

2014 No. 3075

CLIMATE CHANGE

**The Greenhouse Gas Emissions Trading Scheme (Amendment)
and National Emissions Inventory (Amendment)
Regulations 2014**

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| <i>Made</i> | - - - - | <i>11th November 2014</i> |
| <i>Laid before Parliament</i> | | <i>20th November 2014</i> |
| <i>Coming into force</i> | - - | <i>1st February 2015</i> |

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

Accordingly the Secretary of State, with the consent of the Treasury, in exercise of the powers conferred by section 56(1) and (2) of the Finance Act 1973(c) and section 2(2) of the European Communities Act 1972 makes the following Regulations(d):

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Greenhouse Gas Emissions Trading Scheme (Amendment) and National Emissions Inventory (Amendment) Regulations 2014 and come into force on 1st February 2015.

(2) In these Regulations “the 2005 Amendment Regulations” means the Greenhouse Gas Emissions Trading Scheme (Amendment) and National Emissions Inventory Regulations 2005(e).

Amendment of the 2005 Amendment Regulations

2.—(1) The 2005 Amendment Regulations are amended as follows.

(2) In regulation 2(1) (interpretation), omit the definition of “the 2005 Regulations”.

(3) For Part 3 (project approval and authorisation to participate) substitute—

(a) S.I. 2008/301.

(b) 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).

(c) 1973 c.51; section 56(1) was amended by S.I. 2011/1043, article 6(1)(e).

(d) 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.

(e) S.I. 2005/2903, amended by S.I. 2011/727, S.I. 2012/3038 and S.I. 2013/3135.

“PART 3

Project approval and authorisation to participate

Approval of and authorisation to participate in project activities

5.—(1) A person wishing to have a proposed project activity approved may, in accordance with this regulation, apply to the Environment Agency for approval of the proposed project activity.

(2) A person wishing to be authorised to participate in a project activity or a proposed project activity may, in accordance with this regulation, apply to the Environment Agency for such authorisation.

(3) An application under this regulation must be made in the English language and contain the following information—

- (a) the applicant’s name and address;
- (b) a description of the project activity or proposed project activity; and
- (c) any other information that the Environment Agency may require for the purpose of determining the application.

(4) An application under this regulation must be made in such form as may be required by the Environment Agency.

(5) The Environment Agency may require any information included in an application made under this regulation to be independently verified and a requirement under this paragraph may include a requirement for the verification to be provided by a person of a description specified by the Environment Agency.

(6) An application under paragraph (2) may be combined with an application under paragraph (1).

(7) An application made under this regulation may be withdrawn at any time before it is determined.

Request for further information

6.—(1) For the purposes of determining an application made under regulation 5, the Environment Agency may serve a notice on the applicant requesting further information.

(2) A notice under paragraph (1) must specify the information required and the date by which the further information must be provided.

(3) A notice under paragraph (1) may include a requirement for information provided in connection with an application made under regulation 5 to be independently verified and a requirement under this paragraph may include a requirement for the verification to be provided by a person of a description specified by the Environment Agency.

(4) If an applicant fails to comply with a notice served under paragraph (1), the Environment Agency may serve a notice on the applicant stating that the application is deemed to have been withdrawn.

Determination of application

7.—(1) Where an application is made under regulation 5, the Environment Agency must, in accordance with this regulation, determine whether to approve the proposed project activity or to authorise participation in the project activity or proposed project activity (as the case may require).

(2) When determining an application made under regulation 5, the Environment Agency may attach such conditions to an approval or authorisation as it considers necessary.

(3) The Environment Agency must give notice of its determination to the applicant within—

- (a) a period of two months beginning with the date on which the application was received by the Environment Agency; or
 - (b) such longer period as may be agreed in writing with the applicant.
- (4) For the purposes of calculating the periods referred to in paragraph (3), no account is to be taken of any period beginning on the date on which notice is served under regulation 6(1) and ending on the date on which the applicant provides the further information.
- (5) The Environment Agency may not approve a proposed project activity to be carried out in the United Kingdom.
- (6) The Environment Agency may only approve a proposed project activity if it is satisfied that—
- (a) where a proposed project activity is to be undertaken in a country which has signed a Treaty of Accession with the European Union, the baseline used for determining the emissions reductions from the project activity complies with the body of common rights and obligations which binds all Member States within the European Union, including the temporary derogations set out in that Treaty; and
 - (b) in relation to a proposed project activity for the production of hydro-electric power with a generating capacity of more than 20 megawatts, the development of the proposed project activity will respect the criteria and guidelines identified in the report produced by the World Commission on Dams on 16th November 2000 entitled “Dams and Development - A New Framework for Decision-Making”(a).
- (7) The Environment Agency may only authorise an applicant’s participation in a project activity or a proposed project activity if the Environment Agency is satisfied that to do so would be consistent with article 11b(5) of the Emissions Trading Directive.

Agreement with the devolved administrations on project approval

8. The power of the Environment Agency to determine an application under regulation 7 is exercisable—

- (a) in so far as an application under regulation 5(1) relates to a Scottish applicant, only with the agreement of the Scottish Ministers;
- (b) in so far as an application under regulation 5(1) relates to a NI applicant, only with the agreement of the Department of the Environment; and
- (c) in so far as an application under regulation 5(1) relates to a Welsh applicant, only with the agreement of the National Assembly for Wales.

Duty to consult the Secretary of State and referral of applications

8A.—(1) The Environment Agency must consult the Secretary of State as soon as reasonably practicable before determining—

- (a) an application made under regulation 5 in relation to a project activity or proposed project activity which is not of a type—
 - (i) which has been approved by the Secretary of State or the Environment Agency; or
 - (ii) in respect of which participation has been authorised by the Secretary of State or the Environment Agency,
 on or before the date on which the application is received;
- (b) an application made under regulation 5 in relation to a project activity or proposed project activity which the Environment Agency reasonably considers to be novel, contentious or controversial;

(a) First published in the United Kingdom and the United States of America in 2000 by Earthscan Publications Limited, ISBN 1-85383-797-0 (hardback) and 1-85383-798-9 (paperback).

- (c) an application made under regulation 5 in relation to a project activity or proposed project activity for the production of hydro-electric power with a generating capacity of more than 20 megawatts.

(2) The Secretary of State may require the Environment Agency to refer an application made under regulation 5 to the Secretary of State for the Secretary of State to determine in accordance with this Part.

(3) Where the Environment Agency has referred an application to the Secretary of State under paragraph (2)—

- (a) the functions of the Environment Agency under regulations 6, 7 and 8 in respect of that application must be exercised by the Secretary of State; and
- (b) the references to the Environment Agency in regulations 6, 7, 8 and 9 are to be read as references to the Secretary of State.

Appeals

9.—(1) A person may appeal to the First-tier Tribunal^(a) against a determination to—

- (a) refuse an application made under regulation 5; or
- (b) attach a condition to an approval or authorisation notified under regulation 7.

(2) The bringing of an appeal against a condition attached to an approval or authorisation to participate suspends the approval or authorisation to participate pending the final determination or withdrawal of the appeal.

(3) The First-tier Tribunal may—

- (a) in relation to a determination to refuse an application under regulation 5—
 - (i) affirm the determination;
 - (ii) quash the determination and remit it to the Environment Agency;
- (b) in relation to a determination to attach a condition to an approval or authorisation notified under regulation 7—
 - (i) affirm or vary the determination;
 - (ii) quash the determination and remit it to the Environment Agency.”.

(4) Omit Part 5 (offences).

(5) In Part 6 (civil penalties), before regulation 14 (penalty notices) insert—

“Interpretation: Part 6

13A. In this Part, “the regulator” means—

- (a) the Secretary of State; or
- (b) in the case of an application made under regulation 5 that has not been referred to the Secretary of State under regulation 8A(2), the Environment Agency.”.

(6) In regulation 14 (penalty notices) and 15 (discretion in imposing civil penalties), for the words “Secretary of State” wherever they appear substitute “regulator”.

(7) In regulation 14, after paragraph (5) insert—

“(6) If the regulator is the Environment Agency it must, as soon as reasonably practicable—

- (a) notify the Secretary of State if it serves a penalty notice under this regulation; and

(a) 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).

- (b) pass to the Secretary of State any civil penalty that has been paid to it pursuant to such notice.”.
- (8) In regulation 17 (providing false or misleading information), for paragraph (2) substitute—
 - “(2) This paragraph applies where the statement is made or the information is provided to the regulator in writing—
 - (a) in connection with an application made under regulation 5; or
 - (b) 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).”.
- (9) Omit the Schedule (list of least developed countries).

Saving provisions: applications submitted before 1st February 2015

3.—(1) This regulation applies to an application made under regulation 5 of the 2005 Amendment Regulations that is received by the Environment Agency before 1st February 2015 (an “existing application”).

(2) The amendments made by these Regulations do not apply to an existing application.

(3) The 2005 Amendment Regulations as in force immediately before 1st February 2015 continue to apply to an existing application.

11th November 2014

Amber Rudd
Parliamentary Under-Secretary of State
Department of Energy and Climate Change

We consent to the making of these Regulations

11th November 2014

Mark Lancaster
Gavin Barwell
Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Greenhouse Gas Emissions Trading Scheme (Amendment) and National Emissions Inventory Regulations 2005 (S.I. 2005/2903) (“the 2005 Amendment Regulations”) in relation to the way in which the 2005 Amendment Regulations deal with the approval of, and authorisation to participate in, projects under the Kyoto Protocol to the United Nations Framework Convention on Climate Change (Cm 6485).

Regulation 2(2) and (9) remove redundant provisions.

Regulation 2(3) provides for the replacement of Part 3 (project approval and authorisation to participate). Under the new Part 3, appeals in respect of applications made under regulation 5 of the 2005 Amendment Regulations will be heard by the First-tier Tribunal rather than the Secretary of State. In addition, the drafting of this Part has been clarified to reflect the transfer of functions under this Part from the Secretary of State to the Environment Agency, which was given effect to by S.I. 2011/727. In particular, the new Part replaces the references to “the Secretary of State” with “the Environment Agency”. This is subject to an exception where an application has been referred to the Secretary of State for determination. Redundant provisions regarding fees have also been removed from this new Part.

A copy of the report produced by the World Commission on Dams, which is referred to in regulation 7(6)(b) of the new Part 3, can be found at http://www.unep.org/dams/WCD/report/WCD_DAMS%20report.pdf.

Regulation 2(4) revokes Part 5 of the 2005 Amendment Regulations (offences) and in doing so abolishes the existing criminal offence of making a false or misleading statement in connection with an application made under regulation 5 of the 2005 Amendment Regulations.

Regulation 2(5) to (8) amends the existing civil penalty regime in regulation 17 of the 2005 Amendment Regulations to enable the Environment Agency or the Secretary of State (as the case may be) to impose a civil penalty in the event that false or misleading information is provided in connection with an application made under regulation 5 of the 2005 Amendment Regulations. An appeal against the imposition of a civil penalty may be made to the First-tier Tribunal under the existing regulation 18 of the 2005 Amendment Regulations.

Regulation 3 provides for the 2005 Amendment Regulations, in force immediately before 1st February 2015, which is the date on which these Regulations come into force, to continue to apply to applications submitted before that date.

A full regulatory impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen. An Explanatory Memorandum is published alongside this instrument on www.legislation.gov.uk.

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