

2007 No. 465

ENVIRONMENTAL PROTECTION

**The Greenhouse Gas Emissions Trading Scheme (Amendment)
Regulations 2007**

<i>Made</i>	- - - -	<i>19th February 2007</i>
<i>Laid before Parliament</i>		<i>22nd February 2007</i>
<i>Coming into force</i>	- -	<i>16th March 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.

He makes the following Regulations in exercise of the powers conferred upon him by that section:

Title and commencement

1.—(1) These Regulations may be cited as the Greenhouse Gas Emissions Trading Scheme (Amendment) Regulations 2007.

(2) These regulations come into force on 16th March 2007.

Amendment of the Greenhouse Gas Emissions Trading Scheme Regulations 2005

2. The Greenhouse Gas Emissions Trading Scheme Regulations 2005^(c) are amended as follows.

3. After regulation 21 (allocation and issue of allowances), insert—

“Allocation by auction or sale

21A.—(1) Before 1st May 2008, the Secretary of State may decide to allocate allowances which meet the conditions in paragraph (2) by way of auction or sale.

(2) The allowances must—

- (a) be for the first scheme phase;
- (b) be contained within the new entrant reserve; and
- (c) qualify for auction or sale in accordance with the approved national allocation plan for that phase.

(a) S.I. 2004/1984.

(b) 1972 c. 68. Section 57(1) of the Scotland Act 1998 (c. 46) provides that despite the transfer to the Scottish Ministers of functions in relation to observing and implementing obligations under Community law by virtue of that Act, any function of a Minister of the Crown shall continue to be exercisable by him as regards Scotland for the purposes specified in section 2(2) of the European Communities Act 1972.

(c) S.I. 2005/925 as amended by S.I. 2005/2903 and S.I. 2006/737.

(3) Subject to regulation 46, if the Secretary of State decides under paragraph (1) to allocate allowances by way of auction or sale, he may enter into an agreement with an account holder (“the purchaser”) to allocate allowances to that person in exchange for payment.

(4) Where the Secretary of State—

(a) agrees to allocate allowances to the purchaser in accordance with this regulation; and

(b) has received the agreed payment from the purchaser by the agreed date, he shall, within 7 days of receiving the payment, serve a notice on the purchaser and the registry administrator^(a) allocating those allowances to the purchaser.

(5) The Secretary of State may take one of the steps specified in paragraph (6) if—

(a) he has agreed to allocate allowances to the purchaser in accordance with this regulation; and

(b) he has not received the agreed payment from the purchaser by the agreed date.

(6) The steps are—

(a) not to allocate those allowances to the purchaser, by serving a notice on him to that effect; or

(b) to recover the outstanding payment from the purchaser summarily as a civil debt.

(7) If in accordance with paragraph (6)(b) the Secretary of State recovers the outstanding payment from the purchaser before 10th April 2008, he shall, within 7 days of receiving such payment, serve a notice on the purchaser and the registry administrator allocating the allowances that were the subject of their agreement to the purchaser.

(8) A notice under paragraph (4) or (7) shall specify—

(a) the purchaser;

(b) the purchaser’s holding account;

(c) the number of allowances to be allocated to the purchaser,

(d) where all of the allowances are not to be issued in the same year, the number of allowances to be issued in each remaining year or part year of the first scheme phase; and

(e) the date, or where all of the allowances are not to be issued in the same year the dates in each relevant year, by which the allowances are to be issued (the first of which shall be no later than 14 days after the date of the notice).

(9) Where a notice is served on the registry administrator in accordance with paragraph (4) or (7), the registry administrator shall transfer the quantity of allowances specified in the notice from the party holding account to the account specified in the notice.

(10) The registry administrator shall transfer allowances in accordance with paragraph (9) by the date specified in the notice in accordance with paragraph (8)(e).

(11) The registry administrator shall transfer allowances in accordance with the internal transfer process set out in Annex IX to the Registries Regulation.

(12) Where appointed to do so by the Secretary of State, the Environment Agency or the Scottish Environment Protection Agency may exercise any of the Secretary of State’s functions under this regulation (other than the power of appointment under this paragraph) subject to any limitations imposed by the Secretary of State when making the appointment.”

4. At the end of regulation 46 (agreement of Scottish Ministers, etc), add—

(a) The Environment Agency acts as registry administrator for the purposes of the Greenhouse Gas Emissions Trading Scheme Regulations 2005 – see regulation 26(2).

“(5) Subject to paragraph (8), the power of the Secretary of State under regulation 21A(1) (but not any power of the Environment Agency or the Scottish Environment Protection Agency which arises by virtue of regulation 21A(12)) is exercisable only with the consent of the Scottish Ministers, the National Assembly for Wales and the Department of the Environment (“the devolved administrations”).

(6) Subject to paragraph (8), the Secretary of State’s power of appointment under regulation 21A(12), including the power to impose limitations on such an appointment, is exercisable only with the consent of the devolved administrations.

(7) Consent under paragraph (5) means consent to the manner in which the Secretary of State intends to conduct an auction or sale of allowance.

(8) The Secretary of State may exercise the power in regulation 21A(1) or (12) where—

- (a) consent of any one or more of the devolved administrations has not been given;
- (b) he considers that it is necessary to exercise the power to ensure that the United Kingdom complies with its obligations under the Directive; and
- (c) he serves a notice on each of the devolved administrations which has not given its consent stating that he has decided to exercise the power without such consent.”.

19th February 2007

Ian Pearson
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 Emissions 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 provide that the Secretary of State may allocate allowances for the first phase of the scheme (2005 to 2007) by way of auction or sale. The Secretary of State is permitted to enter into agreements with persons who hold accounts in the emissions trading registry to transfer allowances to those persons in exchange for payment (regulations 21A and 46 of the 2005 Regulations, as inserted by these Regulations).

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

£3.00

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E0223 2/2007 170223T 19585