
STATUTORY INSTRUMENTS

2011 No. 1506

CLIMATE CHANGE

**The Greenhouse Gas Emissions Trading
Scheme (Nitrous Oxide) Regulations 2011**

Made - - - - 15th June 2011

Coming into force in accordance with regulation 1(1)

The Secretary of State is a Minister designated ^{M1} for the purposes of section 2(2) of the European Communities Act 1972 ^{M2} in relation to the environment.

In accordance with section 2(4) of the Pollution Prevention and Control Act 1999 (“the 1999 Act”) ^{M3}, the Secretary of State has consulted the Environment Agency, the Scottish Environment Protection Agency, and such bodies or persons appearing to the Secretary of State to be representative of the interests of local government, industry, agriculture and small businesses, and such other bodies and persons, as the Secretary of State considers appropriate.

In accordance with section 2(8) and (9)(d) of the 1999 Act and paragraph 2(2) of Schedule 2 to the European Communities Act 1972, a draft of these Regulations has been laid before, and approved by a resolution of, each House of Parliament.

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972, and it appears to the Secretary of State that it is expedient for the references to an EU instrument in these Regulations to be construed as references to that instrument as amended from time to time.

Accordingly the Secretary of State, in exercise of the powers conferred by section 2 of and Schedule 1 to the 1999 Act ^{M4} and by section 2(2) of the European Communities Act 1972, as read with paragraph 1A of Schedule 2 to the European Communities Act 1972 ^{M5}, makes the following Regulations ^{M6}:

Marginal Citations

M1 SI 2008/301.

M2 1972 c. 68; section 2(2) was amended by section 27(1)(a) of the [Legislative and Regulatory Reform Act 2006 \(c. 51\)](#) and by section 3(3) of, and Part 1 of the Schedule to, the [European Union \(Amendment\) Act 2008 \(c. 7\)](#).

M3 1999 c. 24.

M4 There are amendments to Schedule 1 which are not relevant to these Regulations.

Changes to legislation: There are currently no known outstanding effects for the The Greenhouse Gas Emissions Trading Scheme (Nitrous Oxide) Regulations 2011. (See end of Document for details)

- M5** Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 and amended by S.I. 2007/1388 and by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008.
- M6** Under section 57 of the Scotland Act 1998 (c. 46), despite the transfer to the Scottish Ministers of functions in relation to observing and implementing obligations under Community law in respect of devolved matters, any function of the Secretary of State in relation to any matter continues to be exercisable as regards Scotland for the purposes specified in section 2(2) of the European Communities Act 1972. And similarly, under paragraph 5 of Schedule 3 to the Government of Wales Act 2006 (c. 32), despite the transfer to the Welsh Ministers of functions under section 2 of the 1999 Act so far as exercisable in relation to Wales (except in relation to offshore oil and gas exploration and exploitation), those functions continue to be exercisable by the Secretary of State in relation to Wales for such purposes.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Greenhouse Gas Emissions Trading Scheme (Nitrous Oxide) Regulations 2011, and come into force on the day after the day on which they are made.

(2) In these Regulations, “the 2005 Regulations” means the Greenhouse Gas Emissions Trading Scheme Regulations 2005^{M7}.

Marginal Citations

M7 SI 2005/925; relevant amendments are noted below.

Specification of an amended approved national allocation plan

2.—(1) For the purposes of the 2005 Regulations, the document entitled “EU Emissions Trading Scheme: Approved Phase II National Allocation Plan 2008-2012”^{M8}, as amended and published by the Secretary of State on the day on which these Regulations are made, is specified as the approved national allocation plan for the five year period beginning on 1st January 2008.

(2) Regulation 2 of the Greenhouse Gas Emissions Trading Scheme (Miscellaneous Provisions) Regulations 2007^{M9} is revoked.

Marginal Citations

- M8** See the website of the Department of Energy and Climate Change at <http://www.decc.gov.uk/publications/>
- M9** SI 2007/1096.

Amendments of the Greenhouse Gas Emissions Trading Scheme Regulations 2005

^{F13}.

Textual Amendments

F1 Regs. 3, 4 revoked (1.1.2013) by The Greenhouse Gas Emissions Trading Scheme Regulations 2012 (S.I. 2012/3038), regs. 1, **85(b)(viii)** (with regs. 85, 87, Sch. 1)

Transitional provisions

^{F1}4.

Textual Amendments

F1 Regs. 3, 4 revoked (1.1.2013) by [The Greenhouse Gas Emissions Trading Scheme Regulations 2012 \(S.I. 2012/3038\)](#), regs. 1, **85(b)(viii)** (with regs. 85, 87, Sch. 1)

Saving provision

5. Except in relation to the allocation of allowances in respect of emissions of nitrous oxide from an installation for the production of nitric acid, any reference in the 2005 Regulations to the date on which the approved NAP regulations in relation to the second scheme phase enter into force continues to be a reference to 1st May 2007 ^{M10}.

Marginal Citations

M10 This is the date on which the Greenhouse Gas Emissions Trading Scheme (Miscellaneous Provisions) Regulations 2007 came into force (see [regulation 2\(2\)](#) of these Regulations).

Department of Energy and Climate Change

Greg Barker
Minister of State

EXPLANATORY NOTE

(This note is not part of the Regulations)

^{M11}These Regulations exercise an option provided by Article 24 of Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowance trading within the Community (“the Directive”). The Directive is implemented, as regards installations in the United Kingdom, by the Greenhouse Gas Emissions Trading Scheme Regulations 2005 (“the 2005 Regulations”).

^{M12M13}The Emissions Trading Scheme (“ETS”) established under the Directive at present applies only to emissions of carbon dioxide from the activities specified in Annex I to the Directive. From 1st January 2013, Annex I will be replaced by a new version of that Annex which includes, in particular, the emission of nitrous oxide (N₂O) from the production of nitric acid. Under Article 24 of the Directive, however, a Member State may already apply emission allowance trading in accordance with the Directive to greenhouse gases and activities that are not yet listed in Annex I, provided that it obtains the approval of the European Commission. Where both the activity and the gas concerned are not yet listed in Annex I, the Commission's approval is subject to the comitology procedure laid down by Article 5a of Decision 1999/468/EC. The United Kingdom made an application to include in the ETS nitrous oxide emissions from the production of nitric acid, and following the outcome of that procedure the Commission adopted its approval decision on 6th June 2011. In giving its approval, the Commission also agreed to consequential amendments of the relevant approved national allocation plan; this is the plan that lays down the amounts of greenhouse gas allowances that are allocated to different installations within the United Kingdom for the second phase of the ETS (2008-2012).

^{M14}Regulation 2 specifies that plan as so amended, for the purposes of the definition of “approved national allocation plan” in regulation 2(1) of the 2005 Regulations, and revokes in consequence regulation 2 of the Greenhouse Gas Emissions Trading Scheme (Miscellaneous Provisions) Regulations 2007.

Regulation 3(2) and (3) amends regulations 2(1) and 21(2) of the 2005 Regulations to take into account that new specification.

Regulation 3(4) makes provision in relation to the new entrant reserve (as defined in regulation 2(1) of the 2005 Regulations) in the case of nitric acid production.

^{M15}Regulation 3(5) ensures that project credits under the Kyoto Protocol may not be used to fulfil an obligation to surrender allowances for nitrous oxide emissions.

Regulation 3(6) amends the table in Schedule 1 to the 2005 Regulations so that it now includes an entry for the emission of nitrous oxide from the production of nitric acid.

Regulation 4 contains transitional provisions. These ensure that an operator who has already begun nitric acid production before the commencement of these Regulations has a period of grace during which to apply for a corresponding permit, or variation of a permit, under the 2005 Regulations. Furthermore, an operator who has monitored emissions of nitrous oxide from 1st April 2011 will be able to receive its full allocation of allowances under the national allocation plan; otherwise the allocation for 2011 is reduced to take into account the emissions that cannot be accounted for between 1st April 2011 and the commencement date.

Regulation 5 contains a saving provision.

A full impact assessment of the costs and benefits of this instrument is available from the Department of Energy and Climate Change's National Climate Change Division (telephone 0300 060 4000), and is published alongside the instrument and its Explanatory Memorandum on the legislation website of The National Archives (<http://www.legislation.gov.uk>). A transposition note

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setting out how these Regulations implement the relevant provisions of the Directive is annexed to that Explanatory Memorandum.

Changes to legislation:

There are currently no known outstanding effects for the The Greenhouse Gas Emissions Trading Scheme (Nitrous Oxide) Regulations 2011.