

2007 No. 3433

ENVIRONMENTAL PROTECTION

**The Greenhouse Gas Emissions Trading Scheme (Amendment
No. 2) Regulations 2007**

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|-------------------------------|---------|---------------------------|
| <i>Made</i> | - - - - | <i>4th December 2007</i> |
| <i>Laid before Parliament</i> | | <i>10th December 2007</i> |
| <i>Coming into force</i> | - - | <i>31st December 2007</i> |

The Secretary of State is designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to greenhouse gas emission allowance trading.

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972, as read with paragraph 1A of Schedule 2 to that Act(c):

Title and commencement

1. These Regulations may be cited as the Greenhouse Gas Emissions Trading Scheme (Amendment No. 2) Regulations 2007 and come into force on 31st December 2007.

Amendment of the Greenhouse Gas Emissions Trading Scheme Regulations 2005

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

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

(a) at the appropriate place, insert—

“AAU” means assigned amount unit and has the meaning given to it in Article 2(e) of the Registries Regulation;

“RMU” means removal unit and has the meaning given to it in Article 2(r) of the Registries Regulation;

(b) in the definition of “the Monitoring and Reporting Decision” substitute “2007/589/EC as amended from time to time” for “2004/156/EC”;

(c) in the definition of “Registries Regulation” after “December 2004” insert “as amended from time to time”.

(a) S.I. 2004/1984.

(b) 1972 c. 68.

(c) Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (c. 51).

(d) S.I. 2005/925 as amended by S.I. 2005/2903, S.I. 2006/737, S.I. 2007/465 and S.I. 2007/1096.

4. For paragraph (4)(e) of regulation 15 (transfer of greenhouse gas emissions permits), substitute—

“(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 regulator has not determined the application in accordance with regulation 22A(11), specify whether the application under regulation 22A relates to the transferred unit.”.

5. In paragraph (3)(b) of regulation 16 (applications to surrender a greenhouse gas emissions permit), delete “, or a proportion of those allowances,” and “or a proportion of its allocation”.

6. In paragraph (9) of regulation 21 (allocation and issue of allowances), after “or to the date” delete “of” and insert “specified in”.

7. In paragraph (9) of regulation 21A (allocation by auction or sale), after “a notice” insert “, which shall be an instruction to the registry administrator for the purposes of Article 48a of the Registries Regulation.”.

8.—(1) Regulation 22 (application for an allocation from the new entrant reserve) is amended as follows.

(2) In paragraph (4), delete “(6) or”.

(3) Delete paragraphs (5) and (6).

(4) In paragraph (7), delete “, or deemed to have been made under paragraph (1) in accordance with paragraph (5),”.

(5) For paragraph (10), substitute—

“(10) Subject to paragraph (11), the regulator must give notice under paragraph (13) of its determination of an application under paragraph (1) within a period of two months beginning on the date on which the application is received by the regulator, or within such longer period as may be agreed in writing by the applicant.”.

(6) In paragraph (21), substitute “the automatic national allocation plan table change process in Article 44(2) and Article” for “Article 42 or”.

9. For regulation 22A (application for an allocation for late installations), substitute—

“**22A.**—(1) Before 1st January 2010, an operator of an installation may apply to the regulator and, where the regulator is not the Environment Agency, shall send a copy of that application to the Environment Agency, 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) The regulator shall notify the operator and, where the regulator is not the Environment Agency, the Environment Agency of whether the application under paragraph (1) is duly made within 21 working days of receipt of the application and, where the regulator does not notify within this time, the application shall be deemed to have been duly made.

(3) Where an operator has not made an application for a greenhouse gas emissions permit under regulation 8(1), an application for a permit must be made at the same time as an application under paragraph (1).

(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 approved national allocation plan, this regulation and regulation 22B and shall be accompanied by the fee prescribed in a charging scheme under regulation 18 or 19.

(5) Where an application under paragraph (1) relates to an offshore installation, the fee prescribed in the charging scheme 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.

(6) If an operator fails to pay the fee in accordance with paragraph (5) the regulator may reject the application.

(7) The regulator may, by notice to the applicant, require the applicant 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 information within the period specified and the regulator gives notice to the applicant that it treats the application as having been withdrawn, the application shall be deemed to have been withdrawn at the end of the specified period.

(8) Subject to paragraph (9), the regulator must give notice under paragraph (11) of its determination of an application under paragraph (1) within a period of two months beginning on the date on which the application was received by the regulator, or within such longer period as may be agreed in writing by the applicant.

(9) For the purposes of calculating the period of two months 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 (7) and ending on the date on which the applicant furnishes the information specified in the notice.

(10) If the regulator fails to give notice of its determination of an application under paragraph (1) within the period allowed by paragraph (8), the application shall be deemed to have been rejected if the operator notifies the regulator that it treats the application as having been rejected.

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

- (a) determine the eligible allocation and, subject to paragraphs (12) and (13), allocate allowances to the operator in respect of the installation to which the application relates, or
- (b) reject the application,

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

(12) Allocations of allowances to operators under paragraph (11)(a) must be made in the order that duly made applications are received by the Environment Agency under paragraph (1).

(13) Where a notice has been served under paragraph (11)(a) but allocations are not immediately allocated, the regulator may serve a further notice under paragraph (11)(a) allocating the allowances.

(14) Where the eligible allocation is greater than the number of available allowances, a notice under paragraph (11)(a) shall allocate the available allowances and the regulator may make additional allocations of allowances under paragraph (11)(a) in accordance with paragraph (12) if additional allowances subsequently become available in the late installation element of the new entrant reserve until the number of allowances allocated under paragraph (11)(a) equals the eligible allocation.

(15) Where an allocation of allowances is made under paragraph (11)(a), a notice under that paragraph 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 the number of allowances to be issued, subject to regulations 22C and 23(3), 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.

(16) A notice under paragraph (11)(a) shall be an instruction to the registry administrator for the purposes of the automatic national allocation plan table change in Article 44(2) and Article 48 of the Registries Regulation.

(17) 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 (11)(a) made after the transfer takes effect shall be allocated to the proposed transferee.

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

(19) Where—

- (a) the regulator rejects an application under paragraph (11)(b), or
- (b) an operator appeals the determination of the regulator under paragraph (11)(a),

the regulator may set aside an appropriate amount of allowances in the late installations element of the new entrant reserve pending either the expiry of the time in which an appeal must be notified under paragraph 2(1)(e) of Schedule 2 or the determination of the appeal.

(20) For the purposes of this regulation—

“available allowances” means allowances—

- (a) in the element of the new entrant reserve set aside for late installations as set out in the approved national allocation plan, or
- (b) which have been added to that element of the new entrant reserve by the Secretary of State,

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

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

10. For regulation 22B (eligible allocations), substitute—

“**22B.**—(1) For the purposes of an application made under regulation 22A(1) the eligible allocation shall be the allocation for the year in which the permit is issued or, where the permit is issued before the start of a phase, the allocation for the first year of that phase, plus the annual allocations for the remaining years of the phase.

(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:

$$Z = \frac{D}{365} \times X$$

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);

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) The annual allocation shall, for the purposes of paragraph (1), be calculated using the following formula:

$$X = A \times S \times L$$

Where:

X is the annual allocation;

A (gross annual allocation) is—

- (a) for installations that commenced operation before 1st January 2004, the verified relevant emissions of the installation calculated in accordance with section 3 and appendix C of the approved national allocation plan;
- (b) for installations that commenced operation on or after 1st January 2004 or that do not have the data available to calculate their emissions under sub-paragraph (a), the verified gross annual allocation calculated in accordance with section E6 of appendix D of the approved national allocation plan;

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 an installation that should have been covered by a permit in the first phase was made—
 - (i) on or before 28th February 2007, 100%;
 - (ii) before 1st January 2008, 60%;
 - (iii) on or after 1st January 2008, 25%;
- (b) where an application for a greenhouse gas emissions permit in respect of an installation in an expansion sector of the phase was made—
 - (i) before 1st January 2008, 100%;
 - (ii) on or before 30th June 2008, 90%;
 - (iii) after 30th June 2008, 75%.

(4) For the purposes of this regulation—

“verified” means verified in accordance with the guidance issued by the Secretary of State on 31st March 2006 entitled “Guidance on baseline verification data”(a); and

“expansion sector” has the meaning given to it in an approved national allocation plan.”

11. For regulation 23 (allowance allocation where permit varied, surrendered or revoked), substitute—

“**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(1), the regulator must notify the Secretary of State and the registry administrator.

(2) A notice under paragraph (1) to the registry administrator shall be an instruction for the purposes of Article 17(3) of the Registries Regulation.

(3) 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 steps 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.

(4) The steps which the Secretary of State may take for the purposes of paragraph (3) includes instructing the registry administrator by notice not to issue any further allowances in respect of that installation.

(a) Copies of the Guidance on baseline verification data are available to the public from the EU Emissions Trading Team, Department for Food, Environment and Rural Affairs, Ergon House, Horseferry Road, London SW1P 2AL or by email at eu.ets@defra.gsi.gov.uk.

(5) The registry administrator must comply with any notice served by the Secretary of State under paragraph (4).”.

12.—(1) Regulation 24 (applications to retain allocation) is amended as follows.

(2) In paragraph (1), delete “, or a proportion of the allowances,”.

(3) For paragraph (7)(a), substitute—

“(a) accept the application and provide, subject to such conditions as the regulator considers appropriate, for all the allowances allocated in respect of the installation for the scheme phase to which the application relates to be retained, or”.

(4) Delete paragraphs (9) and (10).

13.—(1) Regulation 25 (supplementary decisions by the regulator or the Secretary of State) is amended as follows.

(2) In paragraph (1)(a)(ii), substitute “22A(1)” for “24(1)”.

(3) In paragraph (5), after “over-allocation” insert—

“, and such steps may include—

(a) an instruction to the registry administrator under Article 44 of the Registries Regulation to amend the allocation relating to the new entrant; and

(b) a revocation of a previous instruction under Article 48 of the Registries Regulation.”.

(4) In paragraph (7)(b), delete “or”.

(5) Delete paragraph (7)(c).

(6) In paragraph (16), in the definition of “over-allocation”, delete sub-paragraph (ii).

14. In paragraph (17) of regulation 26 (registry), after “all” insert “AAUs, RMUs,”.

15. In paragraph (4) of regulation 30 (power of the regulator to determine reportable emissions), substitute “51(3)” for “51(2)”.

16. For paragraph (3)(b) of regulation 32 (appeals against a decision of, or a notice served by, the regulator or registry administrator), substitute—

“(b) an operator whose application for an allocation from the new entrant reserve under regulation 22(1) or 22A(1) is rejected or who is aggrieved by the provisions of a notice under 22(13)(a) or (b), (17) or (18), regulation 22A(11)(a) or regulation 22C”.

17. In paragraph (3)(b) of regulation 33 (appeals for reconsideration of decisions), delete “or 22A(5)”.

18. For paragraph (4) of regulation 39 (civil penalties: excess emissions) substitute—

“(4) In relation to paragraph (3)(b), the reference to an amount in Euro shall be taken to be a reference to the sterling equivalent of that number of Euro, converted by reference to the first rate of conversion to be published in September of the scheme year preceding that in which the liability for the penalty arose in the C series of the Official Journal of the European Communities.”.

19. In paragraph (1) of regulation 46 (agreement of Scottish Ministers, the National Assembly for Wales and the Department for Environment), delete “22A(5)”.

20.—(1) Schedule 2 (appeals (other than appeals to which schedule 4 applies)) is amended as follows.

(2) In paragraph 2(1)(c), delete “other than an appeal which relates to a notice issued under regulation 22A(5)”.

(3) Delete paragraph 2(1)(h).

21. For the table in Schedule 7 (table of sector and new entrant reserve reduction factors), substitute—

| <i>“Sector</i> | <i>Reduction factor (%)</i> |
|-----------------------------|-----------------------------|
| Aluminium | 102.53 |
| Cement | 97.30 |
| Ceramics | 95.16 |
| Chemicals | 95.45 |
| Downstream Gas | 65.64 |
| Food & Drink | 88.68 |
| Glass | 109.46 |
| Iron & Steel | 109.92 |
| Large Electricity Producers | 61.82 |
| Lime | 109.64 |
| Offshore | 73.05 |
| Other Electricity Producers | 89.26 |
| Others A | 132.18 |
| Others B | 121.87 |
| Others C | 76.58 |
| Pulp & Paper | 102.76 |
| Refineries | 99.40 |
| Services | 84.99 |
| CHP | 95.14 ^(*) |

(*) Where an element of an installation in any sector in this table is defined as good quality CHP in accordance with the approved national allocation plan, the reduction factor percentage for CHP shall be applied to that element”

4th December 2007

Phil Woolas
 Minister of State
 Department for Environment, Food and Rural Affairs

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Greenhouse Gas Trading Scheme Regulations 2005 (“the 2005 Regulations”) which provide a framework for a greenhouse gas emissions trading scheme and implement Directive 2003/87/EC of the European Parliament and the Council establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (the “Emissions Trading Directive”).

These Regulations make several technical amendments to the 2005 Regulations and make consequential amendments to reflect the changes in the emissions trading scheme introduced by the UK’s National Allocation Plan for participation in Phase II of the scheme.

Regulations 9, 10 and 21 of these Regulations introduce a new system and process for operators of installations that are late in applying for an allocation under the 2005 Regulations. These operators will apply for an allocation to the fund for late installations, which is part of the new entrant reserve under the National Allocation Plan for Phase II. Under the new system these operators will apply to the regulator rather than the Secretary of State and have their allocation determined in accordance with the formulae introduced by regulation 10.

A full impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

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