EXPLANATORY MEMORANDUM TO

The Greenhouse Gas Emissions Trading Scheme (Amendment) Regulations 2007

2007 No. 465

1. This explanatory memorandum has been prepared by Defra and is laid before Parliament by Command of Her Majesty.

This memorandum does not contain information for the Joint Committee on Statutory Instruments.

2. Description

2.1 This statutory instrument amends the Greenhouse Gas Emissions Trading Scheme Regulations 2005 (SI 2005/925) ("the 2005 Regulations") to enable the disposal of allowances by auction or sale, as provided for in the UK's National Allocation Plan for phase I (2005-2007) that was submitted to the EU Commission and approved by them in accordance with Article 9 of the Emission Trading Directive (Directive 2003/87/EC) ("the Directive").

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

3.1 None

4. Legislative Background

4.1 These Regulations are made under section 2(2) European Communities Act 1972 and they amend the 2005 Regulations in order to allow Government to sell or auction allowances as laid out in the UK's phase I National Allocation Plan ("NAP I"). This is an additional measure in the UK's implementation of the Emissions Trading Directive (Directive 2003/87/EC ("the Directive").

4.2 The 2005 Regulations were made on 23rd March 2005 and came into force on 21st April 2005, revoking and replacing the Greenhouse Gas Emissions Trading Scheme Regulations 2003 (S.I. 2003/3311). The 2005 Regulations now require amendments to include provisions for sale or auction of allowances.

4.4 Under regulation 20 of the 2005 Regulations the Secretary of State must develop a national allocation plan[1] for each scheme phase. The approved National Allocation Plan for the first phase of the Scheme (2005-2007) was published on 24th May 2005.

4.5 Appendix C of NAP I makes provisions for any surplus allowances in the New Entrant Reserve to be auctioned or sold.

4.6 However, the 2005 Regulations contain no power for the Secretary of State or regulator to auction or sell these allowances or for the registry administrator to transfer allowances into the accounts of those who purchase them. Therefore these amendment

[1] See: http://www.defra.gov.uk/environment/climatechange/trading/eu/nap/approved.htm

regulations establish a process to do this and allows the Secretary of State to allocate allowances in accordance with the NAP I provisions.

5. Territorial Extent and Application

5.1 With the agreement of Devolved Administration Ministers, this instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

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

7. Policy background

7.1 The EU Emissions Trading Scheme ("the Scheme") is one of the policies which has been introduced across Europe to tackle emissions of carbon dioxide and other greenhouse gases and combat the serious threat of climate change.

7.2 The Scheme commenced on 1 January 2005. The first phase runs from 2005-2007 and the second phase will run from 2008-2012 to coincide with the first Kyoto Commitment Period. Further periods are expected subsequently.

7.3 The Scheme works on a "Cap and Trade" basis. EU Member State governments are required to set an emission cap for all installations covered by the Scheme. Each installation is then allocated allowances for the particular commitment period in question. The total number of allowances to be allocated to installations in the UK for each phase, and the manner in which they will be distributed is set down in a document called the National Allocation Plan. The number of allowances allocated to each individual installation is then subsequently set out in a national allocation decision in accordance with Article 11 of the Directive and regulation 21 of the 2005 Regulations.

7.4 The UK Government, in agreement with Devolved Administration Ministers, decided to set aside a number of allowances (46.8m allowances) for Phase 1 to be issued to eligible new entrants using a queuing system. The number of allowances in the New Entrant Reserve (NER) would decrease as allowances are allocated to new entrants and increase when installations closed, as the allowances set aside for them are added to the NER. Should there be surplus allowances in the NER, and depending on market conditions, Government may wish to sell or auction these surplus allowances.

7.5 These amendment Regulations allow the Secretary of State or the Environment Agency or the Scottish Environment Protection Agency if appointed to do so, in agreement with Devolved Administration Ministers, to allocate surplus allowances from the NER to a registry account holder in exchange for payment. Once payment has been received the amendments set out a process for the allowances to be transferred by the Registry Administrator (the Environment Agency) to the appropriate account. Should buyers default on payment, the Secretary of State will be able to either recover payment as a debt or stop the allowances from being transferred.

7.6 These amendment Regulations allow the Secretary of State to allocate allowances for payment with the consent of Devolved Administration Ministers. Devolved Administration Ministers will therefore agree the manner in which any allowances are placed on the market and the format, rules and other criteria for any auction or sale.

7.7 These amendment Regulations enable the Government to allocate allowances by auction or sale, in accordance with the NAP I, which has already been the subject of three public consultations:

- two on the principle of auctioning or sale (in August 2003 and in July 2005) and
- one on the method of auctioning or sale (in April 2005).

7.8 Ministers therefore decided not to consult again specifically on the text of these amending Regulations as they just provide the necessary technical procedures to enable an auction or sale to take place. They contain no new policy. It does not place any new duties on anyone other than the Environment Agency which, as registry administrator, will need to transfer the allowances once an auction or sale has taken place.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies. These Regulations enable disposal of allowances to those who are already account holders under the Scheme.

8.2 The impact on the public sector is to enable the Secretary of State and the regulators to ensure that the UK is able to dispose of surplus allowances as envisaged by the NAP I (as approved by the European Commission) if he deems it appropriate to do so.

9. Contact

Margaret Read at the Department for Environment, Food and Rural Affairs Tel: +44 (0)20 7082 8908 or e-mail: Margaret.read@defra.gsi.gov.uk can answer any queries regarding the instrument.