

**EXPLANATORY MEMORANDUM TO
THE GREENHOUSE GAS EMISSIONS TRADING SCHEME (AMENDMENT)
(REGISTRIES AND FEES ETC.) REGULATIONS 2011**

2011 No. 2911

1. This explanatory memorandum has been prepared by the Department of Energy and Climate Change and is laid before Parliament by Command of Her Majesty.
 - 1.1 This memorandum contains information for the Joint Committee on Statutory Instruments.
2. **Purpose of the instrument**
 - 2.1 The purpose of this Statutory Instrument is to update UK legislative provision for Emissions Trading System registries and where necessary implementing the new European Union Registries Regulation 2010; and to amend Environment Act 1995 and Northern Ireland legislation to enable the Environment Agency (“EA”), the Scottish Environment Protection Agency (“SEPA”) and the Department of Environment Northern Ireland (DOENI) to make charging schemes to recover the costs they incur in respect of performing various functions. These provisions are explained below. In addition, this Instrument will also enable an application to be made for a greenhouse gas (GHG) emissions permit covering an activity carried out at an installation for which a permit is only required from 2013.
3. **Matters of special interest to the [Joint Committee on Statutory Instruments or the Select Committee on Statutory Instruments]**
 - 3.1 The instrument is made under section 2(2) of the European Communities Act 1972. It includes various ambulatory references to EU legislation, namely:-
 - Ambulatory reference to Directive 2003/87/EC and the EU Registries Regulation 2010 (2010 EURR) in regulation 3 (review) – this will avoid the need to amend that regulation each time the Directive and Regulation are amended;
 - Ambulatory definition of the 2010 EURR is inserted into the interpretation provisions in the GHG Regulations 2005 – this is considered necessary since it will avoid the need to amend the GHG Regulation each time that Regulation is amended.
 - The amended definitions of “trading scheme registry” include ambulatory references to the 2010 EURR. This includes inserting an ambulatory references to the 2010 EURR into the Environment Act 1995. This ambulatory reference is considered necessary since it is expected that the Registries Regulation will be amended on a number of occasions. The reference will avoid the need to update the reference to the Regulation each

time it is amended and will avoid uncertainty about the scope of the charging provisions (in the event of amendments to the EU Registries Regulation).

- 3.2 The 2010 EURR provides that Member States should use the Union Registry as their EU Emissions Trading System (EU ETS) registry instead of their national EU ETS registries from 1st January 2012. However, the Union Registry will not be fully operational by 1st January 2012. The government is working with the Commission to address this risk. As the Union Registry will be delayed, the statutory instrument confers a power on the EA to enable it to maintain the existing UK Registry for the purposes of both the EU ETS and Kyoto Protocol. That power may be exercised where the Secretary of State determines that the Union Registry is unable to perform some or all of its functions.
- 3.3 Transitional provisions: the EA, SEPA and Department of Environment Northern Ireland (DOENI) have made charging schemes under existing powers which apply to the ETS part of the existing UK registry. There is a risk that the EA and DOENI will be unable to make new charging schemes under their amended powers before the UK Registry is replaced by the Union Registry. This means there is a risk of funding shortfall during the interim. To address this risk, the instrument includes a provision to ensure that the existing charging schemes (made by EA, SEPA and DOENI) will apply in relation to the ETS part of the Union Registry until new charging schemes have been made under the amended charging powers. Given the risk that the Union Registry will be delayed, the transitional provisions only take effect once the Secretary of State has determined that the Union Registry can be used for the purposes of the ETS. Since, the EA's functions in respect of the Union Registry are likely to be the same as its functions in respect of the current registry and as such, its costs are likely to be the same, it is considered that the existing charging schemes will reflect EA's costs during the period until new charging schemes can be made.

4. Legislative Context

4.1 The statutory instrument makes provision in relation to the following areas:

- a. EU ETS and Kyoto Registries;
- b. Emissions permits under the EU ETS;
- c. Powers to make charging schemes.

4.2 The legislative context in relation to the three areas above is set out below.

4.3 EU ETS and Kyoto Registries

The UK is required by EU and international law to maintain a "registry" for the purpose of holding allowances issued under the Kyoto Protocol and EU ETS. EU Member States are required to establish national registries for the purpose of holding EU Allowances (EUAs) under EU law (under Commission Regulation EC

No 2216/2004”¹ (“2004 EURR”). That regulation was made pursuant to article 19 of Directive 2003/87/EC² and Decision 280/2004/EC³. The registry established pursuant to EU law must also be capable of functioning as the relevant Member State’s registry for the purposes of the Kyoto Protocol. Under the EU ETS, operators of “stationary installations (i.e. power stations, steel works etc) are issued with EUAs which they must hold in an account in a national registry. The EU ETS does not currently impose requirements in relation to the aviation sector. However, that will change with effect from 1st January 2012 after which “aircraft operators” will also be required to hold a registry account.

4.4 The UK has complied with the above requirement to maintain a registry through regulation 26 of the “the GHG Regulations 2005”⁴). Regulation 26(1) requires the Secretary of State to establish a “registry” in accordance with the requirements of Article 19 of the Directive and the Registries Regulation. Regulation 26(2) requires the Environment Agency to:-

- (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.

4.5 With effect from 1st January 2012 when the 2004 EURR will be repealed and replaced by Commission Regulation 920/ 2010/EC⁵ (“2010 EURR”) which has recently been amended by a further EU Registries Regulation 2011. The 2010 EURR establishes a new “Union Registry” which will replace Member States national EU ETS registries. As such, the EUA-component of the current UK Registry will “migrate” to the Union Registry during 2012. It is also proposed that Member States Kyoto registries should be hosted by the Union Registry.

4.6 Given that the 2010 EURR will replace the 2004 EURR, it is necessary to amend the GHG Regulations 2005 to update references to the 2004 EURR and to ensure the GHG Regulations 2005 are consistent with the framework under the 2010

¹ Commission Regulation (EC) No 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 No 280/2004/EC of the European Parliament and of the Council (OJ L 386, 29.12.2004, p. 1)

² .J. No. L275, 25.10.03, p.32. The Directive is amended by European Parliament and Council Directives 2004/101/EC (O.J. No. L338,

13.11.2004, p.18), 2008/101/EC ((O.J. No. L8, 13.1.2009, p.3) and 2009/29/EC (O.J. No. L140, 5.6.2009, p.63), and by Regulation

(EC) No 219/2009 of the European Parliament and of the Council (O.J. No. L87, 31.3.2009, p.109).

³ Decision No 280/2004/EC of the European Parliament and of the Council of 11 February 2004 concerning a mechanism for monitoring Community greenhouse gas emissions and for implementing the Kyoto Protocol (OJ L49, 19.2.2004, p.1).

⁴ S.I. 2005/925.

⁵ Commission Regulation (EU) No 920/2010 of 7th October 2010 for a standardised and secured system of registries pursuant to Directive 2003/87/EC of the European Parliament and of the Council and Decision No 280/2004/EC of the European Parliament and of the Council, as amended from time to time (O.J. No.L270, 14.10.2010, p.1).

EURR. It is also necessary to amend the GHG Regulations 2005 to reflect the fact that the Union Registry will replace Member States' EU ETS registries and will host Member States Kyoto registries. The statutory instrument substitutes a new regulation 26 in the GHG Regulations 2005 to give effect to the changes above. The statutory instrument also makes various other changes to the GHG Regulations 2005 to reflect the other changes above.

- 4.7 As mentioned above, the 2010 EURR provides that Member States should use the Union Registry as their EU ETS registry instead of their national EU ETS registries from 1st January 2012. However, there is a risk that the Union Registry will not be fully operational by that date. The government is working with the Commission to address this risk. In the event that the Union Registry is delayed, the statutory instrument confers a power on the EA to enable it to maintain the existing UK Registry for the purposes of both the EU ETS and Kyoto Protocol. That power may be exercised where the Secretary of State determines that the Union Registry is unable to perform some or all of its functions.
- 4.8 **Emissions permits under the EU ETS:**
The instrument also amends the GHG Regulations 2005 to confer new powers in relation to EU ETS Phase 3 emissions permits. Such permits are governed by Directive 2003/87/EC and the relevant powers for EU ETS emissions permits under domestic law are contained in the GHG Regulations 2005.
- 4.9 **The Environment Agency's powers to make charging schemes:**
The instrument also amends the EA's powers to enable the EA and, where appropriate, SEPA and the DOENI, to be able to make charging schemes to recover the costs it incurs in performing various functions, namely:
- a) Determining applications for the approval of projects under regulation 8A of the Greenhouse Gas Emissions Trading Scheme (Amendment) and National Inventories Regulations 2005 (S.I. 2005/2903);
 - b) Maintaining registry accounts in respect of stationary installations and aviation in the "Union Registry" for the purposes of EU Emissions Trading Scheme and maintaining accounts in the UK "Kyoto" Registry;
 - c) Regulation of aviation operators.
- 4.10 Charges in respect of determining applications for the approval of projects under regulation 8A of the Greenhouse Gas Emissions Trading Scheme (Amendment) and National Inventories Regulations 2005 (S.I. 2005/2903): The EA performs functions in relation to approving participation in projects under Joint Implementation (JI) and Clean Development Mechanisms (CDM). The relevant requirements governing these functions are imposed under regulations 5, 6, 7, 8 and 9 of the Greenhouse Gas Emission Trading Scheme (Amendment) and National Inventories Regulation 2005 (S.I. 2005/2903) ("the CDM/JI Regulations

2005"). Regulation 5 of the CDM/JI Regulations 2005 provides that applicants for approval and/or authorisation of CDM or JI projects must pay a fee when submitting their application. The requirement to pay a fee only applies to applications submitted before 6th April 2012. The reason for limiting the requirement in this way was that it was intended to confer a power on the EA later this year to enable it to make charging schemes to impose its own charges. The instrument confers that power.

- 4.11 *Maintaining registry accounts in respect of stationary installations in the “Union Registry” for the purposes of EU Emissions Trading Scheme and in the UK “Kyoto” Registry:* The EA currently maintains and operates the UK emissions registry. In future, the UK EU ETS Registry will form part of the Union Registry and the UK Kyoto Registry will be hosted by the Union Registry. However, in both cases the EA will still be required to exercise functions (e.g. administering accounts held by operators for the UK is responsible and operating the KP registry).
- 4.12 The EA currently has the power to recover the costs it incurs in administering the UK registry through charging schemes made under section 41 Environment Act 1995 (read with section 41A of that Act). In particular:-
- section 41A(1)(d) enables the EA to make charging schemes to prescribe “charges in respect of the subsistence of an account required to be held in the trading scheme registry by an operator (“operator registry charges”).”
 - Section 41A(6)) enables the EA to make charging schemes to prescribe charges in respect of the creation and subsistence of other types of account (e.g. Person Holding Accounts) and in respect of the cost of updating information in respect of such accounts.
- 4.13 In both cases above, the power to make charging schemes is exercisable in relation to the “*trading scheme registry*” which is defined in section 41A(7) as the registry established under regulation 26 of the 2005 Regulations. The power to make charging schemes in respect of “operator registry charges” must be exercised by SEPA in respect of Scotland which must then pass on the charges to the Agency (by virtue of s.41A(2)-(5) Environment Act 1995). Since, the current UK Registry will be replaced by the Union Registry, the definition of “trading scheme registry” in section 41A(7) needs to be amended to ensure it encompasses the EA’s functions in respect of the new Union Registry (including in relation to the Kyoto registry hosted by the Union Registry). The charging powers have also been

amended to ensure they encompass aviation accounts in the registry since those were not previously covered.

- 4.14 The charging powers under the Environment Act 1995 do not extend to DOENI. The DOENI is able to make charging schemes to recover EA's costs in respect of the registry from Northern Irish operators which it must then pass on to EA. Those powers are conferred under the Environment (Northern Ireland) Order 2002 and the Greenhouse Gas Emissions Trading Scheme Charging Scheme Regulations (Northern Ireland) 2010 (S.R. (N.I.) 2010 No. 151). The instrument amends the above order and regulations to ensure those charging powers extend to EA's functions in relation to the Union Registry and aircraft registry accounts.
- 4.15 *Regulating aviation operators:* In addition to maintaining accounts in the Union Registry in respect of aircraft operators, the EA, SEPA and Chief Inspector in Northern Ireland will need to exercise a number of other regulatory functions in respect of aircraft operators once they are included in the EU ETS. Those functions are conferred pursuant to Directive 2008/101/EC which has been implemented by the [TAviation Greenhouse Gas Emissions Trading Scheme Regulations 2010 \(SI 2010/1996\)](#). Schedule 1 of those Regulations prescribes fees which must be paid to the "regulator" in respect of various activities. "Regulator" is defined in regulations 4 and 5 and encompasses, the Agency, the Scottish Environment Protection Agency and the Chief Inspector in Northern Ireland depending on where the relevant aircraft operators registered office is located. The instrument amends the charging powers referred to above to enable EA, SEPA and the DOENI to make charging schemes in respect of the costs of its regulatory functions under Directive 2008/101/EC (in practice, the matters listed in Schedule 1 to the above Regulations).

5. Territorial Extent and Application

- 5.1 This instrument applies to England and Wales, Scotland and Northern Ireland.

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 EU ETS was established under the European Directive 2003/87/EC which entered into force on 25 October 2003. The purpose of the EU ETS is to promote cost-effective reductions in greenhouse gas emissions. It supports the EU's commitment to a global carbon market as a key instrument for tackling climate change, and will be central in enabling the EU to achieve its stated goal of reducing emissions by 20% in 2020 compared to 1990 levels.

- 7.2 Operators covered by the EU ETS must hold a greenhouse gas emissions permit and are allocated emission allowances, which they are able to trade. The conditions of the permit require operators to monitor and report their emissions and to surrender allowances by 30 April each year to cover those emissions in the previous calendar year.
- 7.3 The EU ETS is supported by a system of electronic registries to issue, transfer, hold and cancel carbon allowances. Currently each Member State has a registry; all persons participating in the ETS and wishing to trade EUAs and Kyoto Units within the EU ETS must have an account in a Member State registry which holds those EUAs and Kyoto Units.
- 7.4 Computerised registries are key components of the EU ETS and wider international emissions trading under the United Nations Framework Convention on Climate Change's (UNFCCC's) Kyoto Protocol. Under Directive 2003/87/EC, EU Member States were required to put in place a standardised, electronic national registry from 2005, whilst Parties to the Kyoto Protocol were required to put in place a national registry to allow international emissions trading from 2008.
- 7.5 The functional requirements of the Registry are determined by the European Commission (through the Registry Regulations) and the UNFCCC secretariat (through various decisions).
- 7.6 An emissions trading registry is a web-based application that records:
- CO₂ allowances and units allocated to and held in operator, person and Government accounts
 - Movement of allowances and units between accounts (including allocations, transfers, surrender and cancellations)
 - Annual verified emissions of installations
 - Annual compliance status of installations under the EU ETS and Kyoto Protocol frameworks.
- 7.7 **EU ETS and Kyoto Registries**
EU Registries Regulations provide the legal framework for the operation of the EU ETS registries. The registries are essential for compliance with the EU ETS scheme as they allow persons to hold and trade emission allowances with other account holders. It is therefore of extreme importance that the legislative framework governing the registries is up to date and accurate.
- 7.8 The current UK 2005 GHG Regulations refer back to 2004 EURR, which will be replaced at the end of this year. It is necessary to update the UK GHG Regulation to give effect to 2010 EURR, this will be done through this Statutory Instrument which will ensure the appropriate legal framework is in place and will ensure the UK does not contravene EU legislation.
- 7.9 **The Environment Agency's powers to make charging schemes**

There exists a range of powers to make charging schemes under sections 41 and 41A of the Environment Act 1995 and for Northern Ireland under Article 4 of the Environment (Northern Ireland) Order 2002 (as amended). However for aviation operators and the consideration of applications from third parties for the approval of participation in CDM and JI projects, these fees are fixed in separate secondary legislations. Aviation fees are contained in Schedule 1 of the Aviation Greenhouse Gas Emissions Trading Scheme Regulations 2010 (SI 2010/1996) and charges for the consideration of applications for approval of participation in CDM and JI projects are the 2011 Regulations.

- 7.10 Aviation operators regulator charges are fixed in regulation and the regulations provide no power to charge aviation operators in relation to registry accounts. Aviation operators will be covered by the EU ETS with effect from 1st January 2012 and will be required to hold EUAs in the new Union Registry. There is a cost associated in opening and maintaining an account in the Union Registry. Moving the existing charges set out in Schedule 1 of the Aviation Greenhouse Gas Emissions Trading Scheme Regulations 2010 (SI 2010/1996) will mean greater consistency with how static EU ETS operators are charged and also allow for a new fee to be applied for the Union Registry. It will also mean greater autonomy from central Government for how regulators charge aviation operators.
- 7.11 The EA has a statutory obligation under domestic legislation implementing the Kyoto Protocol to consider applications from third parties for the approval of participation in CDM and JI projects . This function is performed through the UK DNA and DFP which reviews the applications against the relevant CDM and JI rules and legislation, and decides whether or not to issue a letter of approval (LOA). CDM and JI projects must receive a letter of approval from an Annex I country in order to get credits transferred into their registry account.
- 7.12 This statutory obligation was conferred to the EA along with the requirement for applications for LOAs to be accompanied by a fee under “the 2011 Regulations”. The requirement to pay a fee only applies up until 6th April 2012 and so the purpose of these amendments is to confer powers on the Environment Agency to make a charging scheme from next financial year to ensure they continue to operate these functions on a cost recovery basis in line with UK policy. As the operators of the DNA and DFP, EA are best able to decide fee levels and under EA guidelines any proposed fee changes will be subject to public consultation by EA as part of its broader consultation on charging levels. Participants of the CDM and JI applying to the UK DNA and DFP are limited to but not exclusive to a small group of stakeholders. The costs incurred to these stakeholders as a result of the fees for applications would be minor, especially in relation to overall costs and returns of the projects they are applying for. As this is such a small function, the continuation of existing fees charges will have a relatively minor impact. No media interest or particular sensitivities arose from “the 2011 Regulations” and so do not expect there to be any with these amendments.
- 7.13 As mentioned above, this SI also includes provisions to enable to EA to make a charging scheme to impose fees to recover their costs for a number of functions. This SI amends the Environment Act 1995 ensuring that the Agency is able to set up a charging scheme, enabling them to make charging schemes in respect of functions detailed above. It will also ensure that their charging is in line with

Government policy for regulators, such as the EA, to recover the costs of their regulatory activities cost. Before making a charging scheme, the EA is under a duty to consult on the proposed scheme and must then obtain the Secretary of State's approval of the scheme.

7.14 **Consolidation**

The 2005 GHG Regulations will be revised and consolidated next year

8. **Consultation outcome**

8.1 **EU ETS and Kyoto Registries**

As these changes are very technical in nature, DECC ran an informal consultation for seven weeks. DECC consulted with current registry account holders, trade associations and traders. No objections were raised to these amendments.

8.2 **The Environment Agency's powers to make charging schemes**

The charges set out in Schedule 1 of the Aviation Greenhouse Gas Emissions Trading Scheme Regulations 2010 (SI 2010/1996) were part of the general consultation on these regulations, which took place between December 2009 and March 2010. In addition the EA have included proposals to move aviation EU ETS charges into a charging scheme in their consultation on their various charging schemes for 2011/12, which took place between September and December 2010. Several respondents to the consultation raised objections to the charges. However this was part of a general opposition to being included in the EU ETS, particularly from non-EU aviation operators. These amendments do not propose increasing the current level of charges set out currently in Schedule 1 of the Aviation Greenhouse Gas Emissions Trading Scheme Regulations 2010 (SI 2010/1996).

8.3 In February 2011 DECC conducted an informal consultation with the main stakeholders who use the UK's DNA and DFP. This consultation exercise asked stakeholders for their views on the introduction of fees for applications to the DNA/DFP and the transfer of this function to the Environment Agency which was enacted in the previous amendment to these regulations. As we received no negative responses to this consultation, the transfer improved service levels and fees will not be increased next financial year, we have not felt it necessary to consult stakeholders further on these latest regulation amendments which will maintain the status quo.

8.4 **Emissions permits under the EU ETS**

An informal consultation on the conditions and content of Phase 3 permits will be conducted during 2012 once the European Commission has published the new Monitoring and Reporting Regulations and Accreditation and Verification Regulations, which will set out the requirements with regards to permit content and conditions.

9. **Guidance**

- 9.1 The EA through its website currently provides extensive guidance on the EU ETS⁶ their charges⁷ and on the exercise of DNA and DFP functions it performs on behalf of the Secretary of State⁸. Guidance covering phase 3, which will include GHG emissions permitting, is being developed and will be made available once the European Commission has published the new Monitoring and Reporting Regulations and Accreditation and Verification Regulations.

10. Impact

- 10.1 The impact on business, charities or voluntary bodies is negligible.
- 10.2 The impact on the public sector is administrative resource.
- 10.3 An Impact Assessment has not been prepared for this instrument. This is because there is minimal impact on the private, voluntary and public sector.

11. Regulating small business

- 11.1 The legislation applies to small business.
- 11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is to band some of the aviation charges so that smaller emitters pay less. However we are unable to cross-subsidise regulator costs so many of the charges do not differentiate between operator size.
- 11.3 The overall impacts of the DNA – DFP aspects of the legislation will not be significant and will not disproportionately impact small businesses. There were no responses in our consultation exercise contrary to this assessment and firms will continue to pass on the costs of fees on to their business clients. The fees as set would continue to be a very small part of the overall costs of CDM/JI project applications.
- 11.4 The basis for the final decision on what action to take to assist small business is based on the approach taken in the current charging schemes on static EU ETS operators.

12. Monitoring & review

- 12.1 No specific review is planned for these amendments. Once the power to make the relevant charging schemes is made then the actual charging schemes made will be subject to public consultation and the Secretary of State for Environment, Food and Rural Affairs is required to sign them off.

⁶ <http://www.environment-agency.gov.uk/business/topics/pollution/32232.aspx>

⁷ <http://www.environment-agency.gov.uk/business/regulation/31853.aspx>

⁸ <http://www.environment-agency.gov.uk/business/regulation/130070.aspx>

13. Contact

- 13.1 Georgina Murray at the Department of Energy and Climate Change Tel: 0300 068 5294 or email: Georgina.murray@decc.gsi.gov.uk can answer any queries regarding the instrument.