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STATUTORY INSTRUMENTS

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**2013 No. 3135**

The Greenhouse Gas Emissions Trading Scheme and National Emissions Inventory (Amendment) Regulations 2013

PART 3

Amendment of the Greenhouse Gas Emissions Trading Scheme (Amendment) and National Emissions Inventory Regulations 2005

**Interpretation**

7. A reference in this Part to a numbered regulation is to that regulation of the Greenhouse Gas Emissions Trading Scheme (Amendment) and National Emissions Inventory Regulations 2005(1).

**Review of the Regulations**

8. After regulation 1 insert—

**“Duty to review these Regulations**

1A.—(1) The Secretary of State must from time to time—

- (a) carry out a review of these Regulations;
- (b) set out the conclusions of the review in a report; and
- (c) publish the report.

(2) In carrying out the review the Secretary of State must, so far as is reasonable, have regard to how the Emissions Trading Directive and Decision [280/2004/EC](#)(2) are implemented in other member States.

(3) The report must in particular—

- (a) set out the objectives intended to be achieved by the regulatory system established by these Regulations;
- (b) assess the extent to which those objectives are achieved; and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(4) The first report under this regulation must be published before the end of the period of five years beginning with the day on which the Greenhouse Gas Emissions Trading Scheme and National Emissions Inventory (Amendment) Regulations 2013 come into force.

(5) Reports under this regulation are afterwards to be published at intervals not exceeding five years.”

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(1) [S.I. 2005/2903](#), amended by [S.I. 2011/727](#) and [2012/3038](#).

(2) Decision No [280/2004/EC](#) of the European Parliament and of the Council concerning a mechanism for monitoring Community greenhouse gas emissions and for implementing the Kyoto Protocol (OJ No L 49, 19.2.2004, p 1).

## Notices

9. In regulation 3, for “Regulation 4 of the 2005 Regulations” substitute “Schedule 2 to the Greenhouse Gas Emissions Trading Scheme Regulations 2012”.

## National inventory: removal of powers of entry

- 10.—(1) Omit regulation 11 (powers of entry).
- (2) In regulation 12 (agreement with devolved administrations on national inventory)—
- (a) after “under regulation 10” omit “and to authorise a person under regulation 11”;
  - (b) after “served in Scotland” omit “or an authorisation authorises the exercise of powers in Scotland”;
  - (c) after “served in Northern Ireland” omit “or an authorisation authorises the exercise of powers in Northern Ireland”; and
  - (d) after “served in Wales” omit “or an authorisation authorises the exercise of powers in Wales”.

## National inventory: abolition of criminal offences

11. In paragraph (1) of regulation 13 (offences), omit—
- (a) sub-paragraph (a);
  - (b) paragraphs (ii) and (iii) of sub-paragraph (b); and
  - (c) sub-paragraphs (c) and (d).

## National inventory: civil penalties

12. After regulation 13 insert—

# “PART 6

## Civil penalties

### Penalty notices

14.—(1) Subject to regulation 15, where the Secretary of State is satisfied that a person (“P”) is liable to a civil penalty under this Part the Secretary of State must, serve a notice on P (a “penalty notice”).

- (2) The penalty notice must specify—
- (a) the regulation under which that liability arises;
  - (b) the amount of the civil penalty due;
  - (c) whether or not P may be liable to a civil penalty in accordance with regulation 16(2)(b) (an “additional daily penalty”); and
  - (d) if P will not be liable to an additional daily penalty, the date by which the penalty for which P is liable must be paid.

(3) Subject to regulation 15, where the Secretary of State is satisfied that P is liable to an additional daily penalty the Secretary of State must, when the amount of that additional daily penalty can be determined, serve a notice on P (an “additional penalty notice”) specifying—

- (a) the total amount of the civil penalties due; and

- (b) the date by which that amount must be paid.
- (4) A civil penalty imposed by a penalty notice or an additional penalty notice must be paid to the Secretary of State by the date specified in the notice.
- (5) Any such civil penalty is recoverable by the Secretary of State as a civil debt.

### **Discretion in imposing civil penalties**

**15.** Where the Secretary of State considers it appropriate to do so, the Secretary of State may—

- (a) refrain from imposing a civil penalty under this Part;
- (b) reduce the amount of a penalty (including the amount of an additional daily penalty);
- (c) extend the time for payment specified in the penalty notice or additional penalty notice;
- (d) withdraw a penalty notice or an additional penalty notice; or
- (e) modify the notice by substituting a lower penalty.

### **Failure to comply with a notice under regulation 10(1)**

**16.—(1)** A person (“P”) is liable to the civil penalties in paragraph (2) where P fails to comply (or to comply on time) with the requirements of a notice served under regulation 10(1) (an “information notice”).

- (2) The civil penalties are—
  - (a) £1,500; and
  - (b) £150 for each day that P fails to comply with the requirements of the information notice, following service of a penalty notice, up to a maximum of £13,500.

### **Providing false or misleading information**

**17.—(1)** Where paragraph (2) applies, a person is liable to the civil penalty in paragraph (3) where that person provides false or misleading information, or makes a statement which is false or misleading in a material particular.

(2) This paragraph applies where the statement is made (or the information is provided) to the Secretary of State in writing for the purpose of preparing a national inventory, whether or not the statement is made (or the information provided) in purported compliance with a requirement imposed by a notice under regulation 10(1).

- (3) The civil penalty is £1,000.

### **Appeals**

**18.—(1)** A person on whom a penalty notice or additional penalty notice has been served under this Part may appeal to the First-tier tribunal<sup>(3)</sup>.

(2) The bringing of the appeal suspends the effect of the notice pending the final determination or withdrawal of the appeal.

- (3) In determining the appeal the First-tier tribunal may—

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(3) The procedure for appeals to the First-tier Tribunal is provided by the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (S.I. 2009/1976 (L. 20)). Appeals are assigned to the General Regulatory Chamber of the First-tier Tribunal by virtue of article 3(a) of the First-tier Tribunal and Upper Tribunal (Chambers) Order 2010 (S. I. 2010/2655).

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- (a) affirm or quash the notice; or
- (b) reduce the amount of the penalty imposed by the notice (including the amount of any additional daily penalty).”.