

## SCHEDULE

Regulation 4

### Amendments to the 2005 Regulations

1. The 2005 Regulations are amended as follows.
2. In regulation 2 (Interpretation)—
  - (a) insert the following definitions in alphabetical order in the appropriate place—
    - ““aircraft operator” means a person who is a UK operator for the purposes of the Aviation Regulations;
    - “the Aviation Regulations” means the Aviation Greenhouse Gas Emissions Trading Scheme Regulations 2010(1);
    - “registry administrator” means the Environment Agency;
    - “UK Registry” means the registry established pursuant to regulation 26 of these Regulations as they had effect immediately prior to 1st January 2012;
    - “Union Registry” means the Union registry referred to in Article 3(2) of the Registries Regulation;”;
  - (b) in the definition of “appropriate authority” for “32(14) apply” substitute “32(14) apply and subject to regulations 4 and 32);
  - (c) in the definition of “AAU”, for “Article 2(e)” substitute “Article 2(7)”;
  - (d) in the definition of “issue”, for “registry” substitute “the Union Registry”;
  - (e) in the definition of “new entrant reserve”, for “Article 38(2) or 44(2)” substitute “Article 37”;
  - (f) for the definition of “Registries Regulation” substitute—
    - “Commission Regulation (EU) No 920/2010 of 7 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(2), as amended from time to time (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);”;
  - (g) in the definition of “regulator” for ““regulator” means” substitute ““regulator” means (subject to regulations 4, 26, 42 and 43)”; and
  - (h) in the definition of “RMU”, for “Article 2(r)” substitute “Article 2(11)”.
3. In regulation 4 (Notices) insert at the end—
  - “(7) For the purposes of this regulation—
    - (a) “regulator” includes a person who is a regulator for the purposes of regulation 26;
    - (b) “appropriate authority” includes a person who is an appropriate authority for the purposes of appeals under regulation 32.”
4. After regulation 7 (Requirement for greenhouse gas emissions permit to carry out Schedule 1 activities) insert—

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(1) [S.I. 2010/1996](#), amended by [S.I. 2011/765](#).

(2) O.J. No. L270, 14.10.2010, p.1. The Regulation has been amended by Commission Regulation (EU) No 1193/2011 of 18 November 2011 establishing a Union Registry for the trading period commencing on 1 January 2013, and subsequent trading periods, of the Union emissions trading scheme 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 and amending Commission Regulations (EC) No [2216/2004](#) and (EU) No 920/2010 (O.J. No. L 315, 29.11.2011, p. 1).

*Status: This is the original version (as it was originally made).*

### “Permits for Phase 3 activities

**7A.**—(1) A person who wishes to carry out a Phase 3 activity may make an application for a greenhouse gas emissions permit (and such a permit may accordingly authorise the carrying out of a Phase 3 as well as a Schedule 1 activity).

(2) For the purposes of this regulation—

(a) “Phase 3 activity” means an activity falling within Annex 1, as carried out on or after 1st January 2013, other than—

(i) a Schedule 1 activity, or

(ii) an aviation activity; and

(b) “Annex 1” means Annex 1 to the Directive, as substituted by Directive [2009/29/EC](#) of the European Parliament and of the Council amending Directive [2003/87/EC](#) so as to improve and extend the greenhouse gas emission allowance trading scheme of the Community<sup>(3)</sup>.

(3) The provisions mentioned in paragraph (4) apply as if any reference to a Schedule 1 activity included a reference to a Phase 3 activity.

(4) The provisions are—

(a) regulations 8 to 10, 12, 14 and 15 (other than 15(2)); and

(b) in regulation 2, the definitions of “installation”, “reportable emissions” and “specified emissions” in so far as they have effect for the purposes of the interpretation of those provisions (or of definitions of expressions used in them).

(5) For the purposes mentioned in paragraph (4)(b), in relation to greenhouse gas emissions from a Phase 3 activity, the reference in the definition of “specified emissions” to emissions specified in Schedule 1 is to be read as a reference to emissions specified in Annex 1.

(6) Regulations 15(2) and 16 do not apply to a permit that authorises the carrying out of a Phase 3 as well as a Schedule 1 activity.

(7) In respect of a permit that authorises solely the carrying out of a Phase 3 activity, no charge is payable for the subsistence of the permit—

(a) under regulation 18(1), or

(b) under provisions superseding the provisions of Schedule 5 in accordance with regulation 18(3).”

**5.** In regulation 16(12) (Applications to surrender a greenhouse gas emissions permit), for “Article 17(1)” substitute “Article 23”.

**6.** In regulation 17(10) (Revocation of greenhouse gas emissions permits), for “Article 17(1)” substitute “Article 23”.

**7.** In regulation 19(1)(g) (Charging scheme for offshore installations), for “registry established under regulation 26” substitute “UK Registry or the Union Registry”.

**8.** In regulation 21 (Allocation and issue of allowances)—

(a) omit paragraph (5);

(b) in paragraph (6), for “the second sentence of Article 40 or 46” substitute “Article 40(2)”; and

(c) in paragraph (9), for “Article 40 or 46” substitute “Article 40(2)”.

(3) O.J. No L140, 5.6.2009, p 63; see Article 1(30) of that Directive.

9. In regulation 22(21) (Application for an allocation from the new entrant reserve), for “Article 44(2) and Article 48” substitute “Article 37(1) and 40(3)”.

10. In regulation 22A(16) (Application for an allocation for late installations) for “Article 44(2) and Article 48” substitute “Article 37(1) and 40(3)”.

11. In regulation 22C (Power to withhold allowances), in paragraphs (4), (5) and (6), for “Article 42 or 48” substitute “Article 40(1) or 40(3)”.

12. In regulation 23(2) (Allowance allocation where permit varied, surrendered or revoked), for “Article 17(3) substitute “Article 23(1)”.

13. In regulation 25(5) (Supplementary decisions by the regulator or the Secretary of State)—

- (a) in sub-paragraph (a), for “Article 44” substitute “Article 37”; and
- (b) in sub-paragraph (b), for “Article 48” substitute “Article 40”.

14. For regulation 26 (Registry), substitute—

#### **“UK Registry and Union Registry**

26.—(1) The Environment Agency shall act as national administrator for the purposes of the Registries Regulation and these Regulations.

(2) Where the Secretary of State has determined that the Union Registry is not capable of performing some or all of its functions for the purposes specified in Article 3(1) of the Registries Regulation—

- (a) the Environment Agency may continue to maintain the UK Registry and act as the KP registry administrator in relation to that registry in accordance with the Registries Regulation and these Regulations for the purposes specified in Article 3(1) of the Registries Regulation to the extent that the Secretary of State has determined that the Union Registry is not capable of performing its functions for those purposes; but
- (b) that power may not be exercised after the Secretary of State has determined that the Union Registry is capable of performing all of its functions for the purposes specified in Article 3(1) of the Registries Regulation.

(3) Where the Secretary of State has determined that the Union Registry is not capable of performing some or all of its functions for the purposes specified in Article 3(2) of the Registries Regulation—

- (a) the Environment Agency may continue to maintain the UK Registry and act as registry administrator in relation to that registry in accordance with the old Regulations for the purposes specified in Article 3(2) of the Registries Regulation to the extent that the Secretary of State has determined that the Union Registry is not capable of performing its functions for those purposes; but
- (b) that power may not be exercised after the Secretary of State has determined that the Union Registry is capable of performing all of its functions for the purpose specified in Article 3(2) of the Registries Regulation.

(4) The old Regulations continue to have effect for the purposes of paragraph (3) above.

(5) Any determination under paragraphs (2) or (3) shall be published in such manner as the Secretary of State thinks appropriate.

(6) The Environment Agency may require users of the UK Registry or the Union Registry to comply with reasonable terms and conditions in relation to those registries.

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(7) Subject to paragraph (8), the competent authority for the purposes of the Registries Regulation shall be the regulator.

(8) The Secretary of State shall be the competent authority or competent body for the purposes of Articles 12(2), 18, 20(4), 21(1), 26(2), 27(5), 27(6), 28(1), 28(5), 29(2), 29(5), 29(6), 40(3), 41(3), 42, 47 and 64a of the Registries Regulation.

(9) It shall be the duty of the verifier to comply with the requirement to enter emissions data in accordance with Article 29(2) of the Registries Regulation.

(10) It shall be the duty of the verifier to mark emissions as verified in accordance with Article 29(5) of the Registries Regulation.

(11) Subject to paragraph (14), where an operator fails to comply with a condition imposed pursuant to regulation 10(3) in respect of an installation, the national administrator shall ensure that the 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 31 of the Registries Regulation is greater than or equal to zero.

(12) Paragraph (13) applies where—

- (a) an operator is required to submit a report to the regulator by the terms of a notice of surrender in relation to an installation included pursuant to regulation 16(7) (a) or by the terms of a revocation notice in relation to an installation included pursuant to regulation 17(5)(a); and
- (b) the operator—
  - (i) fails to submit the report to the regulator;
  - (ii) submits the report to the regulator and the report is incomplete; or
  - (iii) submits the report to the regulator and the report or part of the report cannot be verified in accordance with the relevant monitoring and reporting conditions.

(13) Subject to paragraph (14), where this paragraph applies, the registry administrator shall ensure that the relevant person may not transfer allowances out of the operator holding account for a relevant installation until—

- (a) the report referred to in paragraph (12) has been submitted to the regulator and has been verified in accordance with the terms of the notice of surrender or the revocation notice; or
- (b) the regulator has notified a determination in accordance with regulation 30(3).

(14) Paragraphs (11) and (13) shall not prevent the surrender of allowances, CERs or ERUs in accordance with Articles 46, 47 and 48 of the Registries Regulation.

(15) Where a national administrator prevents the transfer of allowances out of an account under paragraphs (11) or (13) the national administrator shall notify the account holder specifying the reason why and the period during which transfers will be prevented.

(16) In this regulation—

- (a) “old Regulations” means these Regulations as they had effect immediately prior to 1st January 2012;
- (b) in relation to an aviation operator, “regulator” means the person specified by regulations 4 to 6 of the Aviation Regulations;
- (c) “relevant installation” means the installation to which the notice of surrender or revocation notice referred to in paragraph (12) relates;
- (d) “relevant person” means—
  - (i) the operator of the installation; or

(ii) the pool administrator where the installation is covered by a notice under regulation 27(10)(b).”

**15.** In regulation 27A(1) (Use of CERs and ERUs), for “Article 53” substitute “Article 48”.

**16.** In regulation 30(4) (Power of the regulator to determine reportable emissions), for “Article 51(3)” substitute “Article 29(6)”.

**17.** In regulation 32 (Appeals against a decision of, or notice served by, the regulator or registry administrator)—

(a) for paragraph (4) substitute—

“(4) The persons listed in paragraph (4A) may appeal to the appropriate authority.”;

(b) after paragraph (4) insert—

“(4A) The persons listed in this paragraph are—

(a) a person who is aggrieved by a decision to prevent transfers out of that person’s account in accordance with paragraphs (11) or (13) of regulation 26; or

(b) a person who is aggrieved by one or more of the following decisions of the national administrator—

(i) a refusal to open an account in accordance with Article 18(2) of the Registries Regulation;

(ii) a refusal to approve an authorised representative or additional authorised representative in accordance with Article 20(3b) of the Registries Regulation;

(iii) a refusal to update account information in accordance with Article 21(1) of the Registries Regulation;

(iv) a decision to suspend access to an account in accordance with of Article 27(1), (2a) or (3) of the Registries Regulation;

(v) a decision to close an account in accordance with Article 28(1) of the Registries Regulation; or

(vi) a decision to remove an authorised representative or additional authorised representative in accordance with Article 28(4) of the Registries Regulation.”; and

(c) in paragraph (5) for “Paragraphs (1) to (4)” substitute “Paragraphs (1) to (3)”;

(d) for paragraph (14) substitute—

“(14) For the purposes of appeals under this regulation, the appropriate authority is—

(a) in relation to an installation (other than an offshore installation) which is (or will be) situated in Northern Ireland, the Planning Appeals Commission; and

(b) in the case of an appeal brought by an aircraft operator, the authority specified in relation to that operator by regulation 7 of the Aviation Regulations.”

**18.** In regulation 38, delete paragraph (1)(i).

**19.** In regulation 42, at the end insert—

“(6) For the purposes of this regulation, “regulator” includes a person who is a regulator for the purposes of regulation 26.”

**20.** In regulation 43, at the end insert—

“(3) For the purposes of this regulation “regulator” includes a person who is a regulator for the purposes of regulation 26.”

**Amendment to the Environment Act 1995**

**21.** The Environment Act 1995(4) is amended as follows.

**22.** In section 41(5)—

(a) in subsection (1), in paragraph (g) for “prescribed.” substitute “prescribed;”, and after that paragraph insert—

“(h) as a means of recovering costs incurred by it in performing functions conferred by regulation 8A of the Greenhouse Gas Emissions Trading Scheme (Amendment) and National Inventory Regulations 2005(6), the Agency may require the payment to it of such charges as may from time to time be prescribed;

(i) as a means of recovering costs incurred by it in performing functions conferred by regulations made for the purpose of implementing Directive 2008/101/EC of the European Parliament and of the Council amending Directive 2003/87/EC so as to include aviation activities in the scheme for greenhouse gas emission allowance trading within the Community, each of the new Agencies may require the payment to it of such charges as may from time to time be prescribed;

(j) each of the new Agencies may require the payment to it of such charges as may from time to time be prescribed in respect of the subsistence of an account required to be held in the trading scheme registry by an aircraft operator;”;

(b) in subsection (10), in the appropriate alphabetical order, insert—

““aircraft operator” has the same meaning as in the Aviation Greenhouse Gas Emissions Trading Scheme Regulations 2010;”;

““trading scheme registry” means—

(a) any registry operated by the Environment Agency for the purpose of meeting the requirements of Article 3(1) of Commission Regulation (EU) No 920/2010 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(7), as amended from time to time; or

(b) the Union registry referred to in Article 3(2) of that Regulation.”

**23.** In section 41A(8)—

(a) for the heading, substitute “Charges in respect of greenhouse gas emissions permits etc: supplementary”;

(b) in subsection (1), after “Regulations 2005” omit (“the regulations”);

(c) in subsection (2)(a), after “registry charges” insert “or aircraft operator registry charges;”;

(d) in subsection (5), after “registry charges”, insert “and any aircraft operator charges”;

(e) in subsection (6)(a), after “operator”, insert “or an aircraft operator”; and

(f) for subsection (7) substitute—

“(7) In this section—

“aircraft operator registry charges” means charges prescribed under section 41(1)(j);

(4) 1995 c.25.

(5) Section 41 has been amended by S.S.I. 2003/235, S.I. 2005/894, 2005/1806 (W. 138), 2006/937, 2007/1711, 2007/3106, 2008/3087, 2009/890, 2009/3381, the Climate Change (Scotland) Act 2009 (asp.12), the Flood and Water Management Act 2010 (c.29) and S.I. 2011/988.

(6) S.I. 2005/2903, amended by S.I. 2011/727.

(7) O.J. No. L270, 14.10.2010, p.1.

(8) Inserted by S.I. 2005/925.

“aircraft operator”, “charging scheme”, “prescribed” and “trading scheme registry” have the same meaning as in section 41;

“allowance” and “operator” have the same meaning as in the Greenhouse Gas Emissions Trading Scheme Regulations 2005.”

### **Amendment to the Environment (Northern Ireland) Order 2002**

**24.** Schedule 1 to the Environment (Northern Ireland) Order 2002<sup>(9)</sup> (particular purposes for which provision may be made under Article 4 of that Order) is amended as follows.

**25.** After paragraph 9A insert—

“**9B.**—(1) Without prejudice to paragraph 9, authorising the Department to make schemes for the charging by enforcing authorities of fees or other charges as a means of recovering costs incurred by them in performing functions conferred by regulations made for the purpose of implementing Directive [2008/101/EC](#) of the European Parliament and of the Council amending Directive [2003/87/EC](#) so as to include aviation activities in the scheme for greenhouse gas emission allowance trading within the Community.

(2) Without prejudice to paragraph 9, authorising the Department to make schemes for the charging by enforcing authorities of fees or other charges as a means of recovering costs incurred by them in performing functions in respect of the subsistence of an account required to be held in the trading scheme registry by an aircraft operator (“aircraft operator charges”).”

**26.** In paragraph 24 of that Schedule, after “9A” insert “, 9B”.

**27.** In paragraph 24A—

(a) after “paragraph 9A” insert “, or 9B”;

(b) after “operator registry charges” insert “, or aircraft operator registry charges”.

**28.** In paragraph 26—

(a) in the appropriate alphabetical place insert—

““aircraft operator” has the same meaning as in the Aviation Greenhouse Gas Emissions Trading Scheme Regulations 2010;”;

(b) for the definition of “trading scheme registry” substitute—

““trading scheme registry” means—

(a) any registry operated by the Environment Agency for the purpose of meeting the requirements of Article 3(1) of Commission Regulation (EU) No 920/2010 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; or

(b) the Union registry referred to in Article 3(2) of that Regulation.”

### **Amendment to the Greenhouse Gas Emissions Trading Scheme Charging Scheme Regulations (Northern Ireland) 2010**

**29.** The Greenhouse Gas Emissions Trading Scheme Charging Scheme Regulations (Northern Ireland) 2010<sup>(10)</sup> are amended as follows.

<sup>(9)</sup> 2002 No. 3153 (N.I. 7), amended by S.R. (N.I.) 2010 No. 92.

<sup>(10)</sup> S.R. (N.I.) 2010 No. 151.

- 30.** In regulation 2 (interpretation), in the appropriate alphabetical order insert—
- ““trading scheme registry” means—
- (a) any registry operated by the Environment Agency for the purpose of meeting the requirements of Article 3(1) of Commission Regulation (EU) No 920/2010 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; or
  - (b) the Union registry referred to in Article 3(2) of that Regulation.”
- 31.** In regulation 4 (fees and charges in respect of greenhouse gas emissions permits)—
- (a) in the heading, omit “in respect of greenhouse gas emissions permits”;
  - (b) in paragraph (2), after subparagraph (g) insert—
    - “(h) charges in respect of any costs incurred by it in performing functions conferred by regulations made for the purpose of implementing Directive 2008/101/EC of the European Parliament and of the Council amending Directive 2003/87/EC so as to include aviation activities in the scheme for greenhouse gas emission allowance trading within the Community;
    - (i) charges in respect of the subsistence of an account required to be held in the trading scheme registry by an aircraft operator (“aircraft operator registry charges”).”
- 32.** In regulation 5 (trading scheme and registry charges)—
- (a) in paragraph (1)(a), after “registry charges” insert “or aircraft operator registry charges”;
  - (b) in paragraph (4) after “registry charges” insert “or aircraft operator registry charges”.

**Transitional provisions: existing charging schemes**

**33.** Subject to paragraphs 34 and 35, from the commencement of these Regulations any provisions of an existing scheme or an existing Northern Ireland scheme prescribing charges in respect of the subsistence or creation of an account in the UK registry (or of the updating of information provided in relation to such an account) continue to apply, but as if any reference in those provisions to the “registry” were a reference to the Union registry.

**34.** The modifications made by paragraph 33 have effect only from the date that the Union registry is capable of being used for the purposes specified in Article 3(2) of the Registries Regulation; and for the purposes of this paragraph—

- (a) notice of that date is to be published by the Secretary of State in such manner as the Secretary of State thinks fit; and
- (b) until that date, any reference in those provisions to the “registry” continues to be a reference to the UK registry.

**35.** Paragraph 33 ceases to have effect—

- (a) in respect of Northern Ireland, on the commencement of the provisions of a new Northern Ireland scheme that prescribe charges in respect of the matters mentioned in that paragraph;
- (b) in respect of the rest of the United Kingdom, on the commencement of the provisions of a new scheme that prescribe charges in respect of the matters mentioned in that paragraph.

**36.** In paragraphs 33 to 35 and this paragraph—

“existing Northern Ireland scheme” means a scheme in force made under the old regulation 4;



“existing scheme” means a scheme in force made under section 41 of the Environment Act 1995 as read with the old section 41A;

“new Northern Ireland scheme” means a scheme made under the new regulation 4;

“new scheme” means a scheme made under section 41 of the Environment Act 1995 as read with the new section 41A;

“new section 41A” means section 41A of the Environment Act 1995 as amended by paragraphs 21 to 23 (and “old section 41A” means that section as it had effect immediately before that amendment);

“new regulation 4” means regulation 4 of the Greenhouse Gas Emissions Trading Scheme Charging Scheme Regulations (Northern Ireland) 2010 as amended by paragraphs 29 to 32 of these Regulations (and “old regulation 4” means that regulation as it had effect immediately before that amendment);

“the Union registry” means the Union registry referred to in Article 3(2) of the Registries Regulation.

### **Transitional provisions: aviation**

**37.** The Aviation Greenhouse Gas Emissions Trading Scheme Regulations 2010 are amended as follows.

**38.** For regulation 28 substitute—

“**28.**—(1) Schedule 1 (charging) has effect; but the provisions of paragraph 1 of that Schedule cease to have effect—

(a) in respect of Northern Ireland, when they are superseded by a scheme made under the Greenhouse Gas Emissions Trading Scheme Charging Scheme Regulations (Northern Ireland) 2010 (“a Northern Ireland charging scheme”);

(b) in respect of the rest of the United Kingdom, when they are superseded by a scheme made under section 41 of the Environment Act 1995 (“a charging scheme”).

(2) For that purpose, a provision is superseded by a Northern Ireland charging scheme or charging scheme respectively where such a scheme is in force that—

(a) specifies an amount in respect of the same activity as is mentioned in that provision, and

(b) states that the amount specified by that provision is superseded by the amount specified by the scheme.

(3) Where a provision is superseded in accordance with paragraph (1), any reference in these Regulations to a fee in accordance with Schedule 1 is to be read as a reference to the amount specified by the scheme, and any reference in paragraphs 2 to 4 of Schedule 1 to a charge is to be read as a reference to that amount.”