
STATUTORY INSTRUMENTS

2005 No. 925

**The Greenhouse Gas Emissions
Trading Scheme Regulations 2005**

PART 1

GENERAL

Citation and commencement

1. These Regulations may be cited as the Greenhouse Gas Emissions Trading Scheme Regulations 2005 and shall come into force on 21st April 2005.

Interpretation

2.—(1) In these Regulations—

“1995 Act” means the Environment Act 1995⁽¹⁾;

“address” means, in relation to electronic communications, any number or address used for the purposes of such communications;

“allowance” has the meaning given to it in Article 3 of the Directive;

“appeal body” means the body to which an appeal may be made under regulations 32 or 33;

“appropriate authority” means (except where regulation 27(15) or 32(14) apply)—

- (i) in relation to an installation which is (or will be) situated in England and an offshore installation, the Secretary of State;
- (ii) in relation to an installation (other than an offshore installation) which is (or will be) situated in Scotland, the Scottish Ministers;
- (iii) in relation to an installation (other than an offshore installation) which is (or will be) situated in Wales, the National Assembly for Wales; and
- (iv) in relation to an installation (other than an offshore installation) which is (or will be) situated in Northern Ireland, the Department of the Environment;

“approved national allocation plan” means, in respect of a scheme phase, a national allocation plan specified in approved NAP regulations as the approved national allocation plan for that scheme phase;

“approved NAP regulations” means, in relation to a scheme phase, regulations made by the Secretary of State under section 2(2) of the European Communities Act 1972 specifying as the approved national allocation plan a national allocation plan developed for that scheme phase which has not been rejected by the European Commission or in relation to which the European Commission has accepted amendments in accordance with Article 9(3) of the Directive;

“change in operation” means, in relation to an installation, a change in the nature, functioning or scope of the installation which—

- (i) affects any information included in the greenhouse gas emissions permit pursuant to regulation 9(8)(d); or
- (ii) might, in the opinion of the regulator, require any monitoring and reporting condition to be amended;

“chief inspector” means the chief inspector constituted under regulation 8(3) of the Northern Ireland Regulations;

“the Directive” means Directive [2003/87/EC](#) of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive [96/61/EC](#)(2), as amended by Directive [2004/101/EC](#);

“electronic communication” has the same meaning as in the Electronic Communications Act 2000(3);

“enforcement notice” has the meaning given by regulation 29(1);

“excluded installation” means an installation in respect of which the operator holds a valid certificate served under regulation 11(6);

“greenhouse gas emissions” means the release of greenhouse gases into the atmosphere from sources in an installation;

“greenhouse gas emissions permit” means a permit granted under regulation 9;

“greenhouse gases” has the meaning given to it in Article 3 of the Directive;

“installation” means (except where it appears in Schedule 1)—

- (i) a stationary technical unit where one or more Schedule 1 activities are carried out; and
- (ii) any other location on the same site where any other directly associated activities are carried out which have a technical connection with the activities carried out in the stationary technical unit and which could have an effect on greenhouse gas emissions and pollution,

and references to an installation include references to part of an installation;

“issue” means, in relation to allowances, the transfer in the registry of allowances allocated in respect of an installation from the party holding account to the operator holding account relating to that installation;

“monitoring and reporting condition” means a condition of a greenhouse gas emissions permit imposed pursuant to regulation 10(2) (but excluding conditions imposed pursuant to regulation 10(2)(c));

“the Monitoring and Reporting Decision” means Commission Decision [2004/156/EC](#) establishing guidelines for the monitoring and reporting of greenhouse gas emissions pursuant to Directive [2003/87/EC](#) of the European Parliament and of the Council(4);

“national allocation plan” means a plan developed in accordance with Articles 9 and 10 of and Annex III to the Directive;

“new entrant” has the meaning given in Article 3 of the Directive;

“new entrant reserve” means any reserve of allowances provided for in the approved national allocation plan for distribution to new entrants;

(2) OJNo. L 275, 25.10.03, p.32. The Directive is amended by Directive [2004/101/EC](#), OJ No. L 338, 13.11.2004, p.18.

(3) [2000 c. 7](#); the definition of electronic communication in section 15(1) was amended by the Communications Act [2003 \(c. 21\)](#), section 406(1) and Schedule 17, paragraph 158.

(4) OJ No. L 59 , 26.02.04, p.1.

“Northern Ireland Regulations” means the Pollution Prevention and Control Regulations (Northern Ireland) 2003⁽⁵⁾;

“notice of surrender” has the meaning given by regulation 16(6);

“offshore installation” means an installation which is (or will be) situated in the area (together with places above and below it) comprising—

- (i) those parts of the sea adjacent to England and Wales from the low water mark to the landward baseline of the United Kingdom territorial sea;
- (ii) the United Kingdom territorial sea apart from those areas comprised in any controlled waters within the meaning of section 30A(1) of the Control of Pollution Act 1974⁽⁶⁾; and
- (iii) those areas of sea in any area for the time being designated under section 1(7) of the Continental Shelf Act 1964⁽⁷⁾;

“Offshore Regulations” means the Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001⁽⁸⁾;

“operator” means, subject to paragraph (2), in relation to an installation, the person who has control over its operation;

“Planning Appeals Commission” means the Planning Appeals Commission established under Article 110 of the Planning (Northern Ireland) Order 1991⁽⁹⁾;

“Registries Regulation” means Commission Regulation 2216/2004 of 21 December 2004 for a standardised and secured system of registries pursuant to Directive 2003/87/EC of the European Parliament and of the Council and Decision 280/2004/EC of the European Parliament and the Council⁽¹⁰⁾ and, unless the context otherwise requires, expressions used in these Regulations which are also used in the Registries Regulation have the same meaning as they have in the Registries Regulation;

“regulator” means—

- (i) in relation to an installation (other than an offshore installation) which is (or will be) situated in England and Wales, the Environment Agency;
- (ii) in relation to an installation (other than an offshore installation) which is (or will be) situated in Scotland, the Scottish Environment Protection Agency;
- (iii) in relation to an installation (other than an offshore installation) which is (or will be) situated in Northern Ireland, the chief inspector; and
- (iv) in relation to an offshore installation, the Secretary of State;

“reportable emissions” means, in relation to an installation, the total specified emissions (expressed in tonnes of carbon dioxide equivalent) which arise from the Schedule 1 activities carried out in that installation; and “annual reportable emissions” means, subject to regulation 10(4), the reportable emissions arising during any scheme year;

“responsible authority” has the meaning given by regulation 11(12);

“retention notice” has the meaning given by regulation 24(8);

“revocation notice” has the meaning given by regulation 17(1);

“Schedule 1 activity” means an activity falling within a description in Schedule 1;

“scheme phase” means—

⁽⁵⁾ S.R. (NI) 2003 No 46, amended by S.I. 2003/496, S.I.2003/3311; there is another amending instrument which is not relevant.

⁽⁶⁾ 1974 c. 40; section 30A(1) was inserted by section 169 of, and Schedule 23 to, the Water Act 1989 (c. 15).

⁽⁷⁾ 1964 c. 29; section 1(7) was amended by the Oil and Gas (Enterprise Act) 1982 (c. 23), section 37 and Schedule 3, paragraph 1.

⁽⁸⁾ S.I. 2001/1091, amended by S.I. 2003/3311.

⁽⁹⁾ S.I. 1991/1220 (N.I.11); relevant amending instruments are S.I. 1999/663, 2003/430 (N.I.8).

⁽¹⁰⁾ OJ No. L 386, 29.12.2004, p.1

- (i) the three year period beginning on 1st January 2005;
- (ii) the five year period beginning on 1st January 2008; or
- (iii) each subsequent five year period;

“scheme year” means a year beginning with 1st January;

“specified emissions” means, in relation to any Schedule 1 activity, the greenhouse gas emissions specified in Schedule 1 in relation to that activity;

“tonne of carbon dioxide equivalent” has the meaning given to it in Article 3 of the Directive;

“variation notice” has the meaning given by regulation 14(9).

(2) For the purposes of these Regulations—

- (a) where an installation has not been put into operation, the person who will have control over the operation of the installation when it is put into operation shall be treated as the operator of the installation;
- (b) where an installation has ceased to be in operation, the person who holds the greenhouse gas emissions permit which relates to the installation shall be treated as the operator of the installation; and
- (c) where a permit holder has ceased to be the operator of an installation to which a greenhouse gas emissions permit relates references to the operator shall be read as references to the permit holder.

Application of these Regulations to the Crown

3.—(1) Subject to the provisions of this regulation, these Regulations bind the Crown.

(2) No contravention by the Crown of any provision of these Regulations shall make the Crown criminally liable under regulation 38 but the High Court, or in relation to an installation in Scotland the Court of Session, may, on the application of a regulator, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(3) Notwithstanding paragraph (2), the provisions of these Regulations apply to persons in the service of the Crown as they apply to other persons.

(4) If the Secretary of State certifies that it appears to her, as respects any Crown premises and any specified powers of entry exercisable under section 108 of the Environment Act 1995⁽¹¹⁾ or regulation 27 of the Northern Ireland Regulations in relation to functions conferred or imposed by these Regulations, that it is requisite or expedient that, in the interests of national security, the powers of entry should not be exercisable in relation to those premises, those powers shall not be exercisable in relation to those premises; and in this paragraph “specified” means specified in the certificate and “Crown premises” means premises held or used by or on behalf of the Crown.

(5) The following persons shall be treated as if they were the operator of the installation concerned for the purpose of any notice served or given or any proceedings instituted in relation to an installation operated or controlled by any person acting on behalf of the Royal Household, the Duchy of Lancaster or the Duke of Cornwall or other possessor of the Duchy of Cornwall—

- (a) in relation to an installation operated or controlled by a person acting on behalf of the Royal Household, the Keeper of the Privy Purse;

(11) 1995 c. 25; section 108 was amended by the Pollution Prevention and Control Act 1999 (c. 24), section 6(2) and Schedule 3, in relation to England and Wales by the Pollution Prevention and Control Regulations 2000 (S.I. 2000/1973), regulation 39 and Schedule 10, Part 1, paragraphs 14 and 16 and the Anti-Social Behaviour Act 2003, section 55(6), (7), (8) and (9) and in relation to Scotland by the Pollution Prevention and Control (Scotland) Regulations 2000 (S.S.I. 2000/323), regulation 36, Schedule 10, Part 1, paragraph 5(1) and (3).

- (b) in relation to an installation operated or controlled by a person acting on behalf of the Duchy of Lancaster, such person as the Chancellor of the Duchy appoints in relation to that installation; and
- (c) in relation to an installation operated or controlled by a person acting on behalf of the Duchy of Cornwall, such person as the Duke of Cornwall, or the possessor for the time being of the Duchy of Cornwall, appoints in relation to that installation.

Notices

4.—(1) Any notice or other document served or given under these Regulations by an appropriate authority, a responsible authority, the Secretary of State or a regulator shall be in writing or if the person to be served with or given any such notice or document has provided an address for service using electronic communications, by electronic communications.

- (2) Any such notice or other document may be served on or given to a person by—
 - (a) leaving it at his proper address;
 - (b) sending it by post to him at that address; or
 - (c) where an address for service using electronic communications has been given by that person, sending it using electronic communications to that person at that address.
- (3) Any such notice or other document may—
 - (a) in the case of a body corporate (other than a limited liability partnership), be served on the secretary or clerk of that body;
 - (b) in the case of a limited liability partnership, be served on a member; or
 - (c) in the case of a partnership (other than a limited liability partnership), be served on or given to a partner or person having the control or management of the partnership business.

(4) For the purpose of this regulation and of section 7 of the Interpretation Act 1978(12) (service of documents by post) in its application to this regulation, the proper address of any person on or to whom any such notice or other document is to be served or given shall be his last known address, except that—

- (a) in the case of a body corporate (other than a limited liability partnership) or its secretary or clerk, it shall be the address of the registered or principal office of that body;
- (b) in the case of a limited liability partnership or a member of a limited liability partnership, it shall be the registered or principal office of that partnership;
- (c) in the case of a partnership (other than a limited liability partnership) or person having the control or management of the partnership business, it shall be the principal office of the partnership,

and for the purposes of this paragraph the principal office of a company registered outside the United Kingdom or of a partnership carrying on business outside the United Kingdom shall be its principal office within the United Kingdom.

(5) If the person to be served with or given any such notice or document has specified an address in the United Kingdom other than his proper address within the meaning of paragraph (4) as the one at which he or someone on his behalf will accept notices or documents of the same description as that notice or document, that address shall also be treated for the purposes of this regulation and section 7 of the Interpretation Act 1978 as his proper address.

(6) Where a notice or document is served or given using electronic communications, the service is deemed to be effected by properly addressing and transmitting the electronic communication.

Applications

5.—(1) A regulator may require any application or type of application made to it under any provision of these Regulations to be made on a form made available by the regulator.

(2) A form made available by a regulator under paragraph (1) shall specify the information required by the regulator to determine the application, which shall include any information required to be contained in the application by the provision of these Regulations under which the application is made.

(3) Where a regulator makes available a form under paragraph (1) in relation to the making of applications to it under a provision of these Regulations any application made to it under that provision shall be made on that form.

(4) Any application made under these Regulations may, with the agreement of the regulator, be sent to the regulator electronically.

(5) Where an application which is required to be accompanied by a fee is sent electronically, the fee may be sent to the regulator separately from the application, but the application shall not be treated as having been received by the regulator until the fee has also been received.

(6) An application made under these Regulations may be withdrawn at any time before it is determined.

(7) In its application to regulation 11 (excluded installations), paragraphs (1) to (6) shall apply as if any reference to “the regulator” were a reference to “the responsible authority”.

(8) In its application to regulation 27 (pooling), paragraphs (1) to (6) shall apply as if any reference to “the regulator” were a reference to “the appropriate authority”.

Functions of the regulator: Northern Ireland

6. Any functions conferred or imposed by these Regulations on the chief inspector may be delegated by him to any inspector appointed under regulation 8(1) of the Northern Ireland Regulations.

PART 2

GREENHOUSE GAS EMISSIONS PERMITS

Requirement for greenhouse gas emissions permit to carry out Schedule 1 activities

7. No person shall carry out a Schedule 1 activity resulting in specified emissions, except under and to the extent authorised by a greenhouse gas emissions permit.

Applications for greenhouse gas emissions permits

8.—(1) An application for a greenhouse gas emissions permit shall be made to the regulator in accordance with this regulation and shall, except where the application relates to an offshore installation, be accompanied by the fee prescribed in respect of the application in Schedule 5.

(2) An application under paragraph (1) shall contain the following information—

- (a) the name of the applicant, his telephone number and postal address (including post code) and, if different, any address to which correspondence relating to the application should be sent and, if the applicant is a body corporate, its registered number, the postal address of its registered or principal office and, if that body corporate is a subsidiary of a holding

- company (within the meaning of section 736 of the Companies Act 1985⁽¹³⁾ or, in relation to Northern Ireland, article 4 of the Companies (Northern Ireland) Order 1986⁽¹⁴⁾), the name of the ultimate holding company and the postal address of its principal office;
- (b) the postal address of the site of the installation and its national grid reference (or for offshore installations equivalent information identifying the installation and its location), a description of that site and the location of the installation on that site, and, for installations other than offshore installations, the name of any local authority in whose area the site is situated;
 - (c) a description of the installation and the Schedule 1 activities to be carried out in the installation including a description of the technology used;
 - (d) the raw and auxiliary materials used in carrying out Schedule 1 activities in the installation, the use of which is likely to lead to specified emissions;
 - (e) the sources of specified emissions from the Schedule 1 activities carried out in the installation;
 - (f) a description of the measures which are planned to monitor and report specified emissions in accordance with the Monitoring and Reporting Decision;
 - (g) a description, including the reference number, of any environmental licence issued in relation to the installation;
 - (h) any additional information which the applicant wishes the regulator to take into account in considering the application; and
 - (i) a non-technical summary of the information referred to in sub-paragraphs (c) to (h).
- (3) For the purpose of paragraph (2)(g), “environmental licence” means—
- (a) an authorisation under Part I of the Environmental Protection Act 1990⁽¹⁵⁾ or the Industrial Pollution Control (Northern Ireland) Order 1997⁽¹⁶⁾; or
 - (b) a permit granted under—
 - (i) the Pollution Prevention and Control (England and Wales) Regulations 2000⁽¹⁷⁾;
 - (ii) the Pollution Prevention and Control (Scotland) Regulations 2000⁽¹⁸⁾;
 - (iii) the Offshore Regulations; or
 - (iv) the Northern Ireland Regulations.
- (4) Where an application is for a greenhouse gas emissions permit to operate more than one installation the application shall contain the information required by paragraph (2) in relation to each installation.
- (5) The regulator may, by notice to the applicant, require him to furnish such further information specified in the notice, within the period so specified, as the regulator may require for the purpose of determining the application and if the applicant fails to furnish the specified information within the period specified, the application shall, if the regulator gives notice to the applicant that it treats the application as having been withdrawn, be deemed to have been withdrawn at the end of that period.

⁽¹³⁾ 1985 c. 6; section 736 was substituted by section 144(1) of the Companies Act 1989 (1989 c. 40).

⁽¹⁴⁾ S.I. 1986/1032 (N.I.6), amended by S.I. 1990/1504 (N.I.10); there is other amending legislation but none of it is relevant.

⁽¹⁵⁾ 1990 c. 43.

⁽¹⁶⁾ S.I. 1997/2777 (N.I.18), to which there are amendments not relevant to these Regulations.

⁽¹⁷⁾ S.I. 2000/1973, relevant amending instruments are S.I. 2002/1559, S.I. 2003/3311; there are other amending instruments but none is relevant.

⁽¹⁸⁾ S.S.I. 2000/323, relevant amending instruments are S.S.I. 2003/146, 2003/170, 2003/235, 2004/26 and 2005/101 and S.I. 2003/3311.

Determination of applications and grant of greenhouse gas emissions permits

9.—(1) The regulator shall give notice of its determination of an application for a greenhouse gas emissions permit within a period of two months beginning on the date on which it received the application or within such longer period as may be agreed in writing with the applicant.

(2) For the purpose of calculating the period of two months mentioned in paragraph (1) no account shall be taken of any period beginning with the date on which notice is served on the applicant under regulation 8(5) and ending on the date on which the applicant furnishes the information specified in the notice.

(3) If a regulator fails to give notice of its determination of an application for a greenhouse gas emissions permit within the period allowed by or under paragraph (1), the application shall, if the applicant notifies the regulator that he treats the application as having been refused, be deemed to have been refused at the end of that period.

(4) Subject to paragraph (6), where an application is duly made to the regulator, the regulator shall either grant the greenhouse gas emissions permit subject to the conditions required or authorised to be imposed by regulation 10 or refuse the application.

(5) Where a regulator grants a greenhouse gas emissions permit—

- (a) in relation to an offshore installation; or
- (b) in response to an application for a greenhouse gas emissions permit which was made before the date on which these Regulations enter into force,

the fee prescribed in Schedule 5 in respect of the grant of the permit shall be payable within a period of 28 days beginning on the date on which the regulator serves a notice on the operator requesting payment of the fee.

(6) A greenhouse gas emissions permit shall not be granted if the regulator—

- (a) considers that the applicant will not be the operator of the installation concerned after the grant of the permit; or
- (b) is not satisfied that the applicant will ensure that the installation is operated so as to comply with the monitoring and reporting conditions which would be included in the permit.

(7) A greenhouse gas emissions permit may authorise the operation of more than one installation on the same site operated by the same operator but may not otherwise authorise the operation of more than one installation.

(8) A greenhouse gas emissions permit authorising the operation of an installation shall include—

- (a) the name and postal address of the operator and, if different, any address to which correspondence should be sent;
- (b) the postal address of the site of the installation and its national grid reference (or for offshore installations equivalent information identifying the installation and its location);
- (c) a description of the site and the location of the installation on that site; and
- (d) a description of the installation, the Schedule 1 activities to be carried out in the installation and the specified emissions from those activities.

(9) Where—

- (a) the provisions of a greenhouse gas emissions permit have been varied under regulation 14 or by a retention notice or affected by a partial transfer under regulation 15; or
- (b) there is more than one greenhouse gas emissions permit applying to installations on the same site operated by the same operator,

the regulator may replace the permit with a consolidated permit applying to the same Schedule 1 activities and subject to the same conditions as the permit being replaced.

Conditions of greenhouse gas emissions permits

10.—(1) There shall be included in a greenhouse gas emissions permit such conditions as the regulator considers appropriate and in particular such conditions as the regulator considers appropriate to comply with paragraphs (2) to (6).

(2) A greenhouse gas emissions permit shall include conditions concerning the monitoring and reporting of specified emissions from the installation to which it relates and, in particular—

(a) conditions to ensure that any specified emissions from the Schedule 1 activity to which it relates are monitored and reported in accordance with the Monitoring and Reporting Decision, including conditions—

(i) specifying the monitoring methodology and frequency; and

(ii) requiring the operator to submit reports of the annual reportable emissions to the regulator and concerning the timing of such reports;

(b) a requirement that all reports submitted pursuant to conditions imposed under subparagraph (ii) are verified in accordance with the criteria set out in Annex V of the Directive and that the regulator is informed of the results of any such verification; and

(c) a requirement that an operator notifies the regulator as soon as he becomes aware of any factor which might prevent him from complying with any of the conditions included in a greenhouse gas emissions permit pursuant to this paragraph.

(3) A greenhouse gas emissions permit shall contain conditions to ensure that the operator surrenders allowances equal to the annual reportable emissions from the installation within four months of the end of the scheme year during which those emissions arose.

(4) A greenhouse gas emissions permit shall provide that for the purpose of assessing compliance with a condition imposed pursuant to paragraph (3) in relation to a recovery year, the annual reportable emissions from the installation in that year shall be deemed to be increased by an amount equal to the amount of annual reportable emissions in respect of which the operator failed to comply with that condition in the non-compliance year.

(5) For the purposes of paragraph (4)—

(a) “a non-compliance year” shall be a scheme year in respect of which an operator fails to comply with a condition of the permit imposed pursuant to paragraph (3); and

(b) “the recovery year” shall be the scheme year following the non-compliance year, or where the non-compliance results from an error in the report submitted by an operator under a monitoring and reporting condition, the scheme year in which the error is discovered.

(6) A greenhouse gas emissions permit shall contain a condition stating that in relation to any period for which the installation is an excluded installation (the “exclusion period”)—

(a) the operator shall be deemed to be in compliance with any conditions imposed pursuant to paragraphs (2) and (3); and

(b) the operator shall be required to notify the regulator of any change in operation during the exclusion period, at least 2 months before the end of that exclusion period or within 10 days of the revocation of a certificate served under regulation 11(6) (except in relation to a part of the installation in respect of which a new certificate is issued in accordance with regulation 11(11)(b)).

(7) Subject to paragraph (8), where an operator makes a change in operation to an excluded installation, the greenhouse gas emissions permit which relates to that installation shall, for the duration of the period for which the installation is an excluded installation, be deemed to authorise the change in operation.

(8) Paragraph (7) shall not prevent an operator from making an application under regulation 14(2) for a variation of the provisions of a greenhouse gas emissions permit which relates to an excluded installation.

(9) Regulators shall periodically review the conditions of greenhouse gas emissions permits and may do so at any time.

Excluded installations

11.—(1) Where the European Commission has provided for the temporary exclusion of an installation under Article 27(2) of the Directive, the operator of the installation may apply to the responsible authority for a certificate stating that the installation is an excluded installation.

(2) The Secretary of State shall, within 7 days beginning on the date of a notification by the European Commission of a decision under Article 27(2) of the Directive providing for the temporary exclusion of an installation or of the publication of the decision in the Official Journal of the European Union, whichever is the earlier, publish or, as the case may be, further publish the decision in such manner as she considers appropriate.

(3) Subject to paragraph (4), an application under paragraph (1) shall be made before the expiry of the period of two months beginning with the date on which the Secretary of State publishes or, as the case may be, further publishes a European Commission decision in accordance with paragraph (2), whichever is the later.

(4) A responsible authority may accept an application after the date by which an application is required to be made under paragraph (3).

(5) An application under paragraph (1) shall—

- (a) identify the installation in question;
- (b) contain the name and postal address of the operator and, if different, any address to which correspondence should be sent;
- (c) contain a copy of the greenhouse gas emissions permit relating to the installation identified in sub-paragraph (a);
- (d) identify the regulator which granted that permit; and
- (e) identify the national policy by virtue of which the European Commission has provided for the temporary exclusion of the installation.

(6) Where an application is duly made, the responsible authority shall serve on the regulator and the operator a certificate which shall—

- (a) identify the installation;
- (b) identify the operator and the regulator of that installation;
- (c) state the date from which the installation is excluded and the duration of the exclusion and identify any period for which it is deemed to be excluded in accordance with paragraph (7); and
- (d) specify any conditions applying to the exclusion.

(7) Where a decision of the European Commission under Article 27(2) of the Directive provides for an installation to be temporarily excluded from a date prior to the date of that decision, the certificate served under paragraph (6) in respect of that installation may provide that for the purposes of compliance with any conditions of the greenhouse gas emissions permit imposed pursuant to regulation 10(2) or (3) the installation shall be treated as if it were an excluded installation from the date provided for in the decision of the European Commission.

(8) Where an application for a certificate under paragraph (1) relates to an installation in respect of which an allocation for the first scheme phase has been made under regulation 21(1)(b), or if

applicable (1)(c), or under regulation 22(13)(b) or (18) the responsible authority, shall before serving a certificate under paragraph (6) take such steps as are necessary to ensure that—

- (a) no allowances will be issued in respect of the installation to which the application relates in respect of any whole scheme year for which the European Commission has provided for the installation to be excluded;
- (b) the amount of allowances to be issued in respect of the installation to which the application relates in respect of any scheme year in which the European Commission provides for the installation to be excluded for only part of the year shall be reduced in proportion to the part of the year to which the exclusion relates; and
- (c) the total quantity of allowances to be issued in the scheme phase is reduced by the number of allowances which will not be issued in accordance with sub-paragraph (a) and (b).

(9) Where an operator fails to comply with the conditions referred to in paragraph (6)(d), the responsible authority may serve a notice on the operator and the regulator revoking the certificate served under paragraph (6).

(10) Where the regulator effects a transfer or partial transfer under regulation 15 of a greenhouse gas emissions permit which relates to an excluded installation, the regulator shall notify the responsible authority of the transfer or partial transfer and provide a copy of the updated permit and any new permit granted which relates to that installation.

(11) Where the regulator notifies the responsible authority in accordance with paragraph (10)—

- (a) in the case of a transfer of the whole greenhouse gas emissions permit, if the responsible authority is satisfied that the installation will continue to be covered by the national policy identified in the application under paragraph (1), the responsible authority shall serve a notice on the operator and regulator including a copy of the certificate served under paragraph (6) and specifying the change of operator;
- (b) in the case of a partial transfer, the responsible authority shall revoke the certificate served under paragraph (6) and if the responsible authority is satisfied that any part of the installation will continue to be covered by the national policy identified in the application under paragraph (1), the responsible authority shall serve on the operator and the regulator of that part a certificate under paragraph (6) in relation to that part;
- (c) in any other case, the responsible authority shall serve a notice on the operator and the regulator revoking the certificate served under paragraph (6).

(12) For the purposes of this regulation, the “responsible authority” means, subject to paragraph (13), the person who is responsible for the national policy by virtue of which the European Commission has provided for the temporary exclusion of the installation.

(13) If there is doubt as to who is responsible for a particular national policy, the Secretary of State shall decide who is to be considered to be responsible for the policy for the purposes of this regulation.

Proposed change in operation

12.—(1) Subject to paragraph (4), where an operator of an installation who holds a greenhouse gas emissions permit in respect of the Schedule 1 activities carried out in the installation proposes to make a change in operation the operator shall, at least 14 days before making the change, notify the regulator.

(2) A notification under paragraph (1) shall be in writing and shall contain a description of the proposed change in operation including a brief explanation of whether and, if so, why it—

- (a) affects any information included in the greenhouse gas emissions permit pursuant to regulation 9(8)(d); or

- (b) might require any monitoring and reporting condition to be amended.
- (3) A regulator shall, by notice served on the operator, acknowledge receipt of any notification received under paragraph (1).
- (4) Paragraph (1) shall not apply where—
 - (a) a change in operation is to be made more than 2 months before the end of the period for which the installation to which the change relates is an excluded installation; or
 - (b) the operator applies under regulation 14(2) for the variation of the conditions of his greenhouse gas emissions permit before making the proposed change in operation and the application contains a description of that change.

Commencement of a Schedule 1 activity

13.—(1) Before the latest of—

- (a) 1st April in each year;
- (b) the expiry of a period of 14 days beginning on the date of the grant of a greenhouse gas emissions permit under regulation 9(1); or
- (c) the expiry of a period of 14 days beginning with the date on which these Regulations enter into force,

the operator of an installation in respect of which a greenhouse gas emissions permit has been granted but which has not been put into operation may notify the regulator that it does not intend to put the installation into operation on or before 31st March in the following year (“the notified non-operation year”).

(2) Where an operator which has notified the regulator under paragraph (1) puts the installation into operation in a notified non-operation year, it shall notify the regulator that the installation has been put into operation before the expiry of a period of 14 days beginning on the day on which the installation is put into operation.

Variation of provisions of greenhouse gas emissions permits

14.—(1) The regulator may at any time vary any provision of a greenhouse gas emissions permit (including the extent to which the permit authorises a Schedule 1 activity) and shall do so if it appears to the regulator at that time, whether as a result of a review under regulation 10(9) or otherwise, that regulation 9(8) or 10 requires provisions to be included in the permit which are different from the subsisting provisions.

(2) An operator of an installation who holds a greenhouse gas emissions permit in respect of the Schedule 1 activity carried out in that installation may apply to the regulator for the variation of the provisions of his permit.

(3) An application under paragraph (2) shall be made in accordance with paragraph (5) and shall, subject to paragraph (4), be accompanied by the fee prescribed in respect of the application in Schedule 5.

(4) Where an application under paragraph (2) relates to an offshore installation, the fee prescribed in Schedule 5 in respect of the application shall be payable within the period of 28 days beginning on the date on which the regulator serves a notice on the operator requesting payment of the fee.

(5) An application under paragraph (2) shall contain the following information—

- (a) the name of the operator, his telephone number and postal address (including post code) and, if different, the address to which correspondence should be sent;

- (b) the postal address of the site of the installation to which the greenhouse gas emissions permit relates and its national grid reference (or, for offshore installations, equivalent information identifying the installation and its location);
- (c) if relevant, a description of the proposed change in operation requiring the variation and a statement of any change as respects the matters dealt with in regulation 8(2)(c) to (f) which would result if the proposed change in operation were made;
- (d) an indication of the variations of the provisions of the greenhouse gas emissions permit which the operator wishes the regulator to make; and
- (e) any additional information which the operator wishes the regulator to take into account in considering his application.

(6) The regulator may, by notice to the operator, require him to furnish such further information specified in the notice, within the period so specified, as the regulator may require for the purpose of determining the application; and if the operator fails to furnish the specified information within the period specified in the notice, the application shall, if the regulator gives notice to the operator that it treats the application as having been withdrawn, be deemed to have been withdrawn at the end of that period.

(7) Where an application is duly made to the regulator under paragraph (2), the regulator shall determine whether to vary the provisions of the greenhouse gas emissions permit and shall give notice of its determination within two months beginning with the day on which the regulator received the application or within such longer period as may be agreed in writing with the operator.

(8) For the purpose of calculating the periods mentioned in paragraph (7) no account shall be taken of any period beginning with the date on which notice is served on an operator under paragraph (6) and ending on the date on which the operator furnishes the information specified in the notice.

(9) Where the regulator decides to vary the provisions of the greenhouse gas emissions permit, whether on an application under paragraph (2) or otherwise, it shall serve a notice on the operator (a “variation notice”) specifying the variations of the provisions of the permit and the date or dates on which the variations are to take effect and, unless the notice is withdrawn, the variations specified in the notice shall take effect on the date or dates so specified.

(10) A variation notice served under paragraph (9) shall, unless served for the purpose of determining an application under paragraph (2), require the operator to pay, within such period as may be specified in the notice, the fee prescribed in respect of the variation notice in Schedule 5.

(11) Where the regulator decides on an application under paragraph (2) not to vary the provisions of the greenhouse gas emissions permit, it shall give notice of its decision to the operator.

(12) If the regulator fails to give notice of its determination of an application under paragraph (2) within the period allowed by or under paragraphs (7) and (8), the application shall, if the operator notifies the regulator that he treats the application as having been refused, be deemed to have been refused at the end of that period.

Transfer of greenhouse gas emissions permits

15.—(1) Subject to paragraph (2), where the operator of an installation wishes to transfer, in whole or in part, his greenhouse gas emissions permit to another person (“the proposed transferee”) the operator and the proposed transferee shall jointly make an application to the regulator to effect the transfer.

(2) A greenhouse gas emission permit which relates to an installation in which a Schedule 1 activity is no longer carried out may not be transferred.

(3) An application under paragraph (1) shall, subject to paragraph (5), be accompanied by the fee prescribed in respect of the transfer in Schedule 5 and shall contain the following information—

- (a) the operator's and the proposed transferee's telephone number and postal address and, if different, any address to which correspondence relating to the application should be sent; and
 - (b) the postal address of the site of the installation to which the greenhouse gas emissions permit relates and its national grid reference (or, for offshore installations, equivalent information identifying the installation and its location).
- (4) Where the operator wishes to transfer only part of his greenhouse gas emissions permit (a "partial transfer"), an application under paragraph (1) shall—
- (a) identify the Schedule 1 activity or part of a Schedule 1 activity to which the transfer applies (the "transferred activity");
 - (b) identify the installation in which that transferred activity is carried out (the "transferred unit");
 - (c) where an application for an allocation of allowances from the new entrant reserve has been made under regulation 22(1) in respect of the installation to which the permit relates and either—
 - (i) the regulator has not determined the application in accordance with regulation 22(13); or
 - (ii) the number of allowances allocated under regulation 22(13)(b) or (18) is less than the number of allowances determined under regulation 22(13)(a),specify whether the application under regulation 22(1) relates to the transferred unit; and
 - (d) where the installation to which the permit relates is included in a pool in accordance with regulation 27, specify whether the installation, or in the case of a partial transfer, the transferred unit, should continue to be included in the pool.
- (5) Where an application under paragraph (1) relates to an offshore installation, the fee prescribed in Schedule 5 in respect of the application shall be payable within the period of 28 days beginning on the date on which the regulator serves a notice on the operator requesting payment of the fee.
- (6) The regulator shall effect the transfer unless the regulator considers that—
- (a) the proposed transferee will not be the operator of the transferred unit after the transfer is effected; or
 - (b) the proposed transferee will not ensure that the installation is operated so as to comply with any monitoring and reporting condition.
- (7) The regulator shall effect a transfer under this regulation by—
- (a) in the case of a partial transfer—
 - (i) issuing a new greenhouse gas emissions permit to the proposed transferee which—
 - (aa) applies to the transferred activity;
 - (bb) identifies the transferred unit; and
 - (cc) includes the conditions required by paragraph (8); and
 - (ii) reissuing the original greenhouse gas emissions permit to the operator, updated to record the transfer and varied to—
 - (aa) identify the Schedule 1 activity to be carried out in the installation after the transfer and the specified emissions from that activity;
 - (bb) describe the installation after the transfer; and
 - (cc) specify the conditions applying after the transfer as required by paragraph (8);

(b) in the case of a transfer of the whole greenhouse gas emissions permit, reissuing to the operator and the proposed transferee the permit updated to include the name and other particulars of the proposed transferee as the operator of the transferred unit, and the transfer shall take effect from such date as may be agreed with the applicants and specified in the updated greenhouse gas emissions permit and, in the case of a partial transfer, the new greenhouse gas emissions permit.

(8) In the case of a partial transfer effected under this regulation, the conditions included in the new greenhouse gas emissions permit and the original greenhouse gas emissions permit after the transfer shall be the same as the conditions included in the original permit immediately before the transfer in so far as they are relevant, respectively, to any installation to which the new permit relates or the original permit continues to relate but subject to such variations as, in the opinion of the regulator, are necessary to take account of the transfer.

(9) If within the period of two months beginning with the date on which the regulator receives an application under paragraph (1), or within such longer period as the regulator and the applicants may agree in writing, the regulator has neither effected the transfer nor given notice to the applicants that it has rejected the application, the application shall, if the applicants notify the regulator in writing that they are treating the application as having been refused, be deemed to have been refused at the end of that period or that longer period, as the case may be.

(10) The regulator may, by notice, require the operator or the proposed transferee to furnish such further information specified in the notice, within the period so specified, as the regulator may require for the purpose of determining an application under this regulation.

(11) Where a notice is served on an operator or proposed transferee under paragraph (10)–

- (a) for the purpose of calculating the period of two months mentioned in paragraph (9), no account shall be taken of the period beginning with the date on which the notice is served and ending on the date on which the information specified in the notice is furnished; and
- (b) if the specified information is not furnished within the period specified, the application shall, if the regulator gives notice to the operator and proposed transferee that it treats the application as having been withdrawn, be deemed to have been withdrawn at the end of that period.

(12) Where a regulator effects the transfer of a greenhouse gas emissions permit in accordance with paragraph (7)(b), the regulator shall notify the registry administrator of the transfer.

Applications to surrender a greenhouse gas emissions permit

16.—(1) Where an operator has ceased carrying out in an installation all of the Schedule 1 activities authorised by a greenhouse gas emissions permit in relation to that installation, the operator shall apply to the regulator to surrender the permit.

(2) An application under paragraph (1) shall be made before the expiry of a period of one month beginning on the date on which the operator ceased to carry out the activity or activities in the installation to which the greenhouse gas emissions permit relates or by the date of entry into force of approved NAP regulations in relation to the first scheme phase, whichever is the later.

(3) Paragraph (1) shall not apply where—

- (a) an approved national allocation plan provides for all allowances allocated under these Regulations in respect of any installation in which a Schedule 1 activity is no longer carried out to continue to be issued to the operator of such installation during the scheme phase to which the approved national allocation plan relates; or
- (b) an approved national allocation plan provides that, if conditions specified in that plan are met, an operator which ceases to carry out a Schedule 1 activity in an installation may retain the allowances, or a proportion of those allowances, allocated in respect of the installation

under these Regulations and the operator has, before the expiry of a period of one month beginning on the date on which the operator ceased to carry out the Schedule 1 activities or of the date on which the approved NAP Regulations in relation to the scheme phase for which the allowances are allocated enter into force, whichever is the later, made an application to retain its allocation or a proportion of its allocation under regulation 24(1).

(4) An application under paragraph (1) shall, subject to paragraph (5), be accompanied by the fee prescribed in respect of the application in Schedule 5, and shall contain the operator's telephone number and postal address and, if different, any address to which correspondence relating to the application should be sent.

(5) Where an application under paragraph (1) relates to an offshore installation, the fee prescribed in Schedule 5 in respect of the application shall be payable within the period of 28 days beginning on the date on which the regulator serves a notice on the operator requesting payment of the fee.

(6) Where an application is duly made under paragraph (1), the regulator shall within two months give the operator and, where the surrender relates to an installation included in a pool in accordance with regulation 27, the appropriate authority, notice of the surrender of its greenhouse gas emissions permit ("a notice of surrender") and the notice shall take effect, subject to regulation 32(10), on the date specified in the notice.

(7) A notice of surrender of the permit shall require the operator, in relation to the scheme year in which the notice of surrender takes effect, to—

- (a) except where a notice of surrender relates to an excluded installation which was an excluded installation for the whole of the scheme year up to the date on which the notice is served, submit to the regulator by the date specified in the notice a report specifying the reportable emissions from the beginning of the scheme year in which the notice of surrender is served until the date on which the notice of surrender is served (excluding any period for which the installation was an excluded installation) and to ensure that such report is verified in accordance with the relevant monitoring and reporting conditions; and
- (b) by the date specified in the notice surrender allowances equal to—
 - (i) the reportable emissions specified in a report referred to in sub-paragraph (a);
 - (ii) where an operator has failed to comply with a condition of a greenhouse gas emissions permit imposed pursuant to regulation 10(3) in respect of the last scheme year for which the date for surrendering allowances in accordance with that condition has passed, the annual reportable emissions in respect of which the operator failed to comply with that condition in that year;
 - (iii) where a notice of surrender is served in a scheme year in which an error in the report submitted by an operator under a monitoring and reporting condition in relation to any earlier scheme year has been discovered, the annual reportable emissions in respect of which, as a result of that error, the operator failed to comply with the condition of a greenhouse gas emissions permit imposed pursuant to regulation 10(3) in respect of the scheme year to which the error relates;
 - (iv) where a supplementary decision has been made under regulation 25(2) or (7), the total number of allowances which on the date on which the notice of surrender is served have been issued in respect of the installation which would not have been issued if the statement referred to in regulation 25(1)(a) or 25(7)(a) had not been false or misleading; and
 - (v) where an operator has failed to comply with paragraph (1), the total number of allowances which on the date on which the notice of surrender is served have been issued in respect of the installation which would not have been issued if the operator had complied with paragraph 16(1).

(8) The report referred to in paragraph (7)(a) shall be prepared and verified in accordance with the monitoring and reporting conditions in the greenhouse gas emissions permit to which the application to surrender relates.

(9) From the date on which the notice of surrender takes effect, the greenhouse gas emissions permit shall cease to have effect to authorise the carrying out of a Schedule 1 activity but any conditions of the permit shall continue to have effect so far as they are not superseded by the requirements of the notice pursuant to paragraph (7) until the regulator certifies either that the requirements of paragraph (7) and any conditions of the greenhouse gas emissions permit imposed pursuant to regulation 10(3) have been complied with or that there is no reasonable prospect of further allowances being surrendered by the operator in respect of the installation to which the notice relates.

(10) From the scheme year following the scheme year in which the notice of surrender takes effect, for the purposes of assessing compliance with a condition of the permit imposed pursuant to regulation 10(3), the reportable emissions of the installation, before any increase in accordance with regulation 10(4), shall be deemed to be zero.

(11) Except where paragraph (12) applies, where the regulator certifies in accordance with paragraph (9) that there is no reasonable prospect of further allowances being surrendered by the operator it shall notify the registry administrator.

(12) Where the regulator certifies in accordance with paragraph (9) that there is no reasonable prospect of further allowances being surrendered by the operator because the operator holding account has been closed in accordance with Article 17(1) of the Registries Regulation, regulation 39 shall apply as if the failure to surrender sufficient allowances to comply with any conditions of the greenhouse gas emissions permit imposed pursuant to regulation 10(3) in a previous scheme year prior to the date on which the operator holding account is closed, were a further failure to comply with a condition imposed pursuant to regulation 10(3).

(13) The requirements specified in a notice of surrender pursuant to paragraph (7)(a) shall be treated as if they were monitoring and reporting conditions.

(14) The requirements specified in a notice of surrender pursuant to paragraph (7)(b) shall be treated as if they were conditions of the greenhouse gas emissions permit imposed pursuant to regulation 10(3) and the number of allowances required to be surrendered by the notice of surrender were the annual reportable emissions of the installation in respect of the scheme year to which the notice relates.

(15) Where an installation fails to comply with the requirements of a notice of surrender included pursuant to paragraph (7), the regulator shall notify the registry administrator.

(16) The regulator may, by notice to the operator, require him to furnish such further information specified in the notice, within the period so specified, as the regulator may require for the purpose of determining an application under this regulation.

(17) Where a notice is served on an operator under paragraph (16) for the purpose of calculating the period of two months mentioned in paragraph (6), no account shall be taken of the period beginning with the date on which the notice is served and ending on the date on which the information specified in the notice is furnished.

Revocation of greenhouse gas emissions permits

17.—(1) Subject to paragraph (3), the regulator may at any time revoke a greenhouse gas emissions permit by serving a notice (“a revocation notice”) on the operator and where the revocation relates to an installation included in a pool in accordance with regulation 27, on the appropriate authority.

(2) Without prejudice to the generality of paragraph (1) the regulator shall serve a notice under paragraph (1) where an operator fails to comply with an obligation under regulation 16(1).

(3) Where an approved national allocation plan provides for allowances allocated in respect of an installation in which a Schedule 1 activity is no longer carried out to continue to be issued during the scheme phase to which the approved national allocation plan relates, the regulator shall not revoke the greenhouse gas emissions permit which relates to that installation until after 28th February in the last scheme year in that scheme phase.

(4) A revocation notice shall specify the date on which the notice shall, subject to regulation 32(10), take effect, which shall be at least 28 days after the date on which the notice is served.

(5) A revocation notice shall specify that the operator is, in relation to the scheme year in which the revocation takes effect, required to—

- (a) except where a revocation notice relates to an excluded installation which was an excluded installation for the whole of the scheme year up to the date on which the notice is served, submit to the regulator by the date specified in the notice a report specifying the reportable emissions from the beginning of the scheme year in which the revocation notice is served until the date on which the revocation notice is served on the operator and to ensure that such report is verified in accordance with the relevant monitoring and reporting conditions; and
- (b) by the date specified in the notice surrender allowances equal to—
 - (i) the reportable emissions specified in a report referred to in sub-paragraph (a);
 - (ii) where an operator has failed to comply with a condition of a greenhouse gas emissions permit imposed pursuant to regulation 10(3) in respect of the last scheme year for which the date for surrendering allowances in accordance with that condition has passed, the annual reportable emissions in respect of which the operator failed to comply with that condition in that year;
 - (iii) where a revocation notice is served in a scheme year in which an error in the report submitted by an operator under a monitoring and reporting condition in relation to any earlier scheme year has been discovered, the annual reportable emissions in respect of which, as a result of that error, the operator failed to comply with the condition of a greenhouse gas emissions permit imposed pursuant to regulation 10(3) in respect of the scheme year to which the error relates;
 - (iv) where a supplementary decision has been made under regulation 25(2) or (7), the total number of allowances which on the date on which the revocation notice is served have been issued in respect of the installation which would not have been issued if the statement referred to in regulation 25(1)(a) or 25(7)(a) had not been false or misleading; and
 - (v) where the notice is served in accordance with paragraph (2), the total number of allowances which on the date on which the notice is served have been issued in respect of the installation which would not have been issued if the operator had complied with regulation 16(1).

(6) Where a revocation notice is served in accordance with paragraph (2), regulation 24(11) or regulation 25(3), the revocation notice shall require the operator to pay, within such period as may be specified in the notice, the fee prescribed in respect of a revocation notice in Schedule 5.

(7) From the date on which the revocation notice takes effect, the greenhouse gas emissions permit shall cease to have effect to authorise the carrying out of a Schedule 1 activity and to require the monitoring and reporting of emissions but the conditions of the permit shall continue to have effect in so far as they are not superseded by the requirements of the notice specified pursuant to paragraph (5) until the regulator certifies that either the requirements of the notice specified pursuant to paragraph (5) and any conditions of the greenhouse gas emissions permit imposed pursuant

to regulation 10(3) have been complied with, or that there is no reasonable prospect of further allowances being surrendered by the operator in respect of the installation to which the notice relates.

(8) From the scheme year following the scheme year in which the revocation notice takes effect, for the purposes of assessing compliance with a condition of the permit imposed pursuant to regulation 10(3), the reportable emissions of the installation, before any increase in accordance with regulation 10(4), shall be deemed to be zero.

(9) Except where paragraph (10) applies, where the regulator certifies in accordance with paragraph (7) that there is no reasonable prospect of further allowances being surrendered by the operator it shall notify the registry administrator.

(10) Where the regulator certifies in accordance with paragraph (7) that there is no reasonable prospect of further allowances being surrendered by the operator because the operator holding account has been closed in accordance with Article 17(1) of the Registries Regulation, regulation 39 shall apply as if the failure to surrender sufficient allowances to comply with any conditions of the greenhouse gas emissions permit imposed pursuant to regulation 10(3) in a previous scheme year prior to the date on which the operator holding account is closed, were a further failure to comply with a condition imposed pursuant to regulation 10(3).

(11) The requirements specified in a revocation notice pursuant to paragraph (5)(a) shall be treated as if they were monitoring and reporting conditions.

(12) The requirements specified in a revocation notice pursuant to paragraph (5)(b) shall be treated as if they were conditions of the greenhouse gas emissions permit imposed pursuant to regulation 10(3) and the number of allowances required to be surrendered were the annual reportable emissions of the installation in respect of the scheme year to which the notice relates.

(13) Where an installation fails to comply with the requirements of a revocation notice included pursuant to paragraph (5), the regulator shall notify the registry administrator.

(14) A regulator which has served a revocation notice may, before the date on which the revocation takes effect, withdraw the notice.

Fees and charges

18.—(1) An operator which holds a greenhouse gas emissions permit shall pay a charge for the subsistence of such permit in accordance with Schedule 5.

(2) If an operator has failed to pay a charge referred to in paragraph (1), the regulator may revoke the greenhouse gas emissions permit under regulation 17(1).

(3) The provisions of Schedule 5 shall apply until such time as they are superseded by the provisions of a charging scheme made—

- (a) in respect of installations (other than offshore installations) situated in England, Wales or Scotland, under section 41 of the 1995 Act; or
- (b) in respect of offshore installations, under regulation 19.

(4) A charging scheme made under section 41 of the 1995 Act which supersedes the provisions of Schedule 5, or any such scheme made under regulation 19, shall specify which of those provisions it supersedes.

(5) Where a fee or charge prescribed in Schedule 5 is superseded in accordance with paragraph (3), a reference to a fee or charge prescribed in Schedule 5 shall be read as a reference to a fee or charge prescribed in a charging scheme which supersedes that fee or charge.

Charging scheme for offshore installations

19.—(1) The Secretary of State may make, and from time to time revise, a scheme prescribing—

- (a) fees payable in respect of, or of applications for, a greenhouse gas emissions permit for an offshore installation;
 - (b) fees payable in respect of, or of applications for, the variation, transfer and surrender of such permits; and
 - (c) charges payable in respect of the subsistence of such permits.
- (2) The fees and charges prescribed in a scheme under paragraph (1) shall be paid to the Secretary of State.
- (3) The Secretary of State shall, on making or revising a scheme under paragraph (1), lay a copy of the scheme or of the revisions made to the scheme or, if she considers it more appropriate, the scheme as revised, before each House of Parliament.
- (4) A scheme under paragraph (1) may, in particular—
- (a) make different provision for different cases, including different provision in relation to different persons in different circumstances or localities;
 - (b) allow for reduced fees or charges payable in respect of greenhouse gas emissions permits granted to the same operator;
 - (c) provide for the times at which and the manner in which the payments required by the scheme are to be made (subject to the requirements in these Regulations as to times at which payment is required); and
 - (d) make such incidental, supplementary and transitional provisions as appears to the Secretary of State to be appropriate.
- (5) The Secretary of State shall take such steps as she considers appropriate for bringing the provisions of any charging scheme made by her which is for the time being in force to the attention of persons likely to be affected by it.
- (6) In this regulation “prescribed” means specified in, or determined under, a scheme made under this regulation.

PART 3

ALLOWANCES

National Allocation Plans

- 20.**—(1) Subject to regulation 46, the Secretary of State shall develop a national allocation plan in respect of the second scheme phase and in respect of each subsequent scheme phase.
- (2) The Secretary of State shall send to the Scottish Ministers, the National Assembly for Wales and the Department of the Environment—
- (a) a copy of the national allocation plan developed under paragraph (1), at least 18 months before the beginning of the scheme phase in respect of which it is developed;
 - (b) information on whether the European Commission has accepted or rejected a national allocation plan or any aspect of a plan as soon as practicable after being advised of such acceptance or rejection; and
 - (c) any amendment to the national allocation plan proposed by the Secretary of State as soon as practicable after its communication to the European Commission.
- (3) The Secretary of State shall publish in England the national allocation plan developed for each scheme phase, at least 18 months before the beginning of the relevant phase.

(4) The Secretary of State shall publish in England information on whether the European Commission has accepted or rejected a national allocation plan or any aspect of a plan as soon as practicable after being advised of such acceptance or rejection.

(5) Where the European Commission rejects a national allocation plan or any aspect of such plan under Article 9(3) of the Directive and the Secretary of State proposes an amendment to the plan, the Secretary of State shall publish in England the amendment as soon as practicable after its communication to the European Commission.

(6) The Scottish Ministers shall publish in Scotland any plan, information or amendment sent to them by the Secretary of State under paragraph (2) as soon as practicable after it is received.

(7) The National Assembly for Wales shall publish in Wales any plan, information or amendment sent to it by the Secretary of State under paragraph (2) as soon as practicable after it is received.

(8) The Department of the Environment shall publish in Northern Ireland any plan, information or amendment sent to it by the Secretary of State under paragraph (2) as soon as practicable after it is received.

Allocation and issue of allowances

21.—(1) Subject to regulation 46, for the second scheme phase and each subsequent scheme phase, the Secretary of State shall decide upon—

- (a) the total quantity of allowances to be allocated for that phase;
- (b) the allocation of allowances in respect of each installation including the number of those allowances to be issued in each scheme year in that phase; and
- (c) where there is more than one greenhouse gas emissions permit relating to an installation, the division of the allowances allocated in respect of that installation under subparagraph (b) between each part of the installation to which a separate greenhouse gas emissions permit relates.

(2) Decisions under paragraph (1) shall—

- (a) be based upon the national allocation plan for the relevant phase which has not been rejected by the European Commission or in relation to which the European Commission has accepted amendments in accordance with Article 9(3) of the Directive; and
- (b) take due account of comments from the public in accordance with the provisions of the national allocation plan.

(3) The Secretary of State shall publish in England a decision under paragraph (1), at least twelve months before the beginning of the scheme phase to which the decision relates.

(4) The Secretary of State shall notify the Scottish Ministers, the National Assembly for Wales and the Department of the Environment of her decision under paragraph (1).

(5) Where the European Commission has provided for additional allowances to be allocated in respect of an installation, or installations of any description, under Article 29(1) of the Directive, the Secretary of State shall instruct the registry administrator to issue allowances in accordance with Article 43(1) of the Registries Regulation.

(6) Where—

- (a) an approved national allocation plan provides that where conditions specified in the approved national allocation plan are met allowances allocated under these Regulations in respect of an installation for a particular scheme year in the scheme phase to which the plan relates should be issued to the operator of the installation after 28th February; and
- (b) such conditions are met in respect of an installation,

the relevant decision maker shall notify the registry administrator and the operator that the second sentence of Article 40 or 46 of the Registries Regulation applies to that installation in respect of the scheme year in which the notice is served.

(7) A notice under paragraph (6) shall, in accordance with the approved national allocation plan, either—

- (a) specify the date after 28th February on which, in accordance with the approved national allocation plan, allowances should be issued in respect of the installation; or
- (b) where the approved national allocation plan provides for such date to be determined by reference to when specified conditions have been met, specify the conditions and indicate that the relevant decision maker will further notify the registry administrator when those conditions have been met.

(8) Where paragraph (7)(b) applies, the relevant decision maker shall periodically, or where requested by a notice served on the relevant decision maker by the operator, assess whether the conditions specified in the notice under paragraph (6) have been met and shall notify the operator and the registry administrator when the conditions have been met.

(9) Where a notice is served under paragraph (6), the reference to “later date” in Article 40 or 46 of the Registries Regulation shall be to the date specified in accordance with paragraph (7)(a) or to the date of a notice under paragraph (8).

(10) For the purposes of this regulation, “relevant decision maker” means—

- (a) where the conditions referred to in paragraph (6)(a) relate to an installation in respect of which an application for temporary exclusion under Article 27(2) of the Directive has been made, the responsible authority;
- (b) where the conditions referred to in paragraph (6)(a) relate to a supplementary decision of the Secretary of State under regulation 25(7), the Secretary of State;
- (c) in all other cases, the regulator.

Application for an allocation from the new entrant reserve

22.—(1) Where an approved national allocation plan provides for a new entrant reserve in the scheme phase to which it relates, an operator of an installation may apply to the regulator for an allocation of allowances in respect of that installation from the new entrant reserve.

(2) Subject to paragraph (3), an application under paragraph (1) shall be combined with an application for a greenhouse gas emissions permit under regulation 8(1) or an application for a variation of a greenhouse gas emissions permit under regulation 14(2).

(3) Paragraph (2) shall not apply where an application under paragraph (1) relates to—

- (a) an installation in respect of which an operator made an application for a greenhouse gas emissions permit under regulation 8(1) before the date on which the approved NAP Regulations enter into force; or
- (b) a change in operation in respect of which an operator made an application for a variation of a greenhouse gas emissions permit under regulation 14(2) before the date on which the approved NAP Regulations enter into force.

(4) An application under paragraph (1) shall contain such information as the regulator may reasonably require for the purpose of determining the application in accordance with the provisions of the approved national allocation plan and, except where paragraph (6) or (7) applies, shall be accompanied by the fee prescribed in Schedule 5 in respect of such application.

(5) Subject to paragraph (6), where—

- (a) before the date on which approved NAP Regulations for the first scheme phase enter into force; and
- (b) in the case of an application relating to an installation which was put into operation on or after 27th February 2005 or a change in operation which was made on or after 27th February 2005, on or after 10th January 2005,

an operator has made to the regulator an application which if made after the date on which the approved NAP Regulations enter into force would have complied with paragraph (1), it shall be deemed to be an application under paragraph (1) made on the date of entry into force of the approved NAP Regulations and where more than one application is deemed to have been received on that day, the applications shall be deemed to have been received on that day in the order in which they were originally received by the regulator.

(6) Except where paragraph (7) applies, paragraph (5) shall only apply to an application in respect of which the operator has before the expiry of a period of 15 working days beginning on the date on which these Regulations enter into force paid to the regulator the fee prescribed in Schedule 5 in respect of an application under paragraph (1).

(7) Where an application under paragraph (1), or deemed to have been made under paragraph (1) in accordance with paragraph (5), relates to an offshore installation, the fee prescribed in Schedule 5 in respect of the application shall be payable within the period of 28 days beginning on the date on which the regulator serves a notice on the operator requesting payment of the fee.

(8) If an operator fails to comply with paragraph (7) the regulator may refuse the application.

(9) The regulator may, by notice to the applicant, require him to furnish such further information specified in the notice, within the period so specified, as the regulator may require for the purpose of determining the application and if the applicant fails to furnish the specified information within the period specified, the application shall, if the regulator gives notice to the applicant that it treats the application as having been withdrawn, be deemed to have been withdrawn at the end of that period.

(10) Subject to paragraph (11), the regulator shall give notice under paragraph (13) of its determination of an application under paragraph (1) within a period of two months beginning on the later of—

- (a) the date on which the application under paragraph (1) was received by the regulator; or
 - (b) the date of entry into force of the approved NAP Regulations for the first scheme phase,
- or within such longer period as may be agreed in writing with the applicant.

(11) For the purposes of calculating the period of two months mentioned in paragraph (10) no account shall be taken of—

- (a) any period beginning with the date on which notice is served on the applicant under paragraph (9) and ending on the date on which the applicant furnishes the information specified in the notice;
- (b) any period beginning with the date on which notice is served on the applicant under regulation 8(5) or 14(6) in respect of an application with which an application under paragraph (1) is combined in accordance with paragraph (2).

(12) If the regulator fails to give notice of its determination of an application under paragraph (1) within the period allowed by paragraph (10), the application shall, if the operator notifies the regulator that it treats the application as having been refused, be deemed to have been refused.

(13) Where an application under paragraph (1) is duly made to the regulator, the regulator shall, in accordance with the provisions of the approved national allocation plan—

- (a) determine the eligible allocation subject to such conditions as the regulator considers appropriate to comply with the approved national allocation plan;

- (b) determine the eligible allocation and, subject to paragraph (14), allocate allowances to the operator in respect of the installation to which the application relates; or
- (c) reject the application,

by serving a notice on the operator and, in the case of a determination under sub-paragraph (b), on the registry administrator.

(14) Where the eligible allocation is greater than the number of available allowances, a notice under paragraph (13)(b) shall allocate the available allowances and the regulator may make additional allocations of allowances under paragraph (13)(b) if additional allowances subsequently become available in the new entrant reserve in accordance with the approved national allocation plan until the number of allowances allocated under paragraph (13)(b) equals the eligible allocation.

(15) A notice under paragraph (13)(a) shall—

- (a) specify the conditions applying to the determination;
- (b) require the operator to notify the regulator if any of the information provided in the application or provided to the regulator in response to a request for further information under paragraph (9) changes; and
- (c) where the approved national allocation plan provides for allowances from the new entrant reserve to be reserved for an installation in respect of which an application under paragraph (1) has been made, indicate whether, and, if so, how many allowances have been reserved in respect of the installation.

(16) Where it appears to the regulator, whether as a result of a notification in accordance with a condition imposed pursuant to paragraph (13)(a) or otherwise, that the approved national allocation plan requires a variation of any of the provisions of the notice served on the operator under paragraph (13)(a), the regulator shall serve a further notice under paragraph (13)(a) on the operator varying the provisions of the previous notice.

(17) Where it appears to the regulator, whether as a result of a notification in accordance with a condition imposed pursuant to paragraph (13)(a) or otherwise, that it would no longer be consistent with the approved national allocation plan for an allocation of allowances to be made in respect of an installation to which a notice under paragraph (13)(a) relates, the regulator shall serve a further notice on the operator rejecting the application.

(18) Subject to paragraph (19), where the regulator is satisfied that all the conditions specified in a notice under paragraph (13)(a) are met, the regulator shall serve a notice on the operator and the registry administrator allocating allowances in respect of the installation.

(19) Where the eligible allocation is greater than the number of available allowances, a notice under paragraph (18) shall allocate the available allowances and the regulator may make additional allocations of allowances under paragraph (18) if additional allowances subsequently become available in the new entrant reserve in accordance with the approved national allocation plan until the number of allowances allocated under paragraph (18) equals the eligible allocation.

(20) A notice under paragraph (13)(b) or (18) shall specify—

- (a) the operator and installation identification code of the installation in respect of which the allocation is made and the permit identification code of the greenhouse gas emissions permit which relates to that installation;
- (b) the allocation of allowances to the operator in respect of the installation including the number of allowances to be issued in each remaining year or part year of the phase in relation to which the allocation is made and the date on which the allowances will be issued in the year in which the notice is served.

(21) A notice under paragraph (13)(b) or (18) shall be an instruction to the registry administrator for the purposes of Article 42 or 48 of the Registries Regulation.

(22) Where an application under regulation 15(1) specifies that an application under paragraph (1) in respect of the installation relates to the transferred unit, any allocation of allowances under paragraph (13)(b) or (18) made after the transfer takes effect shall be allocated to the proposed transferee.

(23) For the purposes of this regulation—

“eligible allocation” means the amount of allowances which may be allocated in respect of an installation under the provisions of the approved national allocation plan subject to the number of available allowances;

“available allowances” means allowances in the new entrant reserve which are available for allocation in accordance with the approved national allocation plan;

“proposed transferee” and “transferred unit” shall have the same meaning as in regulation 15(1) and (4).

Allowance allocation where permit surrendered or revoked

23.—(1) Where a greenhouse gas emissions permit is surrendered under regulation 16 or revoked by the regulator under regulation 17(1)—

(a) the regulator shall notify the Secretary of State; and

(b) where an allocation of allowances in respect of the installation to which the greenhouse gas emissions permit relates has been made under regulation 22(13)(b) or (18) for the phase in which the permit is surrendered or revoked or the subsequent scheme phase, the regulator shall take such steps as it considers necessary to ensure that no further allowances are issued in respect of the installation from the date on which the notice of surrender or the revocation notice takes effect.

(2) Where the regulator notifies the Secretary of State that the greenhouse gas emissions permit in respect of an installation has been surrendered or revoked, the Secretary of State shall take such steps as she considers necessary to ensure that no further allowances are issued in respect of the installation from the date on which the notice of surrender or the revocation notice takes effect.

Applications to retain allocation

24.—(1) Where the approved national allocation plan provides that, if conditions specified in the approved national allocation plan are met, an operator which ceases to carry out a Schedule 1 activity in an installation may retain the allowances, or a proportion of the allowances, allocated in respect of that installation under these Regulations, the operator may apply to the regulator to retain its allocation.

(2) An application under paragraph (1) shall contain such information as the regulator may reasonably require for the purpose of determining the application in accordance with the provisions of the approved national allocation plan.

(3) Subject to paragraph (4), the regulator shall give notice under paragraph (7) of its determination of an application which is duly made under paragraph (1) within a period of two months beginning on the day on which the regulator received the application or within such longer period as may be agreed in writing with the applicant.

(4) For the purposes of calculating the period of two months mentioned in paragraph (3) no account shall be taken of any period beginning with the date on which notice is served on the applicant under paragraph (6) and ending on the date on which the applicant furnishes the information specified in the notice.

(5) If the regulator fails to give notice of its determination of an application under paragraph (1) within the period allowed by paragraph (3), the application shall, if the operator notifies the regulator that it treats the application as having been refused, be deemed to have been refused.

(6) The regulator may, by notice to the applicant, require him to furnish such further information specified in the notice, within the period so specified, as the regulator may require for the purpose of determining the application and if the applicant fails to furnish the specified information within the period specified, the application shall, if the regulator gives notice to the applicant that it treats the application as having been withdrawn, be deemed to have been withdrawn at the end of that period.

(7) Where an application is duly made under paragraph (1), the regulator shall, in accordance with the provisions of the approved national allocation plan—

- (a) accept the application and provide, subject to such conditions as the regulator considers appropriate, for either—
 - (i) all the allowances allocated in respect of the installation for the scheme phase to which the application relates to be retained, or
 - (ii) a proportion of the allowances allocated in respect of the installation for the scheme phase to which the application relates to be retained; or
- (b) refuse the application,

by serving a notice on the operator.

(8) A notice under paragraph (7)(a) (a “retention notice”) shall—

- (a) specify such variations to the provisions of the greenhouse gas emissions permit as the regulator considers appropriate which shall take effect from the date on which the notice takes effect;
- (b) specify the number of hours which the regulator required to determine the application under paragraph (1) and shall require the operator to pay, within such period as may be specified in the notice, the fee prescribed in Schedule 5 in respect of the determination of the application.

(9) Where—

- (a) a retention notice provides for only a proportion of the allowances allocated under regulation 22(13)(b) or (18) in respect of the installation to be retained, the regulator shall take such steps as are necessary to ensure that from the date on which the retention notice takes effect only such proportion of the allowances as is specified in the notice are issued in respect of the installation;
- (b) a retention notice provides for only a proportion of the allowances allocated under regulation 21(1)(b) or, if applicable, (1)(c) in respect of the installation to be retained, the regulator shall notify the Secretary of State who shall take such steps as she considers necessary to ensure that from the date on which the retention notice takes effect only such proportion of the allowances as is specified in the notice are issued in respect of the installation.

(10) Subject to regulation 32(10), where a retention notice provides for a proportion of the allowances allocated in respect of the installation to which the application relates to be retained, the provision of the notice specifying the proportion of the allowances to be retained shall take effect from the expiry of a period of 15 working days beginning on the date of the notice.

(11) Where—

- (a) an application under paragraph (1) is withdrawn by the operator or refused by the regulator; or
- (b) any conditions specified in a notice under paragraph (7)(a) are no longer met,

the regulator shall revoke the greenhouse gas emissions permit in accordance with regulation 17(1).

Supplementary decisions by the regulator or the Secretary of State

25.—(1) Subject to paragraph (3), paragraph (2) shall apply where—

- (a) a person has made a false statement—
 - (i) in connection with an application under regulation 22(1); or
 - (ii) in connection with an application under regulation 24(1); and
- (b) the statement resulted in an over-allocation in respect of an installation.

(2) Where this paragraph applies, the regulator may make a supplementary decision by serving a notice on the operator.

(3) Where a person has made a false statement in connection with an application under regulation 24(1) and the application would, in accordance with the approved national allocation plan, have been refused if the statement had not been false or misleading, the regulator shall revoke the greenhouse gas emissions permit in accordance with regulation 17(1).

(4) A supplementary decision under paragraph (2) shall—

- (a) identify the false statement and specify the amount of the over-allocation;
- (b) set out the steps which the regulator will take in accordance with paragraph (5) and, if applicable, paragraph (6),

and, subject to regulation 32(10), shall take effect from the expiry of a period of two months beginning on the date of the notice.

(5) Subject to paragraph (6), where the regulator makes a supplementary decision under paragraph (2), the regulator shall take such steps as it considers necessary to ensure that the amount of allowances issued pursuant to an allocation under regulation 22(13)(b) or (18) in respect of the installation to which the false statement relates are reduced by the amount of the over-allocation.

(6) Where paragraph (2) applies and—

- (a) all allowances allocated under regulation 22(13)(b) or (18) in respect of the installation for the scheme phase to which the false statement relates have been issued; or
- (b) the amount of such allowances which have not been issued is less than the amount of the over-allocation,

the regulator shall notify the Secretary of State specifying the amount of over-allocation or, where the regulator has made a supplementary decision under paragraph (2), the remaining over-allocation.

(7) Subject to regulation 46, where—

- (a) a person has made a false statement in response to a request for information from the Secretary of State for the purposes of developing a national allocation plan under regulation 20(1) or making a decision under regulation 21(1) and the statement has resulted in an over-allocation in respect of the installation; or
- (b) the regulator notifies the Secretary of State in accordance with paragraph (6),

the Secretary of State may make a supplementary decision by serving notice on the operator.

(8) A supplementary decision under paragraph (7) shall—

- (a) identify the false statement and specify the amount of the over-allocation;
- (b) set out the steps which the Secretary of State will take in accordance with paragraph (9),

and, subject to regulation 33(6), shall take effect from the expiry of a period of two months beginning on the date of the notice.

(9) Where the Secretary of State makes a supplementary decision under paragraph (7), the Secretary of State shall take such steps as she considers necessary to ensure that the number of allowances issued in respect of the installation to which the false statement relates for—

(a) the phase to which the false statement relates; and
 (b) where the number of allowances allocated in respect of the installation in that scheme phase which have not been issued is less than the amount of the over-allocation or, if applicable, the remaining over-allocation, a subsequent scheme phase,
 are reduced by the amount of the over-allocation or, if applicable, the remaining over-allocation.

(10) The steps which may be taken by the Secretary of State under paragraph (9) may include—

- (a) where the supplementary decision relates to an installation situated in England (other than an offshore installation), directing the regulator; or
- (b) where the supplementary decision relates to an installation, other than an offshore installation, situated in Scotland, Wales or Northern Ireland, arranging for the appropriate authority in relation to that installation to direct the regulator,

to take such steps as are necessary to reduce the amount of allowances issued pursuant to an allocation under regulation 22(13)(b) or (18).

(11) As soon as practicable after the Secretary of State makes a supplementary decision under paragraph (7), she shall publish her supplementary decision under paragraph (7) in England and notify the Scottish Ministers, the National Assembly for Wales and Department of the Environment of the decision.

(12) The Scottish Ministers shall publish in Scotland any decision notified to them under paragraph (11) as soon as practicable on notification.

(13) The National Assembly for Wales shall publish in Wales any decision notified to them under paragraph (11) as soon as practicable on notification.

(14) The Department of the Environment shall publish in Northern Ireland any decision notified to them under paragraph (11) as soon as practicable on notification.

(15) A regulator which has served a notice under paragraph (2) or the Secretary of State who has served a notice under paragraph (7), may before the date on which the notice takes effect withdraw the notice.

(16) For the purposes of this regulation—

“false statement” means a statement which is which is false or misleading in a material particular;

“over-allocation” means—

- (i) the number of allowances by which an allocation under regulation 21(1)(b), or if applicable, (1)(c) or regulation 22(13)(b) or (18) in respect of an installation in the scheme phase to which a false statement relates exceeds the number of allowances which would have been allocated in accordance with the approved national allocation plan for that scheme phase if the statement had not been false or misleading;
- (ii) in relation to an application under regulation 24(1), the number of allowances which are retained by the operator which would not have been retained in accordance with the approved national allocation plan if the statement had not been false or misleading;

“remaining over-allocation” means the difference between the over-allocation and the amount by which the number of allowances to be issued in respect of an installation is reduced by the supplementary decision under paragraph (2).

Registry

26.—(1) Subject to regulation 46, the Secretary of State shall establish a registry in accordance with the requirements of Article 19 of the Directive and the Registries Regulation.

(2) The Environment Agency shall—

- (a) maintain the registry in accordance with the requirements of Article 19 of the Directive;
 - (b) act as registry administrator for the purposes of the Registries Regulation and these Regulations.
- (3) Subject to paragraph (4), the regulator shall be the competent authority for the purposes of the Registries Regulation.
- (4) The Secretary of State shall be the competent authority for the purposes of Articles 15, 38, 41, 43, 44, 47, 59 and 60 of the Registries Regulation.
- (5) The Secretary of State shall be the relevant body for the purposes of Articles 12(1), 13, 50(1) and 63(1) of and paragraph 19 of Annex VI to the Registries Regulation.
- (6) It shall be the duty of the operator to comply with the requirements of Article 15(1) and (3) of the Registries Regulation.
- (7) A holder of an account in the Registry may nominate an additional authorised representative for that account in accordance with Article 23(2) of the Registries Regulation.
- (8) Subject to paragraph (15), where an operator fails to comply with a condition imposed pursuant to regulation 10(3) in respect of an installation, the registry administrator shall ensure that an operator may not transfer any allowances out of the operator holding account for that installation until the compliance status figure for that installation calculated in accordance with Article 55 of the Registries Regulation is greater than or equal to zero.
- (9) If a person has failed to comply with any terms and conditions agreed in accordance with Article 19(4) of the Registries Regulation, the registry administrator may—
- (a) prevent, subject to paragraph (15), the transfer of any allowances out of any person holding accounts in the registry held in the name of that person until the person complies with the terms and conditions, or
 - (b) if the person continues to fail to comply with the terms and conditions, serve a notice on the person indicating that, subject to regulation 32(10), any person holding accounts in the registry held in his name will be closed on the expiry of such period as may be specified in a notice.
- (10) The registry administrator may, before the date on which the notice under paragraph (9)(b) takes effect, withdraw the notice.
- (11) Subject to paragraph (15), if an operator has failed to comply with any terms and conditions agreed in accordance with Article 15(4) of the Registries Regulation, the registry administrator may prevent the transfer of any allowances out of any operator holding account in the registry held in the name of that operator until the operator complies with the terms and conditions.
- (12) An application for the creation of a person holding account under Article 19(1) of the Registries Regulation shall be accompanied by the fee prescribed in respect of the application in Schedule 5.
- (13) A notification under Article 19(3) of the Registries Regulation concerning a change to the authorised representatives for the account shall be accompanied by the fee prescribed in respect of the notification in Schedule 5.
- (14) Where—
- (a) an operator fails to submit to the regulator the report required to be submitted to the regulator by the terms of a notice of surrender included pursuant to regulation 16(7)(a) or by the terms of a revocation notice included pursuant to regulation 17(5)(a) or the report submitted is incomplete; or
 - (b) the report submitted to the regulator in accordance with the terms of a notice of surrender included pursuant to regulation 16(7)(a) or by the terms of a revocation notice included

pursuant to regulation 17(5)(a) or part of such report cannot be verified in accordance with the relevant monitoring and reporting conditions,

the registry administrator shall ensure that, subject to paragraph (15), the operator or, where the installation is covered by a notice under regulation 27(10)(b) authorising a pool, the pool administrator, may not transfer allowances out of the operator holding account for the installation to which the notice of surrender or the revocation notice relates until the report has been submitted to the regulator and has been verified in accordance with the terms of a notice of surrender included pursuant to regulation 16(7)(a) or by the terms of a revocation notice included pursuant to regulation 17(5)(a) or the regulator has notified a determination in accordance with regulation 30(3).

(15) Paragraphs (8), (9)(a), (11) and (14) shall not prevent—

- (a) the surrender of allowances in accordance with Article 52 or 54 of the Registries Regulation; or
- (b) the cancellation and replacement of allowances in accordance with Articles 60 and 61 of the Registries Regulation.

(16) Where a registry administrator prevents the transfer of allowances out of an account under paragraphs (8), (9)(a), (11) or (14) or Article 27 of the Registries Regulation, the registry administrator shall notify the account holder specifying the reason why and the period during which transfers will be prevented.

Pooling

27.—(1) One or more operators of installations to which this regulation applies may make a joint application to the appropriate authority to form a pool for the second scheme phase.

(2) This regulation applies to installations which carry out activities which—

- (a) fall within the same description in Schedule 1; and
- (b) do not fall within any description in Annex I of Council Directive [96/61/EC](#) concerning integrated pollution prevention and control⁽¹⁹⁾.

(3) An application under paragraph (1) shall be made at least 6 months before the start of the scheme phase in which the operators wish to form a pool and shall—

- (a) identify the installations to be included in the pool;
- (b) contain the names and postal addresses of the operators of those installations and, if different, any addresses to which correspondence should be sent;
- (c) contain a copy of the greenhouse gas emissions permit in respect of each of those installations and identify the regulator which granted that permit;
- (d) nominate a person to act as pool administrator and contain a declaration from that person that he is willing to act as pool administrator; and
- (e) contain evidence that the pool administrator will be able to fulfil the obligations in paragraph (12).

(4) Where an application is duly made under paragraph (1) and the appropriate authority considers it appropriate to allow the pool—

- (a) where the Secretary of State is not the appropriate authority, the appropriate authority shall send a copy of the application to the Secretary of State; and
- (b) the Secretary of State shall submit the application to the European Commission.

(5) The appropriate authority shall notify—

- (a) the operator of each installation to be included in the pool;

(19) OJ No. L 257, 10.10.1996, p.26; to which there are amendments not relevant to this regulation.

(b) the regulator or regulators for the installations to be included in the pool; and
(c) the person nominated to act as pool administrator under paragraph (3)(d),
whether it considers it appropriate to allow the pool.

(6) If the European Commission rejects the application within three months of the date it receives the application—

- (a) where the Secretary of State is not the appropriate authority, the Secretary of State shall notify the appropriate authority; and
- (b) the appropriate authority shall notify—
 - (i) the operator of each installation to be included in the pool;
 - (ii) the regulator or regulators for the installations to be included in the pool; and
 - (iii) the person nominated to act as pool administrator under paragraph (3)(d),that the application has been rejected and of the reasons given by the European Commission for the rejection.

(7) Where operators are notified under paragraph (6) that the European Commission has rejected their application, they may within a period of four weeks beginning on the date of the notice under paragraph (6)(b) submit an amended application to the appropriate authority.

(8) If the appropriate authority considers that the amended application addresses the reasons given by the European Commission for rejection of the application—

- (a) where the Secretary of State is not the appropriate authority, the appropriate authority shall send a copy of the amended application to the Secretary of State; and
- (b) the Secretary of State shall submit the amended application to the European Commission.

(9) The appropriate authority shall notify—

- (a) the operator of each installation to be included in the pool;
- (b) the regulator or regulators for the installations to be included in the pool; and
- (c) the person nominated to act as pool administrator under paragraph (3)(d),

of whether it considers that the amended application addresses the reasons given by the European Commission for rejection of the application.

(10) If the European Commission does not reject the application within three months of the date it receives the application or accepts an amended application submitted under paragraph (8)(b)—

- (a) where the Secretary of State is not the appropriate authority, the Secretary of State shall notify the appropriate authority; and
- (b) the appropriate authority shall serve a notice authorising the pool on—
 - (i) the operator of each installation to be included in the pool;
 - (ii) the regulator for each installation to be included in the pool;
 - (iii) the person nominated to act as pool administrator under paragraph (3)(d); and
 - (iv) the registry administrator.

(11) A notice under paragraph (10)(b) shall—

- (a) identify the installations included in the pool;
- (b) identify the person who will act as pool administrator;
- (c) specify any conditions applying to the approval of the pool; and
- (d) specify the phase for which the pool is approved.

(12) For the duration of the period for which a group of installations are covered by a notice under paragraph (10)(b) authorising the pool—

- (a) the operator of each installation referred to in paragraph (11)(a) shall ensure that the pool administrator is nominated as primary authorised representative for the operator holding account for the installation;
- (b) the pool administrator shall surrender allowances equal to the annual reportable emissions from all the installations within the pool for which he is acting as pool administrator (as increased by any condition of a greenhouse gas emissions permit relating to an installation included in the pool imposed pursuant to regulation 10(4)) within four months of the end of the scheme year during which those emissions arose; and
- (c) regulation 39 shall apply to a pool administrator who fails to comply with the obligation in sub-paragraph (b) as it applies to an operator who fails to comply with a condition of a greenhouse gas emissions permit imposed pursuant to regulation 10(3).

(13) An operator of an installation which is included in a notice authorising a pool in accordance with paragraph (11)(a) shall be deemed, unless the notice is revoked, to be in compliance with any condition of a greenhouse gas emissions permit imposed pursuant to regulation 10(3).

(14) Where the pool administrator fails to pay a civil penalty under regulation 39 by the due date determined in accordance with regulation 41(3), the appropriate authority shall serve a notice on the persons specified in paragraph (10)(b) providing for the notice under paragraph (10)(b) authorising the pool to be revoked, subject to paragraph 33(6), from the date specified in the notice.

(15) For the purposes of this regulation, where an application to form a pool relates to installations in more than one country of the United Kingdom, the appropriate authority in relation to the application and any subsequent pool shall, subject to regulation 46, be the Secretary of State.

(16) Where a notice of surrender or a revocation notice is served in respect of an installation which is included in a pool, the appropriate authority shall serve on the persons on which the notice under paragraph (10)(b) in respect of the pool was served, a further notice amending the notice under paragraph (10)(b) to remove the installation from the list of installations included in the pool from the date on which the notice of surrender or revocation notice takes effect.

(17) Where the regulator effects a transfer under regulation 15 of a greenhouse gas emissions permit which relates to an installation included in a pool, the appropriate authority shall serve on the persons on which the notice under paragraph (10)(b) in respect of the pool was served, a further notice amending the notice under paragraph (10)(b) from the date on which the transfer takes effect to take account of the transfer in accordance with the provisions of the application for transfer under regulation 15(4)(d).

(18) Where—

- (a) the Secretary of State is the appropriate authority by virtue of paragraph (15);
- (b) no agreement has been reached under regulation 46 in relation to a decision under paragraph (4); and
- (c) the deadline in paragraph (3) for making an application to form a pool has passed,

the Secretary of State shall forthwith serve a notice on those persons referred to in paragraph (5) indicating that, as no agreement has been reached, it is not considered appropriate to allow the pool and providing that the operators of installations included in the application which are situated in the same country of the United Kingdom may make a new application under paragraph (1) to the appropriate authority within two weeks of the date of the notice under this paragraph.

(19) Where—

- (a) the Secretary of State is the appropriate authority by virtue of paragraph (15);

- (b) no agreement has been reached under regulation 46, in relation to a decision under paragraph (8); and
- (c) a period of four weeks from the date of submission of an amended application to the Secretary of State under paragraph (7) has expired,

the Secretary of State shall forthwith serve a notice on those persons referred to in paragraph (9) indicating that it has not been agreed that the amended application addresses the reasons given by the European Commission for rejection of the application to form a pool and providing that the operators of installations included in the application which are situated in the same country of the United Kingdom may submit a further amended application under paragraph (8) to the appropriate authority within two weeks of the date of the notice under this paragraph.

PART 4

ENFORCEMENT

Duty of regulator to enforce compliance with monitoring and reporting conditions

28. While a greenhouse gas emissions permit is in force it shall be the duty of the regulator to take such action under these Regulations as may be necessary for the purpose of ensuring that the monitoring and reporting conditions are complied with.

Enforcement notices

29.—(1) If the regulator is of the opinion that an operator has contravened, is contravening or is likely to contravene any monitoring and reporting condition, the regulator may serve on him a notice (an “enforcement notice”).

(2) An enforcement notice shall—

- (a) state that the regulator is of the opinion that an operator has contravened, is contravening or is likely to contravene any monitoring and reporting condition;
- (b) specify the matters constituting the contravention or the matters making it likely that the contravention will arise, as the case may be;
- (c) specify the steps that must be taken to comply with the monitoring and reporting condition or, to the extent possible, to remedy any failure to comply with the monitoring and reporting condition, as the case may be; and
- (d) specify the period within which those steps must be taken.

(3) The regulator may withdraw an enforcement notice at any time.

Power of the regulator to determine reportable emissions

30.—(1) Where—

- (a) an operator serves notice on the regulator in accordance with a condition of the greenhouse gas emissions permit imposed pursuant to regulation 10(2)(c) notifying it of factors that might prevent him from complying with the monitoring and reporting conditions of the permit and requesting the regulator to determine all or part of the annual reportable emissions from the installation or, in respect of the surrender or revocation of a greenhouse gas emissions permit, the reportable emissions from the installation for the period specified in regulation 16(7)(a) or 17(5)(a);
- (b) an operator fails to comply with the conditions included in a greenhouse gas emissions permit pursuant to regulation 10(2)(a)(ii) or 10(2)(b); or

(c) an operator fails to comply with the requirements included in a notice of surrender pursuant to regulation 16(7)(a) or in a revocation notice pursuant to regulation 17(5)(a), the regulator shall determine the reportable emissions from the installation in the relevant period and the regulator's determination of the reportable emissions shall be treated as the reportable emissions from that installation for the period to which the determination relates.

(2) When determining annual reportable emissions under paragraph (1) the regulator shall take account of the Monitoring and Reporting Decision and the requirements set out in Annex V of the Directive.

(3) The regulator shall notify any determination under paragraph (1) to the operator of the installation.

(4) A notice under paragraph (3) shall be served on the registry administrator and shall be an instruction to the registry administrator for the purposes of Article 51(2) of the Registries Regulation.

(5) Where a regulator makes a determination under paragraph (1) it may recover the cost of making that determination from the operator concerned.

Powers of entry: offshore installations

31.—(1) The Secretary of State may authorise in writing any person who appears suitable to her to exercise, in accordance with the terms of that authorisation, any of the powers specified in paragraph (2) in respect of offshore installations for the purposes of—

- (a) determining whether the requirements, restrictions or prohibitions imposed by or under these Regulations are being, or have been, complied with;
- (b) discharging one or more of the functions conferred or imposed upon the Secretary of State by or under these Regulations; or
- (c) determining whether and, if so, how such a function should be discharged.

(2) The powers exercisable under paragraph (1) are the powers in paragraphs (a) to (k) of regulation 13(2) of the Offshore Regulations and subject to paragraphs (3) and (4) of that regulation.

(3) Regulation 18(1)(f) of the Offshore Regulations shall apply to a failure to comply with an obligation imposed pursuant to a power exercisable under paragraph (1) as it applies to a failure to comply with an obligation imposed pursuant to regulation 13(2) of the Offshore Regulations.

PART 5

APPEALS

Appeals against a decision of, or a notice served by, the regulator or registry administrator

32.—(1) Subject to paragraph (5), the following persons, namely—

- (a) a person who has been refused the grant of a greenhouse gas emissions permit under regulation 9;
- (b) a person who has been refused the variation of the provisions of a greenhouse gas emissions permit on an application under regulation 14(2);
- (c) a person who is aggrieved by the provisions of his greenhouse gas emissions permit following an application under regulation 8 or by a variation notice following an application under regulation 14(2);

- (d) a person whose application under regulation 15(1) for a regulator to effect the transfer of a greenhouse gas emissions permit has been refused or who is aggrieved by the provisions of his greenhouse gas emissions permit to take account of such a transfer;
- (e) a person whose application under regulation 16(1) to surrender a greenhouse gas emissions permit has been refused or who is aggrieved by the terms of the notice of surrender; or
- (f) a person who is aggrieved by the regulator's determination of reportable emissions under regulation 30,

may appeal to the appropriate authority or, where an appeal relates to an offshore installation, to the regulator.

(2) Subject to paragraph (5), a person on whom a variation notice is served, other than following an application under regulation 14(2), or on whom a revocation notice or an enforcement notice is served may appeal to the appropriate authority or, where an appeal relates to an offshore installation, to the regulator.

(3) Subject to paragraph (5),

- (a) an operator who is aggrieved by a notice served by the regulator under regulation 21(6);
- (b) an operator whose application for an allocation from a new entrant reserve under regulation 22(1) is refused or who is aggrieved by the provisions of a notice under regulation 22(13)(a) or (b), (17) or (18);
- (c) an operator whose application under regulation 24(1) to retain an allocation of allowances is refused or who is aggrieved by the terms of a retention notice;
- (d) an operator who is aggrieved by the terms of a notice under regulation 25(2); or
- (e) an operator on which a notice under regulation 41(2)(b) has been served,

may appeal to the appropriate authority or, where an appeal relates to an offshore installation, to the regulator.

(4) Subject to paragraph (5)—

- (a) a person who is aggrieved by a decision to prevent transfers out of his account in accordance with regulation 26(8), (9)(a), (11) or (14) or under Article 27 of the Registries Regulation; or
- (b) a person who is aggrieved by a notice under regulation 26(9)(b),

may appeal to the appropriate authority.

(5) Paragraphs (1) to (4) shall not apply where the decision or notice, as the case may be, implements a direction of the appropriate authority given under paragraph (7) or regulation 42 or of the Secretary of State given under regulation 44.

(6) An appeal under paragraph (3)(b) may include an appeal against a decision of the regulator referred to in paragraph (1)(a), (b) or (c).

(7) Except where an appeal under paragraph (1), (2) or (3) relates to an offshore installation, in determining an appeal under this regulation against a decision of a regulator or a notice served by a regulator the appropriate authority may—

- (a) affirm the decision or notice;
- (b) quash all or part of the decision or notice;
- (c) vary the decision or notice; or
- (d) give directions to the regulator or, in the case of an appeal under paragraph (4), to the registry administrator, in relation to the exercise of its functions under these Regulations in relation to the subject matter of the appeal.

(8) Where an appeal made under paragraph (1), (2) or (3) relates to an offshore installation, the regulator shall reconsider its decision and may affirm, reverse or vary its decision.

(9) Where an appeal is brought under—

- (a) paragraph (1)(c) or (d) in relation to the provisions attached to a greenhouse gas emissions permit;
- (b) paragraph (1)(f);
- (c) paragraph (2) against a variation notice or an enforcement notice;
- (d) paragraph (3)(a);
- (e) paragraph (3)(b) against the provisions of a notice under regulation 22(13)(a) or (b) or (18); or
- (f) paragraph (4)(a),

the bringing of the appeal shall, subject to paragraph (12), not have the effect of suspending the operation of the decision or notice.

(10) Where an appeal is brought under—

- (a) paragraph (2) against a revocation notice or under paragraph (1)(e) against the provisions of a notice of surrender;
- (b) paragraph (3)(c) against the terms of a retention notice, paragraph (3)(d) or (e); or
- (c) paragraph (4)(b),

the bringing of the appeal shall have the effect of suspending the operation of the notice pending the final determination or the withdrawal of the appeal.

(11) Where an appeal is brought under paragraph (3)(c) against a refusal to accept an application under regulation 24(1), the application shall not be deemed to have been refused for the purposes of regulation 24(11)(a) unless the refusal is affirmed on appeal or the appeal is withdrawn.

(12) Where an appeal is brought under paragraph (1)(f) against a determination of reportable emissions the determination shall not be used for the purpose of checking compliance with a condition included in a greenhouse gas emissions permit pursuant to regulation 10(3) pending the final determination or the withdrawal of the appeal.

(13) Regulation 10 shall apply where the appropriate authority, in exercising any of the powers in paragraph (7), gives directions as to the conditions to be attached to a greenhouse gas emissions permit as they would apply to the regulator when determining the conditions of the permit.

(14) For the purposes of appeals under this regulation, the appropriate authority in relation to installations (other than offshore installations) situated in Northern Ireland shall be the Planning Appeals Commission.

Appeals for reconsideration of decisions

33.—(1) A person who is aggrieved by a decision or notice under regulation 27(4), (8) or (14) or the terms of a notice pursuant to regulation 27(16) or (17) may appeal to the appropriate authority.

(2) A person who is aggrieved by—

- (a) a certificate or notice served under regulation 11(6), (9) or (11); or
- (b) a notice served by the responsible authority under regulation 21(6),

may appeal to the responsible authority.

(3) A person who is aggrieved by—

- (a) a supplementary decision under regulation 25(7); or
- (b) a notice served by the Secretary of State under regulation 21(6),

may appeal to the Secretary of State.

(4) Where an appeal is made under this regulation, the appeal body shall reconsider its decision and may affirm, reverse, or vary its decision.

(5) Where an appeal is made under—

- (a) paragraph (1) against a notice under regulation 27(16) or (17); or
- (b) paragraph (2) or (3)(b),

the bringing of the appeal shall not have the effect of suspending the certificate or notice.

(6) Where an appeal is made under—

- (a) paragraph (3)(a); or
- (b) paragraph (1) against a notice under regulation 27(14),

the decision or notice to which the appeal relates shall not take effect pending the final determination or withdrawal of the appeal.

Procedure for appeals under regulations 32 and 33

34.—(1) Except where paragraph (4) applies and subject to paragraph (5), Schedule 2 shall have effect in relation to the making and determination of appeals under regulations 32 or 33.

(2) Except where paragraph (4) applies, the appeal body may—

- (a) appoint any person to exercise on its behalf, with or without payment, the function of determining an appeal under regulation 32 or 33 or any matter or question involved in such an appeal; or
- (b) refer any matter or question involved in an appeal under regulation 32 or 33 to such person as it may appoint for the purpose, with or without payment.

(3) Schedule 3 shall have effect with respect to appointments under paragraph (2)(a).

(4) Where an appeal under regulation 32 relates to an installation (other than an offshore installation) situated in Northern Ireland, Schedule 4 shall have effect in relation to the making and determination of the appeal.

(5) Where an appeal is made under regulation 32(4), references in Schedule 2 to the regulator shall be taken to be references to the registry administrator.

PART 6

INFORMATION

Information

35.—(1) For the purposes of the discharge of its functions under these Regulations, an appropriate authority, a responsible authority or the Secretary of State may, by notice served on a regulator, require the regulator to furnish such information about the discharge of its functions as a regulator as the appropriate authority, responsible authority or the Secretary of State may require.

(2) For the purpose of the discharge of its functions under these Regulations, an appropriate authority, a responsible authority, the Secretary of State or a regulator may, by notice served on any person, require that person to furnish such information as is specified in the notice, in such form and within such period following service of the notice or at such time as is so specified.

(3) The information which a person may be required to furnish by a notice served under paragraph (2) includes information, which, although it is not in the possession of that person or

would not otherwise come into the possession of that person, is information which it is reasonable to require that person to compile for the purpose of complying with that notice.

Publication of a list of operators subject to penalties

36. As soon as possible after the expiry of the period of 4 months after the end of each scheme year of each scheme phase, the regulator shall publish a list of the names of operators who are liable to a civil penalty under regulation 39 or 40.

National Security

37.—(1) No information included in a national allocation plan developed under regulation 20(1), in a decision under regulation 21(1) or in a supplementary decision under regulation 25(7) shall be published, if, in the opinion of the Secretary of State, the inclusion of that information, or information of that description, would be contrary to the interests of national security.

(2) No information shall be included in the list published under regulation 36 if in the opinion of the Secretary of State, the inclusion of that information, or information of that description, would be contrary to the interests of national security.

(3) The Secretary of State may, for the purpose of—

- (a) ensuring that information to which paragraph (1) applies is not published; or
- (b) securing the exclusion from the list published under regulation 36 of the information to which paragraph (2) applies,

give to the appropriate authorities for installations (other than offshore installations) situated in Scotland, Wales and Northern Ireland directions specifying information, or descriptions of information, which shall not be published or shall be excluded from the list published under regulation 36.

(4) The other appropriate authorities referred to in paragraph (3) shall notify the Secretary of State of any information which is not published or which is excluded from a list published in accordance with regulation 36 in pursuance of directions under paragraph (3).

PART 7

OFFENCES AND CIVIL PENALTIES

Offences

38.—(1) It is an offence for a person—

- (a) to contravene regulation 7;
- (b) to fail to comply with or to contravene a condition of a greenhouse gas emissions permit (except where regulation 39 or 40 apply to such failure to comply or contravention);
- (c) to fail to comply with regulation 12(1), 13(2) or 16(1) or to fail to comply with a condition of a notice under regulation 22(13)(a) imposed pursuant to regulation 22(15)(b);
- (d) to fail to comply with the requirements of an enforcement notice;
- (e) to fail, without reasonable excuse, to comply with any requirement imposed by a notice under regulation 16(16) or 35(2);
- (f) to make a statement which he knows to be false or misleading in a material particular, or recklessly to make a statement which is false or misleading in a material particular, where the statement is made—

- (i) in purported compliance with a requirement imposed by a notice under regulation 8(5), 14(6), 15(10), 16(16), 22(9), 24(6) or 35(2);
 - (ii) for the purpose of obtaining the grant of a greenhouse gas emissions permit to himself or any other person, or the variation, transfer or surrender of a greenhouse gas emissions permit;
 - (iii) for the purpose of obtaining a certificate under regulation 11;
 - (iv) for the purpose of obtaining a notice authorising a pool under regulation 27;
 - (v) as part of the verification of a report required under a monitoring and reporting condition;
 - (vi) for the purpose of obtaining an allocation from a new entrant reserve provided for in the approved national allocation plan;
 - (vii) for the purpose of retaining the allocation or a proportion of the allocation of allowances in respect of an installation which ceases to carry out a Schedule 1 activity;
 - (g) intentionally to make a false entry in any record required to be kept under the condition of a greenhouse gas emissions permit;
 - (h) with intent to deceive, to forge or use a document issued or authorised to be issued under a condition of a greenhouse gas emissions permit or required for any purpose under a condition of such a permit or to make or to have in his possession a document so closely resembling any such document as to be likely to deceive;
 - (i) to fail to comply with Article 15(1), 15(3) or 19(3) of the Registries Regulation.
- (2) A person guilty of an offence under paragraph (1) shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding three months;
 - (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both.
- (3) Where an offence under this regulation is committed by—
- (a) a body corporate (other than a limited liability partnership) and is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director, manager, secretary, or other similar officer of the body corporate or a person who was purporting to act in any such capacity;
 - (b) a limited liability partnership and is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any member of the limited liability partnership or a person who was purporting to act as such; or
 - (c) a partnership in Scotland (other than a limited liability partnership) (a “Scottish partnership”) and is proved to have been committed with the consent or connivance of, or have been attributable to any neglect on the part of, any partner or a person who was purporting to act as such,

that person as well as the body corporate, the limited liability partnership or the Scottish partnership, as the case may be, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(4) Where the affairs of a body corporate (other than a limited liability partnership) are managed by its members, paragraph (3) shall apply in relation to the acts or defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(5) Where the commission by any person of an offence under this regulation is due to the act or default of some other person, that other person may be charged with and convicted of the offence

by virtue of this paragraph whether or not proceedings for the offence are taken against the first-mentioned person.

Civil penalties: excess emissions

39.—(1) Any operator who fails to comply with a condition imposed pursuant to regulation 10(3) in respect of an installation shall be liable to a penalty.

(2) The amount of the penalty to which the operator of an installation is liable under paragraph (1) shall be the excess emissions of the installation multiplied by the excess emissions penalty.

(3) For the purpose of paragraph (2)—

(a) “excess emissions” means, in respect of an installation, the amount in tonnes of carbon dioxide equivalent by which the annual reportable emissions from the installation exceeded the number of allowances surrendered for that installation;

(b) “excess emissions penalty” means—

(i) in respect of excess emissions which relate to reportable emissions which were released between 1st January 2005 and 31st December 2007, 40 Euro; and

(ii) in respect of excess emissions which relate to reportable emissions which were released on or after 1st January 2008, 100 Euro.

(4) In relation to paragraph (3)(b), the reference to an amount in Euro shall be taken to be a reference to the sterling equivalent of that number of Euro, converted by reference to the rate of conversion published in the C series of the Official Journal of the European Communities in September of the scheme year preceding that in which the liability for the penalty arose.

Civil penalties: understatement of reportable emissions

40.—(1) Subject to paragraph (2), where in relation to the application for surrender of a greenhouse gas emissions permit under regulation 16(1) or the revocation of a greenhouse gas emissions permit under regulation 17(1), the report submitted in accordance with the requirements included in a notice of surrender or a revocation notice pursuant to regulation 16(7)(a) or 17(5)(a) understates the reportable emissions from the installation to which the report relates, the operator shall be liable to a penalty equal to the amount of the understatement of reportable emissions multiplied by the excess emissions penalty under regulation 39(3)(b) which applied to excess emissions in the year in which the understatement was made.

(2) Conduct falling within paragraph (1) shall not give rise to liability to a penalty under this regulation if the person who made the understatement—

(a) surrenders allowances equal to the amount of the understatement; and

(b) satisfies the regulator, that he did not knowingly or recklessly understate the reportable emissions from the installation.

Civil penalties: general

41.—(1) In this regulation “civil penalty” means any penalty which—

(a) is imposed by or under these Regulations; and

(b) arises otherwise than in consequence of a person’s conviction for a criminal offence.

(2) Where a person is liable to a civil penalty, the regulator shall—

(a) assess the amount due by way of penalty; and

(b) notify the person liable to the penalty of that amount.

(3) Subject to regulation 32(10), a penalty shall be due on the day (the “due date”) following the expiry of a period of two months beginning on the date on which the person is notified by the regulator under paragraph (2)(b) and shall be paid to the regulator.

(4) Where a regulator makes an assessment under paragraph (2) of any penalty to which a person is liable the amount of that penalty shall carry interest for the period which—

(a) begins on the due date; and

(b) ends with the day before the day on which the assessed penalty is paid.

(5) Interest under this regulation shall be payable at a rate of one percentage point above LIBOR on a day to day basis.

(6) For the purposes of paragraph (5), “LIBOR” means the sterling three months London interbank offered rate in force during the period between the due date and the date on which the penalty is paid.

(7) Where an amount has been assessed and notified to any person under paragraph (2), the amount and any interest incurred under paragraph (4) shall be recoverable on demand.

(8) The regulator shall notify the appropriate authority of any penalty assessed under paragraph (2) and shall pass any civil penalties and any interest paid to it to the appropriate authority.

PART 8

APPROPRIATE AUTHORITY'S POWERS

Directions to regulators

42.—(1) Subject to paragraph (5), an appropriate authority may give directions to the regulator of a general or specific character with respect to the carrying out of any of their functions under these Regulations in relation to installations for which it is the appropriate authority.

(2) Without prejudice to the generality of the power conferred by paragraph (1), a direction under that paragraph may direct a regulator—

(a) to exercise any of their powers under these Regulations or to do so in such circumstances as may be specified in the directions or in such manner as may be so specified; or

(b) not to exercise those powers, or not to do so in such circumstances or such manner as may be specified in the directions.

(3) Any direction given under these Regulations shall be in writing and may be varied or revoked by a further direction.

(4) It shall be a duty of a regulator to comply with any direction which is given to it under these Regulations.

(5) This regulation shall not apply in respect of offshore installations.

Guidance to regulators

43.—(1) An appropriate authority may issue guidance to a regulator with respect to the carrying out of any of their functions under these Regulations in relation to installations for which it is the appropriate authority.

(2) A regulator, in carrying out any of its functions under these Regulations, shall have regard to any guidance issued by the appropriate authority under this regulation.

PART 9

SECRETARY OF STATE'S POWERS

Directions to registry administrator

44.—(1) Subject to paragraph 46, the Secretary of State may give directions to the registry administrator of a general or specific character with respect to the carrying out of any of its functions under these Regulations or the Registries Regulation.

(2) Without prejudice to the generality of the power conferred by paragraph (1), a direction under that paragraph may direct the registry administrator—

- (a) to exercise any of its powers under these Regulations or the Registries Regulation or to do so in such circumstances as may be specified in the directions or in such manner as may be so specified; or
- (b) not to exercise those powers, or not to do so in such circumstances or such manner as may be specified in the directions.

(3) Any direction given under this regulation shall be in writing and may be varied or revoked by a further direction.

(4) It shall be the duty of the registry administrator to comply with any direction which is given to it under this regulation.

Guidance to the registry administrator

45.—(1) Subject to regulation 46, the Secretary of State may issue guidance to the registry administrator with respect to the carrying out of any of its functions under these Regulations or the Registries Regulation.

(2) The registry administrator, in carrying out any of its functions under these Regulations or the Registries Regulation, shall have regard to any guidance issued by the Secretary of State under this regulation.

PART 10

SUPPLEMENTARY

Agreement of Scottish Ministers, the National Assembly for Wales and the Department for Environment

46.—(1) Subject to paragraphs (2), (3) and (4), any power of the Secretary of State under regulation 20(1), 21(1), 25(7), 26(1), 27(15), 44 and 45 is exercisable—

- (a) in so far as it relates to installations situated in Scotland (other than offshore installations), only with the agreement of the Scottish Ministers;
- (b) in so far as it relates to installations situated in Wales (other than offshore installations), only with the agreement of the National Assembly for Wales; and
- (c) in so far as it relates to installations situated in Northern Ireland (other than offshore installations), only with the agreement of the Department of the Environment.

(2) The Secretary of State may exercise a power referred to in paragraph (1) in relation to installations situated in Scotland where—

- (a) no agreement has been reached with the Scottish Ministers;

- (b) she considers that it is necessary to do so to ensure that the United Kingdom complies with its obligations under the Directive; and
 - (c) she serves a notice on the Scottish Ministers stating that she has decided to exercise a power referred to in paragraph (1) in relation to Scotland.
- (3) The Secretary of State may exercise a power referred to in paragraph (1) in relation to installations situated in Wales where—
- (a) no agreement has been reached with the National Assembly for Wales;
 - (b) she considers that it is necessary to do so to ensure that the United Kingdom complies with its obligations under the Directive; and
 - (c) she serves a notice on the National Assembly for Wales stating that she has decided to exercise a power referred to in paragraph (1) in relation to Wales.
- (4) The Secretary of State may exercise the power under paragraph (1) in relation to installations situated in Northern Ireland where—
- (a) no agreement has been reached with the Department of the Environment;
 - (b) she considers that it is necessary to do so to ensure that the United Kingdom complies with its obligations under the Directive; and
 - (c) she serves a notice on the Department of the Environment stating that she has decided to exercise a power referred to in paragraph (1) in relation to Northern Ireland.

PART 11

REVOCATION AND CONSEQUENTIAL AMENDMENTS

Revocation and savings provisions

- 47.—(1) Subject to paragraphs (2) and (3), the following Regulations are revoked—
- (a) The Greenhouse Gas Emissions Trading Scheme Regulations 2003(20) (the “2003 Regulations”); and
 - (b) The Greenhouse Gas Emissions Trading Scheme (Amendment) Regulations 2004(21).
- (2) Regulation 18 of the 2003 Regulations shall continue to apply until the obligations under that regulation is fulfilled in respect of the first phase.
- (3) Paragraphs (1) to (4) and (12) to (18) of regulation 19 of the 2003 Regulations shall continue to apply until the obligations under those paragraphs are fulfilled in respect of the first phase.
- (4) In this regulation, “first phase” means the period referred to in regulation 18(2)(a) of the 2003 Regulations.

Consequential amendments

48. The enactments mentioned in Schedule 6 shall have effect with the amendments there specified (being amendments consequential on provisions of these Regulations).

(20) [S.I. 2003/3311](#)

(21) [S.I. 2004/3390](#)

23rd March 2005

Elliot Morley
Minister of State
Department for Environment, Food and Rural
Affairs