which the operator has ceased to carry out a Schedule 1 activity, surrendered under regulation 16 or revoked under regulation 17—

(a) the regulator shall notify the Secretary of State; and

(b) where an allocation of allowances in respect of the installation which has ceased to be the subject of a permit has been made under regulation 22 or 22A for the scheme phase in which the permit is varied, 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 that installation from the date on which the variation notice, the notice of surrender or the revocation notice takes effect.

(2) Where the regulator notifies the Secretary of State that a greenhouse gas emissions permit has been varied so that it no longer applies to an installation in which the operator has ceased to carry out a Schedule 1 activity, 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 which has ceased to be the subject of a permit from the date on which the variation notice, the notice of surrender or the revocation notice takes effect.".

15. In paragraph (7) of regulation 25 (Supplementary decisions by the regulator or the Secretary of State)—

(a) at the end of sub-paragraph (b) insert "or";

(b) after sub-paragraph (b), insert—

"(c) a person has made a false statement in connection with an application under regulation 22A and the statement resulted in an over-allocation in respect of an installation,".

16. In paragraph (16) of regulation 25 (Supplementary decisions by the regulator or the Secretary of State) at the end of the definition of "over-allocation", insert—

"(iii) in relation to an allocation of allowances made under regulation 22A, the difference between the number of allowances allocated in respect of the application made under that regulation, and the number of allowances that would have been allocated if the statement had not been false or misleading;".

17. In regulation 26 (Registry), for paragraph (13) substitute—

"(13) An application by an organisation which wishes to be able to be appointed by an account holder as his additional authorised representative, the holder of a person holding account or a verifier—

(a) to be included in the registry;

(b) to appoint an individual as a new user in the registry; or

(c) to authorise an individual to use the registry on his behalf,

shall be accompanied by such fee as may be prescribed in respect of the application in Schedule 5.".

18. In regulation 32 (Appeals against a decision of, or a notice served by, the regulator or registry administrator)—

(a) at the end of sub-paragraph (3)(b) insert ", or regulation 22C"; and

(b) at the end of sub-paragraph (9)(e) insert “, or regulation 22C”.

19. In paragraph (3) of regulation 33 (Appeals for reconsideration of decisions) insert “or 22A(5)” at the end of sub-paragraph (b).

20. At the end of regulation 35 (Information), add—

“(6) The Secretary of State may use any information which she holds or has obtained for the purposes of these Regulations, and may share such information with other government bodies, for the purpose of preparing and publishing national energy and emissions statistics, including the preparation and publication of a national inventory.

(7) In this regulation, “national inventory” means the estimation of anthropogenic emissions of greenhouse gases by sources and removals of all greenhouse gases by sinks not controlled by the Montreal Protocol(**5**) under Article 4(1)(a) of the UNFCCC(**6**).”.

21. In paragraph (1) of regulation 46 (Agreement of Scottish Ministers, the National Assembly for Wales and the Department for Environment), after “21(1),” insert “22A(5),”.

22. In Schedule 2 (Appeals (other than appeals to which Schedule 4 applies)), for paragraph 2(1)(c) substitute—

“(c) in the case of an appeal under regulation 32(2) against a variation notice or an enforcement notice, of an appeal under regulation 32(3)(a) or 33(1) or (2)(b), or of an appeal under regulation 33(3)(b) other than an appeal which relates to a notice issued under regulation 22A(5), before the expiry of the period of two months beginning with the date of the notice which is the subject matter of the appeal;”.

23. After paragraph 2(1)(g) of Schedule 2 (Appeals (other than appeals to which Schedule 4 applies)), add—

“(h) in the case of an appeal under regulation 33(3)(b) which relates to a notice issued under regulation 22A(5), before the expiry of a period of 10 working days beginning with the date of the decision which is the subject matter of the appeal”.

24. In Schedule 5 (Fees and charges), for paragraph 3(1)(b) substitute—

“(b) in respect of an application by—

(i) a verifier; or

(ii) an organisation which wishes to be able to be appointed by an account holder as his additional authorised representative,

to be included in the registry, £175;

(c) subject to sub-paragraph (2), in respect of an application by the holder of a person holding account to appoint an individual as a new user in the registry, whom he may subsequently appoint as one of his authorised representatives in accordance with Article 19(3) of the Registries Regulation, £50;

(d) subject to sub-paragraph (2), in respect of an application by—

(i) a verifier; or

(ii) an organisation which has been included in the registry so that it is able to be appointed by an account holder as his additional authorised representative,

to appoint an individual as a new user in the registry, whom he may subsequently authorise to use the registry on his behalf, £50.

(**5**) Montreal Protocol on Substances that Deplete the Ozone Layer adopted at Montreal on 16th September 1987. This is available at http://hq.unep.org/ozone/Montreal-Protocol/Montreal-Protocol2000.shtml.

(**6**) United Nations Framework Convention on Climate Change signed in New York on 9th May 1992. This is available at http://unfccc.int/resource/docs/convkp/conveng.pdf.

(e) subject to sub-paragraph (2), in respect of an application by—

(i) a verifier; or

(ii) an organisation which has been included in the registry so that it is able to be appointed by an account holder as his additional authorised representative,

to authorise an individual, who has not previously been appointed as a new user in the registry, to use the registry on his behalf, £50.".

25. In Schedule 5 (Fees and charges), for sub-paragraph 3(2) substitute—

"(2) Where, in respect of a verifier or an organisation, the application referred to in paragraph (1)(b) included an application to authorise only one individual to use the registry on its behalf, paragraphs (1)(d) and (1)(e) shall not apply to the verifier or organisation's first subsequent application—

(a) to appoint an individual as a new user in the registry; or

(b) to authorise an individual to use the registry on its behalf.".

26. In Schedule 5 (Fees and charges), for paragraph 9 substitute—

"**9.** Where during a financial year—

(a) a greenhouse gas emissions permit is granted in relation to an installation under regulation 9(4);

(b) an installation ceases to be an excluded installation;

(c) a planned installation is put into operation; or

(d) a permit is partially transferred in accordance with regulation 15,

the charge payable under paragraph 4 or 5 of this Schedule in respect of the subsistence of the greenhouse gas emissions permit relating to the installation (or in the case of a partially transferred permit the transferred unit) for the remainder of that financial year shall be a proportion of the charge shown in Table 1 or Table 2 calculated on a daily basis for the remainder of the financial year commencing on the date of the grant of the greenhouse gas emissions permit, the date on which the installation ceased to be an excluded installation, the date on which the planned installation is put into operation, or the date upon which the transfer took effect, as appropriate.".

27. After Schedule 6, add Schedule 7 set out in the Schedule.

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

Date 12 March 2006