

2009 No. 3130

CLIMATE CHANGE

**The Greenhouse Gas Emissions Data and National
Implementation Measures Regulations 2009**

<i>Made</i>	- - - -	<i>30th November 2009</i>
<i>Laid before Parliament</i>		<i>2nd December 2009</i>
<i>Coming into force</i>	- -	<i>31st December 2009</i>

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

These Regulations make provision for a purpose mentioned in that section and it appears to the Secretary of State that it is expedient for the references to the European Community instruments in these Regulations to be construed as references to those instruments as amended from time to time.

The Secretary of State, in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972(c) and subsection (1) of section 2 of the Pollution Prevention and Control Act 1999(d) (“the 1999 Act”), having, in accordance with subsection (4) of section 2 of the 1999 Act, consulted the Environment Agency, the Scottish Environment Protection Agency, such bodies or persons appearing to the Secretary of State to be representative of the interests of local government, industry, agriculture and small businesses and such other bodies and persons as the Secretary of State considers appropriate, hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Greenhouse Gas Emissions Data and National Implementation Measures Regulations 2009 and come into force on 31st December 2009.

Interpretation

2. In these Regulations—

(a) S.I. 2008/301.
(b) 1972 c.68. As regards Scotland, see also section 57(1) of the Scotland Act 1998 (c.46), which provides that, despite the transfer to the Scottish Ministers by virtue of that Act of functions in relation to observing and implementing obligations under Community law, any function of a Minister of the Crown in relation to any matter shall continue to be exercisable by a Minister of the Crown as regards Scotland for the purposes specified in section 2(2) of the European Communities Act 1972.
(c) Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (c.51).
(d) 1999 c.24.

“2005 Regulations” mean the Greenhouse Gas Emissions Trading Scheme Regulations 2005(a) as amended from time to time;

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

“Annex I” means Annex I to the Directive;

“appropriate authority” means—

- (a) in relation to an installation situated in England or an offshore installation, the Secretary of State;
- (b) in relation to an installation (other than an offshore installation) situated in Wales, the Welsh Ministers;
- (c) in relation to an installation (other than an offshore installation) situated in Scotland, the Scottish Ministers;
- (d) in relation to an installation (other than an offshore installation) situated in Northern Ireland, the Department of the Environment in Northern Ireland;
- (e) in respect of appeals against decisions of the chief inspector, the Planning Appeals Commission;

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

“combustion” has the meaning given to it in the Directive;

“the Directive” means Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emissions allowance trading within the Community and amending Council Directive 96/61/EC(b), as amended from time to time;

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

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

“emissions data” means a record of emissions during the relevant period which are attributable to a Phase 3 activity, or, in relation to an installation which carried out a Phase 3 activity for only part of the relevant period, a record of emissions relating to that period;

“greenhouse gases” means the gases listed in Annex I to the Directive;

“incumbent installation” means an installation whose emissions are authorised by a permit issued under the 2005 Regulations;

“independent verifier” means a person or body accredited or endorsed by UKAS to carry out the verification requirements of Article 15 of the Directive;

“installation” has the meaning given to it in the Directive;

“Monitoring and Reporting Decision” means Commission Decision 2007/589/EC(d) as amended from time to time establishing guidelines for the monitoring and reporting of greenhouse gas emissions pursuant to the Directive;

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

“offshore installation” has the meaning given to it in the 2005 Regulations;

“operator” has the meaning given to it in the 2005 Regulations;

“other relevant data” has the meaning given by regulation 4(4);

“Phase 3 activity” means—

(a) S.I. 2005/925.

(b) OJ No. 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.

(c) 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.

(d) OJ No. L 229, 31.8.07, p.1.

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

- (a) in relation to activities other than combustion activities, those activities listed in Annex I which are only included in the scheme for greenhouse gas emission allowance trading established in the Directive from 2013 onwards; or
- (b) those combustion activities which are only included in the scheme for greenhouse gas emission allowance trading established in the Directive from 2013 onwards

where, in relation to any of those activities, they are carried on at an installation other than an incumbent installation;

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

“production data” has the meaning given by regulation 4(3);

“proper address” has the meaning given by regulation 10(5);

“regulator” has the meaning given to it in the 2005 Regulations;

“relevant period” means the period beginning on 1st January 2005 and ending on 31st December 2008;

“UKAS” means the United Kingdom Accreditation Service;

“the United Kingdom’s national implementation measures” means—

- (a) a list of installations situated in the United Kingdom covered by the Directive; and
- (b) any free allocation of allowances to such installations calculated in accordance with the rules referred to in articles 10a and 10c of the Directive.

Submission of emissions data

3.—(1) In respect of an installation carrying out a Phase 3 activity the operator of that installation must, by 30th April 2010, submit to the regulator emissions data.

(2) Emissions data must be submitted in such form as the regulator requires.

(3) Emissions data must be accompanied by—

- (a) the name, telephone number and—
 - (i) the postal address (including postcode) in the United Kingdom for service; or
 - (ii) the address for service using electronic communication of the operator; and
- (b) a statement from an independent verifier that the emissions data have been verified in accordance with paragraph (4).

(4) The operator must ensure that emissions data are—

- (a) verified by an independent verifier in accordance with Annex V of the Directive; and
- (b) submitted in accordance with the provisions adopted in the Monitoring and Reporting Decision.

(5) The Scottish Environment Protection Agency and the chief inspector must, by 15th June 2010, send all emissions data provided to them pursuant to this regulation to the Environment Agency.

(6) Subject to any notification given to it by the Secretary of State pursuant to paragraph (7), the Environment Agency must, by 30th June 2010, submit all emissions data provided to it pursuant to this regulation to the European Commission.

(7) Where an installation has emitted greenhouse gases other than carbon dioxide as a consequence of carrying out a Phase 3 activity, the Secretary of State may instruct the Environment Agency to notify to the European Commission a lower amount of emissions in accordance with article 9a(2) of the Directive.

(a) S.I. 1991/1220 (N.I. 11); relevant amending instruments are S.I. 1993/663, 2003/430 (N.I. 8).

National implementation measures: submission of production data and other relevant data

4.—(1) Subject to paragraph (2), where the operator of an installation is entitled to free allowances calculated in accordance with the rules referred to in articles 10a and 10c of the Directive, that operator must, by 30th April 2010, submit to the regulator production data and other relevant data.

(2) In complying with its obligation under paragraph (1) the operator must submit production data or any category of other relevant data identified in a notification supplied by the regulator as appropriate to the category of installation operated by the operator.

(3) Data is production data where it—

- (a) comprises a record of annual product output levels of an installation which are attributable to an Annex I activity; and
- (b) relates only to the relevant period or, in relation to production which has been carried out for part only of the relevant period, where it relates to that period.

(4) Data is other relevant data where it—

- (a) comprises a record of the amount of heat produced by an installation which is attributable to an Annex I activity; or
- (b) comprises a record of the quantity of fuel use which is attributable to an Annex I activity; or
- (c) comprises a record of emissions which are attributable to an Annex I activity; and
- (d) relates only to the relevant period or, in relation to activities which have been carried out for part only of the relevant period, which relates to that period.

(5) Production data or other relevant data must be submitted in such form as required by the regulator.

(6) Production data or other relevant data must be accompanied by the name, telephone number and—

- (a) the postal address (including postcode) in the United Kingdom for service; or
- (b) the address for service using electronic communication

of the operator.

(7) By 30th June 2010 the operator must submit to the regulator a statement from an independent verifier that production data or other relevant data have been verified in accordance with the applicable verification standards.

(8) Where production data or other relevant data are—

- (a) not submitted on time; or
- (b) not verified in accordance with paragraph (7),

the regulator may determine the production data or the other relevant data.

(9) Where the regulator makes a determination under paragraph (8), the regulator—

- (a) must notify the operator of that determination; and
- (b) may recover from the operator the costs of making the determination.

(10) The Scottish Environment Protection Agency and the chief inspector must—

- (a) by 30th May 2010, send all production data and other relevant data provided to them pursuant to this regulation; and
- (b) by 14th July 2010, send all verified production data and other relevant data provided to them pursuant to this regulation

to the Environment Agency.

(11) The Environment Agency must—

- (a) by 15th June 2010, send all production data and other relevant data provided to it pursuant to this regulation; and

(b) by 30th July 2010, send all verified production data and other relevant data provided to it to the Secretary of State.

(12) The Secretary of State must—

- (a) determine the applicable verification standards; and
- (b) within 14 days of making the determination publish details of the applicable verification standards.

(13) In this regulation—

“the applicable verification standards” means the processes and methodologies to be applied by an independent verifier when verifying production data or other relevant data required to be submitted to the regulator under this regulation; and

“heat” means steam, hot water, thermal oil or hot air.

Information

5.—(1) The regulator may serve a notice on an operator requiring the operator to provide information.

(2) A notice under paragraph (1)—

- (a) must set out the information required;
- (b) may state the form in which that information is to be provided;
- (c) must state the deadline for the provision of that information;
- (d) may only be served for the purposes of—
 - (i) discharging the regulator’s functions under these Regulations; or
 - (ii) enabling the publication in the United Kingdom or the submission to the European Commission by 30th September 2011 of the United Kingdom’s national implementation measures.

(3) The Scottish Environment Protection Agency and the chief inspector must, by 15th January 2011, send to the Environment Agency all information received by them under paragraph (1).

(4) The Environment Agency must, by 30th January 2011, provide to the Secretary of State the information received by it—

- (a) further to a notice made by the Environment Agency under paragraph (1); and
- (b) under paragraph (3).

Civil penalties

6.—(1) Subject to paragraph (2) an operator is liable to the following civil penalties—

- (a) for failure to comply with—
 - (i) regulation 3(1); or
 - (ii) regulation 3(3)(b); or
 - (iii) a notice served under regulation 5(1) requiring information to be given for the purpose of the discharge of the regulator’s functions under regulation 3, £1,500; or
- (b) for failure to comply with—
 - (i) regulation 4(1); or
 - (ii) regulation 4(7); or
 - (iii) a notice served under regulation 5(1) requiring information to be given for the purpose of the discharge of the regulator’s functions under regulation 4; or
 - (iv) a notice served under regulation 5(1) for the purpose stated in paragraph (2)(d)(ii) of that regulation,

£10,000.

(2) Where an operator fails to comply with—

- (a) both regulation 3(1) and 3(3)(b) the maximum penalty under paragraph (1)(a) shall be £1,500;
- (b) both regulation 4(1) and 4(7) the maximum penalty under paragraph (1)(b) shall be £10,000.

(3) Where an operator is liable to a civil penalty under paragraph (1) the regulator must notify the operator liable to the civil penalty of the amount due.

(4) A civil penalty is due one month after the notification given under paragraph (3).

(5) A civil penalty must be paid to the regulator.

(6) A civil penalty imposed is recoverable as a civil debt.

(7) The regulator must notify the appropriate authority of any civil penalty notified by it under paragraph (3) and must pass any civil penalty paid to it to the appropriate authority.

Appeals

7.—(1) An operator may appeal to the appropriate authority against—

- (a) a notice given by the regulator under regulation 5(1); or
- (b) a notice given by the regulator under regulation 6(3).

(2) In determining an appeal under this regulation 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;
- (d) give directions to the regulator in relation to the subject matter of the appeal; or
- (e) substitute its decision for that of the regulator.

(3) The bringing of an appeal has the effect of suspending the operation of the notice pending the final determination or the withdrawal of the appeal.

(4) Except where paragraph (5) applies, Schedule 1 has effect in relation to the making and determination of appeals under this regulation.

(5) Where an appeal under this regulation is made to the Planning Appeals Commission, Schedule 2 has effect in relation to the making and determination of the appeal.

Agreement of Scottish Ministers, Welsh Ministers and the Department of the Environment in Northern Ireland

8.—(1) Subject to paragraphs (2), (3) and (4), any power of the Secretary of State under regulation 3(7) and 4(12) is exercisable—

- (a) in so far as it relates to installations situated in Scotland (other than offshore installations), only with the agreement of Scottish Ministers;
- (b) in so far as it relates to installations situated in Wales (other than offshore installations), only with the agreement of the Welsh Ministers; and
- (c) in so far as it relates to installations situated in Northern Ireland (other than offshore installations), only with the agreement of the Northern Ireland 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) the Secretary of State considers that it is necessary to do so to ensure that the United Kingdom complies with its obligations under the Directive; and

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

Functions of the regulator: Northern Ireland

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

Notices

10.—(1) Any notice or other document served or given under these Regulations by an appropriate authority or regulator must be in writing or by electronic communication.

(2) Subject to paragraph (3), any notice or other document (including but not limited to documents arising from or connected to proceedings in the courts of England and Wales, Scotland and Northern Ireland) may be served on or given to a person by—

- (a) where applicable, leaving it at a postal address for service provided pursuant to regulation 3(3)(a)(i) or regulation 4(6)(a);
- (b) sending it by post to the person at an address falling under sub-paragraph (a);
- (c) where an address for service using electronic communications has been provided by a person pursuant to regulation 3(3)(a)(ii) or regulation 4(6)(b), sending it using electronic communications to that person at the address provided.

(3) Where any such notice or other document falling under paragraph (2) is to be served on a person that has not provided a postal address for service or an address for service using electronic communications, any such notice or other document may be served on or given to a person by—

- (a) leaving it at the person's proper address; or
- (b) sending it by post to the person at that address.

(4) 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 control or management of the partnership business.

(5) For the purpose of this regulation and of section 7 of the Interpretation Act 1978(a) (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 must be the person's 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 must 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 must 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 must be the principal office of the partnership,

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

(6) If the person to be served with or given any such notice or document has specified an address (including an address for service using electronic communications) other than the person's proper address as the one at which the person or someone on the person's behalf will accept notices or documents of the same description as that notice or document, that address must also be treated for the purpose of this regulation and section 7 of the Interpretation Act 1978 as the person's proper address.

(7) 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.

Joan Ruddock
Minister of State,

Date 30th November 2009

Department of Energy and Climate Change

SCHEDULE 1

Regulation 7(4)

Appeals (other than appeals to which Schedule 2 applies)

1.—(1) A person who wishes to appeal to the appropriate authority under regulation 7 must give to the appropriate authority written notice of the appeal together with the documents specified in sub-paragraph (2) and must at the same time send to the regulator a copy of that notice together with copies of the documents specified in sub-paragraph (2)(a) and (d).

(2) The documents mentioned in sub-paragraph (1) are—

- (a) a statement of the grounds of appeal;
- (b) a copy of any relevant correspondence between the appellant and the regulator;
- (c) a copy of any decision or notice which is the subject matter of the appeal; and

(a) 1978 c.30.

(d) a statement indicating whether the appellant wishes the appeal to be in the form of a hearing or to be disposed of on the basis of written representations.

(3) An appellant may withdraw an appeal by notifying the appropriate authority in writing and must send a copy of that notification to the regulator.

2.—(1) Subject to sub-paragraph (2), notice of appeal in accordance with paragraph 1 is to be given before the expiry of the period of 24 days beginning with the date of the decision, deemed decision or when the notice takes effect.

(2) The appropriate authority may in a particular case allow notice of appeal to be given after the expiry of the period in sub-paragraph (1) where it is satisfied that there was good reason for the applicant's failure to bring the appeal in time.

3.—(1) Before determining an appeal, the appropriate authority may afford the appellant and the regulator an opportunity of appearing before and being heard by a person appointed by it (the "person holding the hearing") and it must do so in any case where a request is made by the appellant or the regulator.

(2) A hearing held under sub-paragraph (1) may, if the person holding the hearing so decides, be held wholly or partly, in private.

(3) Where the appropriate authority causes a hearing to be held under sub-paragraph (1) it must give the appellant and the regulator at least 24 days notice (or such shorter period of notice as they may agree) of the date, time and place fixed for the holding of the hearing.

(4) In the case of a hearing which is to be held wholly or partly in public, the appropriate authority must, at least 24 days before the date fixed for the holding of the hearing publish a copy of the notice referred to in sub-paragraph (3) in a newspaper circulating in the locality in which the appellant is based.

(5) The appropriate authority may vary the date fixed for the holding of any hearing and sub-paragraphs (3) and (4) apply to the variation of a date as they applied to the date originally fixed.

(6) The appropriate authority may vary the time or place for the holding of a hearing and must give such notice of any such variation as appears to the appropriate authority to be reasonable.

(7) The persons entitled to be heard at a hearing are the appellant and the regulator.

(8) Nothing in sub-paragraph (7) prevents the person holding the hearing from permitting any other persons to be heard at the hearing and such permission must not be unreasonably withheld.

(9) After the conclusion of a hearing, the person holding the hearing must make a report in writing to the appropriate authority which must include that person's conclusions and recommendations, or decision not to make any recommendation and in all cases the reasons supporting the report.

(10) Subject to sub-paragraph (11), subsections (2) to (5) of section 250 of the Local Government Act 1972(a) (local inquiries, evidence and costs) apply to hearings held under this Schedule as they apply to inquiries caused to be held under that section by a Minister, but with the following modifications, that is to say—

(a) with the substitution in subsection (2) (evidence) for the reference to the person appointed to hold the inquiry of a reference to the appropriate authority or the person holding the hearing;

(b) with the substitution in subsection (4) (recovery of costs of holding the inquiry) for the references to the Minister causing the inquiry to be held of references to the appropriate authority;

(c) with the substitution for the reference in that subsection to a local authority of a reference to the regulator;

(a) 1972 c.70; section 250 has been amended by the Statute Law (Repeals) Act 1989 (c.43), Schedule 1, Part IV, the Criminal Justice Act 1982 (c.48), sections 37, 38 and 46 and the Housing and Planning Act 1986 (c.63), Schedule 12, Part III.

- (d) with the substitution in subsection (5) (orders as to the costs of the parties) for the reference to the Minister causing the inquiry to be held of a reference to the appropriate authority.

(11) In the case of an appeal to the Scottish Ministers, subsections (3) to (8) of section 210 of the Local Government (Scotland) Act 1973^(a) (which relates to the costs of and holding of local inquiries) apply to hearings held under this Schedule by as they apply to inquiries held under that section, but with the following modifications, that is to say—

- (a) with the substitution in subsection (3) (notice of inquiry) for the reference to the person appointed to hold the inquiry of a reference to the Scottish Ministers or the person holding the hearing;
- (b) with the substitution in subsection (4) (evidence) for the reference to the person appointed to hold the inquiry and, in paragraph (b), the reference to the person holding the inquiry of references to the Scottish Ministers or the person holding the hearing;
- (c) with the substitution in subsection (6) (expenses of witnesses etc) for the references to the Minister causing the inquiry to be held of a reference to the Scottish Ministers or the person holding the hearing;
- (d) with the substitution in subsection (7) (expenses)—
 - (i) for the first reference to the Minister of a reference to the Scottish Ministers; and
 - (ii) for the second reference to the Minister of a reference to the Scottish Ministers or the person holding the hearing;
- (e) with the substitution in subsection (7A) (recovery of entire administrative expense)—
 - (i) for the first reference to the Minister of a reference to the Scottish Ministers or the person holding the hearing;
 - (ii) in paragraph (a), for the reference to the Minister of a reference to the Scottish Ministers; and
 - (iii) in paragraph (b), for the reference to the Minister holding the inquiry of a reference to the Scottish Ministers;
- (f) with the substitution in subsection (7B) (power to prescribe daily amount)—
 - (i) for the first reference to the Minister of a reference to the Scottish Ministers;
 - (ii) in paragraphs (a) and (c), for the references to the person appointed to hold the inquiry of references to the Scottish Ministers or the person holding the hearing; and
 - (iii) in paragraph (d), for the reference to the Minister of a reference to the Scottish Ministers or the person holding the hearing; and
- (g) with the substitution in subsection (8) (certification of expenses)—
 - (i) for the words “the Minister has”, of the words “the Scottish Ministers have”;
 - (ii) for the reference to him and the reference to the Crown of references to the Scottish Ministers or the person holding the hearing.

4.—(1) Where an appeal under regulation 7 is to be disposed of on the basis of written representations, the regulator must submit any written representations to the appropriate authority not later than 24 days after receiving a copy of the documents mentioned in paragraph 1(2)(a) and (c).

(2) The appellant must make any further representations by way of reply to any representations from the regulator not later than 16 days after the date of submission of those representations by the regulator.

(a) 1973 c.65, section 210 was amended by the Criminal Procedure (Scotland) Act 1975 (c.21), sections 289F and 289G (which were inserted into that Act by the Criminal Justice Act 1982 (c.48), section 54) and the Housing and Planning Act 1986, Schedule 11, paragraph 39.

(3) Any representations made by the appellant or the regulator must bear the date on which they are submitted to the appropriate authority.

(4) When the regulator or the appellant submits any representations to the appropriate authority they must at the same time send a copy of them to the other party.

(5) The appropriate authority may in a particular case—

- (a) set later time limits than those mentioned in this paragraph;
- (b) require or permit exchanges of representations between the parties in addition to those mentioned in sub-paragraphs (1) and (2).

5.—(1) The appropriate authority must give notice to the appellant of its determination of the appeal and must provide the appellant with a copy of any report mentioned in paragraph 3(9).

(2) The appropriate authority must at the same time send a copy of the documents mentioned in sub-paragraph (1) to the regulator.

6. Where a determination of the appropriate authority on an appeal is quashed in proceedings before any court, the appropriate authority—

- (a) must send to the appellant and the regulator a statement of the matters with respect to which further representations are invited for the purposes of its further consideration of the appeal;
- (b) must afford to those persons the opportunity of making, within 31 days of the date of the statement, written representations in respect of those matters; and
- (c) may, as it thinks fit, cause a hearing to be held or reopened and, if it does so, paragraphs 3(2) to (11) apply to the hearing or the reopened hearing as they apply to a hearing held under paragraph 3(1),

and paragraph 5 applies to the re-determination of the appeal as it applies to the determination of an appeal.

SCHEDULE 2

Regulation 7(5)

Appeals (Northern Ireland)

1.—(1) A person who wishes to appeal to the Planning Appeals Commission (“the appeals commission”) under regulation 7 must give to the appeals commission written notice of the appeal together with a statement of the grounds of appeal and the appeals commission must as soon as is reasonably practicable send to the regulator a copy of that notice together with the statement of the grounds of appeal.

(2) An appellant may withdraw an appeal by notifying the appeals commission and the appeals commission must as soon as is reasonably practicable notify the regulator.

2. Notice of appeal in accordance with paragraph 1 is to be given before the expiry of the period of 47 days beginning with the date of the decision, deemed decision or the notice takes effect.

3.—(1) The appeals commission must determine the appeal and paragraphs (1), (3), (4) and (5) of Article 111 of the Planning (Northern Ireland) Order 1991 apply in relation to the determination of the appeal as they apply in relation to the determination of an appeal under that Order.

(2) The appeals commission must determine the process for determining appeals taking into account any requests of either party to the appeal.

4. An appeal under this Schedule must be accompanied by a fee of £126.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations transpose parts of Directive 2009/29/EC of the European Parliament and of the Council of 23rd April 2009 amending Directive 2003/87/EC so as to improve and extend the greenhouse gas emission allowance trading scheme of the Community (“the Directive”).

The Regulations, which apply in the United Kingdom, give effect to two parts of the Directive. Firstly, the Regulations enable specified greenhouse gas emissions data to be collected. Secondly, the Regulations enable production and other data to be collected for the purpose of enabling the United Kingdom, as it is required to do so by the Directive, to publish and submit to the European Commission its national implementation measures for the third phase of the greenhouse gas emission allowance trading scheme which commences on 1st January 2013.

Regulation 3 contains provisions which require specified operators to submit certain specified emissions data to the regulator by 30th April 2010. The emissions data must be independently verified and must be submitted in accordance with the Monitoring and Reporting Decision, as is required by the Directive. This regulation places an obligation on the Environment Agency to submit all emissions data to the European Commission by 30th June 2010. Also, as is permitted in the Directive, this regulation contains a power which enables the Secretary of State to require the Environment Agency to notify the European Commission of a lower amount of emissions in order to take into account the emission reduction potential of installations which have emitted greenhouse gases other than carbon dioxide.

Regulation 4 contains provisions which require operators to submit production and other data to the regulator by 30th April 2010. This data must be independently verified and must be submitted in accordance with verification standards to be determined by the Secretary of State. This regulation also contains a power under which a regulator may make its own calculation of the data in a case where an operator has failed to submit data or where the data has not been independently verified, and a regulator may recover its costs in carrying out this activity. This regulation applies to operators who are entitled to free allowances under the Directive.

Regulation 5 enables a regulator to serve a notice to an operator requiring the operator to furnish information for the purposes set out in this regulation. The purposes are: (1) the discharge of the regulator’s functions under the Regulations; and (2) enabling national implementation measures to be published in the United Kingdom and submitted to the European Commission by 30th September 2011.

Regulation 6 provides for the imposition of civil penalties. Where an operator does not comply with its obligations under the Regulations it will be liable to a civil penalty under these Regulations.

Regulation 7 makes provision to allow operators to appeal against notices given by the regulator under these Regulations. Schedules 1 and 2 contain provisions relating to the procedure for appeals.

Regulation 8 requires that the agreement of the devolved administrations in Scotland, Wales and Northern Ireland is obtained by the Secretary of State prior to the carrying out of powers under regulations 3(7) and 4(12). This regulation provides that in certain circumstances the Secretary of State may exercise those powers where no agreement has been reached.

Regulation 10 makes provision for the service of notices or other documents under the Regulations.

A full impact assessment of the effect that this instrument will have on the costs of business is available from the Department of Energy and Climate Change’s Climate and Energy: Europe Division (telephone 0300 060 4000) and is annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website (www.opsi.gov.uk).

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STATUTORY INSTRUMENTS

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CLIMATE CHANGE

The Greenhouse Gas Emissions Data and National
Implementation Measures Regulations 2009

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