

EXPLANATORY MEMORANDUM TO
THE GREENHOUSE GAS EMISSIONS TRADING SCHEME
(MISCELLANEOUS PROVISIONS) REGULATIONS 2007

2007 No.1096

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

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

2. **Description**

2.1 The Greenhouse Gas Emissions Trading Scheme (Miscellaneous Provisions) Regulations 2007:

(i) bring into legal effect the UK's decision based upon the approved National Allocation Plan for Phase II (2008 – 2012) ("Phase II NAP") for the European Emissions Trading Scheme ("the Scheme"), that has been submitted to the European Commission and approved by it¹ in accordance with Article 9 of the Emission Trading Directive (Directive 2003/87/EC) ("the Directive"), and

(ii) amends the definition, for future phases of the Scheme, of the activities of ceramic manufacturers that fall within the scope of the Scheme from that provided in The Greenhouse Gas Emissions Trading Regulations 2005 (S.I. 2005/925) ("the 2005 Regulations").

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

None

4. **Legislative Background**

4.1 The 2005 Regulations implement the Scheme in the UK as a mechanism for encouraging certain businesses who carry out activities listed in Schedule 1 to the 2005 Regulations to reduce carbon dioxide emissions from their installations in order to help combat climate change. Installations that are within the scope of the 2005 Regulations must hold a permit, and are then allocated a specified number of allowances to emit a specified number of tonnes of carbon dioxide for the relevant scheme period.

4.2 These Regulations are made under section 2(2) European Communities Act 1972. In accordance with regulation 21 of the 2005 Regulations (which implements Article 11 of the Directive) the UK's decision on the quantity of

¹ Subject to issues relating to the operation of Phase II of the scheme in Gibraltar.

allowances to be allocated for Phase II NAP (2008 - 2012) was published on 16 March 2007.

4.3 The 2005 regulations contain a broadly interpreted definition of activities of ceramics manufacturers that was applied to this sector under Phase I of the Scheme. This definition is now being narrowed in scope so that fewer ceramic manufacturers will require a permit for future phases of the Scheme.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

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

7. Policy background

7.1 The Scheme is one of the policies which has been introduced across Europe to tackle emissions of carbon dioxide and other greenhouse gases in order to combat the serious threat of climate change.

7.2 The Scheme commenced on 1 January 2005. The first phase runs from 2005 to 2007, and the second phase will run from 2008 to 2012 to coincide with the first Kyoto Commitment Period. Further Scheme periods are expected following the Commission's current formal review of the Directive.

7.3 The Scheme works on a 'Cap and Trade' basis. EU Member State governments are required to set an emission cap for all installations covered by the Scheme. The total number of allowances to be allocated to installations in the UK for each phase, and the manner in which they will be distributed is set down in a decision document that is based upon the UK's National Allocation Plan as approved by the Commission in accordance with Article 11 of the Directive.

7.4 The UK Government's decision was published on 16 March 2007. It is based upon the Phase II NAP and sets out the number of allowances to be traded during the period 2008 to 2012 and the method of allocation of allowances to the various installations covered by the Scheme.

7.5 UK Government published a draft NAP for Phase II in March 2006 and held a formal consultation, following a preliminary consultation in July 2005. The March 2006 consultation together with the responses can be viewed on the Defra website at:

<http://www.defra.gov.uk/corporate/consult/euets-phasetwo-nap/index.htm>

7.6 The change to the definition for the ceramics sector was consulted on in July 2006. Responses to the consultation showed that 100% agreed with the revised definition.

7.7 The Department acknowledges that the 2005 Regulations should ideally be consolidated, but there is a major review of the European Directive taking place this year with a legislative proposal for substantial amendment expected towards the end of the year. The Department envisages that significant changes will therefore shortly be required to implement amendments to the Directive, and therefore the consolidation will take place to implement those amendments. In the meantime the Department will place an unofficial consolidated version of the 2005 Regulations on its website.

8. Impact

8.1 No separate Regulatory Impact Assessment (RIA) has been prepared for this instrument since the development of the Phase II NAP and the amendment to the definition of activities in the ceramics sector for Phase II are covered by existing RIAs. These are available on the Defra website at:

<http://www.defra.gov.uk/environment/climatechange/trading/eu/phase2/phase2nap.htm>

8.2 The Minister of State for Climate Change and the Environment has indicated that he is satisfied that the benefits will justify the costs. The removal of several small ceramic installations from the scope of the Scheme will remove a burden on such businesses. Since publication of the RIAs that covered the Phase II NAP and the ceramics definition, nothing has changed to place new burdens on any party.

9. Contact

9.1 For any queries regarding this instrument, contact Richard Sargent at the Department for Environment, Food and Rural Affairs Tel: +44 (0)20 7082 8947 or e-mail: richard.sargent@defra.gsi.gov.uk