
STATUTORY INSTRUMENTS

2012 No. 2788

**The Greenhouse Gas Emissions Trading Scheme
(Amendment) (Charging Schemes) Regulations 2012**

PART 2

Amendments to the Environment Act 1995

Interpretation

3. In this Part, a reference to a numbered section is to that section of the Environment Act 1995(1).

Section 41

4. In section 41 (power to make schemes imposing charges)(2)—
- (a) omit subsection (1)(i) and (j); and
 - (b) in subsection (10), omit the definitions of “aircraft operator” and “trading scheme registry”.

Section 41A

5.—(1) Section 41A (charges in respect of greenhouse gas emissions permits etc)(3) is amended as follows.

(2) In the heading, for “greenhouse gas emissions permits etc: supplementary” substitute “the EU greenhouse gas emissions trading scheme”.

(3) For subsection (1) substitute—

“(1) Each of the new Agencies may require the payment to it of such charges as may from time to time be prescribed—

- (a) as a means of recovering costs incurred by it in performing functions conferred under or by virtue of regulations made for the purpose of implementing the EU ETS Directive;
- (b) in respect of—
 - (i) an application to open an account that, under the Registries Regulation 2011, is required to be held in a trading scheme registry;
 - (ii) the subsistence of such an account;

(1) 1995 c. 25; relevant amendments are noted below.

(2) Section 41 has been amended by S.I. 2003/235, S.I. 2005/894, 2005/1806 (W. 138), 2006/937, 2007/1711, 2007/3106, 2008/3087, 2009/890, 2009/3381, section 99 of and paragraph 2 of Schedule 2 to the Climate Change (Scotland) Act 2009 (asp.12), section 33 of and paragraph 39 of Schedule 4 to the Flood and Water Management Act 2010 (c. 29), and by S.I. 2011/988 and 2011/2911.

(3) Section 41A was inserted by S.I. 2005/925 and amended by S.I. 2011/2911.

(iii) the updating of information provided to the Agency in relation to such an account;

and in this section “prescribed” means specified in, or determined under, a scheme (in this section referred to as a “charging scheme”) made under this section by the new Agency in question.

(1A) A charging scheme may—

- (a) make different provision for different cases, including different provision in relation to different persons, circumstances or localities;
- (b) provide for the times at which, and the manner in which, the charges prescribed by the scheme are to be paid;
- (c) revoke or amend any previous charging scheme;
- (d) contain supplemental, incidental, consequential or transitional provision for the purposes of the scheme.

(1B) A charging scheme must specify, in relation to any charge prescribed by the scheme, the description of person who is liable to pay the charge.

(1C) A new Agency may not make a charging scheme unless the provisions of the scheme have been approved by the Secretary of State or the Scottish Ministers under section 42.”.

(4) In subsection (2)—

- (a) for “operator registry charges or aircraft operator registry charges” substitute “charges under subsection (1)(b)”; and
- (b) for “under section 42(2) below” substitute “or the Scottish Ministers under section 42”.

(5) In subsection (5), for “operator registry charges and any aircraft operator charges” substitute “charges under subsection (1)(b)”.

(6) For subsection (6)(a) substitute—

- “(a) an application to open an account in a trading scheme registry, other than one that under the Registries Regulation 2011 is required to be held in that registry;”.

(7) For subsection (7) substitute—

“(7) In this section—

“the Registries Regulation 2011” means Commission Regulation (EU) No 1193/2011 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(4), as amended from time to time;

“trading scheme registry” means—

- (a) any registry operated by the Agency for the purpose of meeting the obligations of the United Kingdom referred to in 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(5); or
- (b) the registry established by Article 4(1) of the Registries Regulation 2011.”.

(4) OJ No L 315, 29.11.11, p 1.

(5) OJ No L 270, 14.10.10, p 1.

Section 42

- 6.—(1) Section 42 (approval of charging schemes)(6) is amended as follows.
- (2) In subsection (2), for paragraph (b) substitute—
- “(b) have regard to—
- (i) in the case of a charging scheme made under section 41, the matter specified in subsection (3);
- (ii) in the case of a charging scheme made under section 41A, the matter specified in subsection (3A).”.
- (3) In subsection (3), for “(2)(b)” substitute “(2)(b)(i)”.
- (4) After subsection (3), insert—
- “(3A) The matter mentioned in subsection (2)(b)(ii) above is the desirability of ensuring that the amounts recovered by the new Agency in question by way of charges prescribed by charging schemes are the amounts which, taking one year with another, need to be recovered by that new Agency to meet such of the costs and expenses (whether of a revenue or capital nature) which it incurs in carrying out its functions in relation to the matters described in section 41A(1) as the Secretary of State may consider it appropriate to attribute to the carrying out of those functions.”.
- (5) In subsection (4)—
- (a) after “subsection (3)” insert “or (3A)”; and
- (b) omit “in relation to the activities to which environmental licences of any particular description relate”.
- (6) For subsection (11) substitute—
- “(11) In this section “charging scheme” means a scheme made under section 41 or 41A.”.

Section 56

7. In section 56(1) (interpretation of Part 1)—
- (a) in the definition of “environmental licence”, both in relation to the Environment Agency and in relation to SEPA(7)—
- (i) in paragraph (aa), insert at the end “, other than regulations made for the purpose of implementing the EU ETS Directive”; and
- (ii) omit paragraph (k); and
- (b) after those definitions, insert—
- ““the EU ETS 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](#), as amended from time to time;”.

Section 111

- 8.—(1) Section 111 (evidence in connection with certain pollution offences)(8) is amended as follows.

(6) Subsection (7) of that section was amended by [S.I. 1999/1820](#); there are other amendments that are not relevant.

(7) In those definitions, paragraph (aa) was inserted by [S.I. 2000/1973](#) and paragraph (k) by [S.I. 2005/925](#); there are other amendments that are not relevant.

(8) There are amendments to that section that are not relevant.

- (2) After subsection (2) insert—
 - “(2A) Information provided or obtained pursuant to or by virtue of relevant regulations (including information so provided or obtained, or recorded, by means of any apparatus) shall be admissible in evidence in any proceedings, whether against the person subject to a requirement arising under or by virtue of the regulations or any other person.”.
- (3) In subsection (3)—
 - (a) for “subsection (2)” substitute “subsections (2) and (2A)”; and
 - (b) for “the relevant licence otherwise provides” substitute “provision otherwise is made by the relevant licence or by virtue of the relevant regulations”.
- (4) In subsection (4)—
 - (a) in paragraph (a)—
 - (i) after “a relevant licence” insert “or by virtue of relevant regulations”, and
 - (ii) at the end insert “or compliance with any requirement arising under or by virtue of the regulations”; and
 - (b) at the end insert “or that requirement has not been complied with”.
- (5) In subsection (5), after the definition of “relevant licence” insert—
 - ““relevant regulations” means regulations made for the purpose of implementing the EU ETS Directive (as defined by section 56)”.