

**2015 No. 1849**

**CLIMATE CHANGE**

**The Greenhouse Gas Emissions Trading Scheme (Amendment)  
Regulations 2015**

<i>Made</i>	- - - -	<i>1st November 2015</i>
<i>Laid before Parliament</i>		<i>4th November 2015</i>
<i>Coming into force</i>	- -	<i>4th December 2015</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.

In accordance with section 2(4) of the Pollution Prevention and Control Act 1999 (“the 1999 Act”)(c), the Secretary of State has consulted the Environment Agency, the Natural Resources Body for Wales, the Scottish Environment Protection Agency, and 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.

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972, and it appears to the Secretary of State that it is expedient for the references to EU instruments in these Regulations to be construed as references to those instruments as amended from time to time.

Accordingly the Secretary of State, in exercise of the powers conferred by section 2 and 7(9) of and Schedule 1 to the 1999 Act(d), and by section 2(2) of the European Communities Act 1972, as read with paragraph 1A of Schedule 2 to the European Communities Act 1972(e), makes the following Regulations(f):

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- (a) S.I. 2008/301.
  - (b) 1972 c. 68; section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51) and by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7).
  - (c) 1999 c. 24.
  - (d) 1999 c. 24; section 2(4) was amended by paragraph 395 of Schedule 2 to the Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755 (W. 90)).
  - (e) Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (c. 51) and amended by S.I. 2007/1388 and by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7).
  - (f) Under section 57 of the Scotland Act 1998 (c. 46), despite the transfer to the Scottish Ministers of functions in relation to observing and implementing obligations under EU law in respect of devolved matters, any function of the Secretary of State in relation to any matter continues to be exercisable as regards Scotland for the purposes specified in section 2(2) of the European Communities Act 1972. And similarly, under paragraph 5 of Schedule 3 to the Government of Wales Act 2006 (c. 32), despite the transfer to the Welsh Ministers of functions under section 2 of the 1999 Act so far as exercisable in relation to Wales (except in relation to offshore oil and gas exploration and exploitation), those functions continue to be exercisable by the Secretary of State in relation to Wales for such purposes.

## **Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Greenhouse Gas Emissions Trading Scheme (Amendment) Regulations 2015 and come into force on 4th December 2015.

(2) In these Regulations a reference to a numbered regulation or a numbered Schedule is to that regulation of, or Schedule to, the Greenhouse Gas Emissions Trading Scheme Regulations 2012(a).

## **Amendments to definitions**

2.—(1) Regulation 3 is amended as follows.

(2) In paragraph (1)—

(a) after the definition of “cease operation”, insert—

““change of status notice” means a notice under paragraph 8(1), 8(4) or 9(1) of Schedule 5 that an installation will cease to be treated as an excluded installation;”;

(b) after the definition of “emissions”, insert—

““entry year” means the scheme year following the scheme year in which the operator of an excluded installation is given a change of status notice;”.

(3) For paragraph (3)(b), substitute—

“(b) the installation is a relevant installation, and has permanently ceased the carrying out of regulated activities by virtue of meeting the condition in paragraph 7(1)(d) of Schedule 6 or paragraph 8(1)(d) of Schedule 6A.”.

## **Surrender of permits**

3. For paragraphs (2) and (3) of regulation 13, substitute—

“(2) An application under paragraph (1) must be made by the date specified in paragraph (3), or such later date as may be agreed with the regulator.

(3) The date specified is, in the case of an installation that has ceased operation by virtue of meeting the condition in—

(a) paragraph 7(1)(b) or (c) of Schedule 6, the last day of the one month period beginning with the day on which the installation ceased operation;

(b) paragraph 7(1)(d) of Schedule 6, the last day of the one month period following the end of the relevant period (as defined by paragraph 7(5) of that Schedule);

(c) paragraph 8(1)(d) of Schedule 6A—

(i) where the entry year is 2015, the later of 31st December 2015 or the last day of the one month period following the end of the relevant period (as defined by paragraph 8(15)(b) of Schedule 6A);

(ii) where the entry year is any other scheme year, the later of 31st January in the entry year or the last day of the one month period following the end of the relevant period (as defined by paragraph 8(15)(b) of Schedule 6A).”.

## **Excluded installations**

4. For paragraph (3) of regulation 15, substitute—

“(3) The following provisions do not so apply—

(a) regulation 12(2); and

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(a) S.I. 2012/3038; those Regulations are amended by Schedule 4 to W.S.I. 2013/755 (W. 90) (see in particular paragraph 425), by S.I. 2013/1037, by S.I. 2013/3135, by S.I. 2014/3125, by S.I. 2015/933, and by S.I. 2015/1388.

- (b) Chapter 3 of this Part (except that regulation 16(3A) and Schedule 6A do apply where the operator of an excluded installation has been given a change of status notice).”.

#### **Allocation of allowances for 2013 to 2020**

- 5.—(1) Regulation 16 is amended as follows.
- (2) After paragraph (3), insert—
- “(3A) Schedule 6A sets out procedures for the allocation of allowances to operators of installations which cease to be excluded installations, and for the adjustment of such allocations.”.
- (3) In paragraph (4)(a), after “Schedule 6”, insert “or Schedule 6A”.

#### **Failures to notify changes at an excluded installation**

6. After regulation 58, insert—

**“Failure to notify when an excluded installation has had a significant capacity reduction or partial cessation of regulated activities**

**58A.** An operator is liable to a civil penalty of £5,000 where the operator fails to comply with a notification requirement under paragraph 7(2) or 9(2) of Schedule 6A.

**Failure to notify when the operator of an excluded installation has suspended the carrying out of regulated activities at the installation**

**58B.** An operator is liable to a civil penalty of £3,750 where the operator fails to comply with a notification requirement under paragraph 8(10) or Schedule 6A.”.

#### **Failure to return allowances**

- 7.—(1) Regulation 67 is amended as follows.
- (2) In paragraph (1)(b)(i), omit “or”.
- (3) After paragraph (1)(b)(i), insert—
- “(ia) paragraph 12(4) of Schedule 6A; or”.

#### **Providing false or misleading information**

- 8.—(1) Regulation 70(1) is amended as follows.
- (2) In sub-paragraph (f), at the end, omit “or”.
- (3) For sub-paragraph (g), substitute—
- “(g) pursuant to paragraph 6(2), 8(4)(a), or 8(5)(a) of Schedule 6; or”.
- (4) After sub-paragraph (g), insert—
- “(h) pursuant to paragraph 7(2) or 9(2) of Schedule 6A.”.

#### **Rights of appeal**

- 9.—(1) Regulation 73 is amended as follows.
- (2) In paragraph (1)(b), after “notice served on them”, insert “or notification given to them”.
- (3) After paragraph (2)(n), insert—
- “(na) paragraph 7(7)(a) of Schedule 6A, in relation to a decision to notify the registry administrator to withhold allowances under paragraph 7(5)(a) or (b) of that Schedule;

- (nb) paragraph 8(14)(a) of Schedule 6A, in relation to a decision to notify the registry administrator to withhold allowances under paragraph 8(12)(a) or (b) of that Schedule;
- (nc) paragraph 8(14)(b) of Schedule 6A;
- (nd) paragraph 9(7)(a) of Schedule 6A, in relation to a decision to notify the registry administrator to withhold allowances under paragraph 9(5)(a) or (b) of that Schedule;
- (ne) paragraph 12(2) of Schedule 6A;”.

### **Effect of an appeal**

- 10.**—(1) Regulation 76(2)(c) is amended as follows.
- (2) After “a notice”, insert “or notification”.
  - (3) In sub-paragraph (iv), at the end, omit “or”.
  - (4) In sub-paragraph (v), at the end, for “.”, substitute “; or”.
  - (5) After sub-paragraph (v), insert—
    - “(vi) paragraph 7(7)(a), 8(14)(a) or (b), or 9(7)(a) of Schedule 6A.”.

### **The Union Registry**

- 11.** For paragraph (11)(b) of regulation 80, substitute—
  - “(b) for any other reason (and in particular in consequence of paragraph 8(1) or 8(5) of Schedule 5, paragraph 5 or 10 of Schedule 6, or paragraph 6 or 11 of Schedule 6A).”.

### **Content of greenhouse gas emissions permit**

- 12.** In paragraph 2(7)(a) of Schedule 4 for “paragraph 1(3)(b)” substitute “paragraph 1A(1)(a)”.

### **Allocation and adjustment of allowances**

- 13.**—(1) Schedule 6 is amended as follows.
- (2) After sub-paragraph (1)(b) of paragraph 1, insert—
    - “(ba) “partial cessation” means a reduction in activity levels at a sub-installation of an installation, as described in paragraph 8(2);”.
  - (3) Omit paragraph 1(3).
  - (4) After paragraph 1, insert—

#### **“Application**

- 1A.**—(1) Subject to sub-paragraph (2), this Schedule does not apply—
- (a) to an installation that, by virtue of Article 10a(3) of the Directive, is not eligible for an allocation;
  - (b) where—
    - (i) a significant capacity extension;
    - (ii) a significant capacity reduction; or
    - (iii) a partial cessation,occurs while the installation is an excluded installation;
  - (c) where an installation permanently ceases the carrying out of regulated activities by virtue of meeting the conditions in paragraph 7(1)(a),(b) or (c) while the installation is an excluded installation; or

- (d) where an installation permanently ceases the carrying out of regulated activities by virtue of meeting the condition in paragraph 7(1)(d), but only where the suspension of regulated activities occurs when the installation is an excluded installation.
- (2) Paragraph 8(8) applies where—
  - (a) the allocation of allowances to an operator of an installation which used to be an excluded installation is reduced in accordance with paragraph 9 of Schedule 6A; and
  - (b) after the installation ceases to be an excluded installation, the activity of the sub-installation reaches more than the levels in paragraph 8(7)(a) or 8(7)(b) of this Schedule.”.
- (5) In paragraph 2(2), for “Such”, substitute “Subject to paragraph 8(6) of Schedule 6A, such”.
- (6) In paragraph 4(1)—
  - (a) for “paragraph 2(6) or 3(5)”, substitute “paragraph 2(7) or 3(6)”; and
  - (b) for “paragraph 2(5)(c) or 3(4)(c)”, substitute “2(6)(c) or 3(5)(c)”.
- (7) After sub-paragraph (4) of paragraph 7, insert—
 

“(4A) For the purpose of sub-paragraph (4), where an installation permanently ceases the carrying out of regulated activities by virtue of meeting the condition in sub-paragraph (1)(d), the date of the permanent cessation is deemed to be the date on which the operator suspends the carrying out of regulated activities at the installation.”.

**Allocation and adjustment of allowances: installations which cease to be excluded installations**

14. After Schedule 6, insert—

**“SCHEDULE 6A**

Regulation 16(3A)

**Allocation and adjustment of allowances: installations which cease to be excluded installations**

**Application of this Schedule**

1. This Schedule applies to an operator of an excluded installation who has been given a change of status notice.

**Interpretation**

2.—(1) Subject to sub-paragraph (2), terms used in this Schedule which are defined in Schedule 6 have the same meaning in this Schedule as they have in Schedule 6.

(2) In this Schedule, “partial cessation” means a reduction in activity levels at a sub-installation of an installation, as described in paragraph 9(1).

**Notification of end of excluded installation status: no significant capacity reduction or partial cessation**

3.—(1) Sub-paragraph (2) applies where on or before the relevant date—

- (a) the regulator has not received from the operator a notice under paragraph 7(2), 8(10) or 9(2); and
- (b) the operator has not applied to surrender the permit authorising regulated activities at the installation under regulation 13(1).

(2) Where this sub-paragraph applies, the regulator must, as soon as reasonably practicable after the relevant date, notify the persons in sub-paragraph (3) that from the beginning of the entry year, the installation is not to be treated as an excluded installation and that so far as the regulator is aware—

- (a) the installation has not ceased operation;
- (b) the operator has not suspended the carrying out of regulated activities at the installation;
- (c) the installation has not had a significant capacity reduction—
  - (i) after 30th June 2011; or
  - (ii) on or before that date, but where the reduced capacity was capable of determination only after 30th September 2011; and
- (d) the installation has not had a partial cessation.

(3) The persons referred to in sub-paragraph (2) are—

- (a) the registry administrator (where the registry administrator is not the regulator);
- (b) the authority;
- (c) the Secretary of State (where the Secretary of State is not the regulator); and
- (d) the European Commission.

(4) For the purpose of this paragraph, “the relevant date” is—

- (a) where the entry year is 2015, 4th December 2015;
- (b) where the entry year is any year after 2015, 31st January in the entry year.

**Application for an allocation from the new entrant reserve: significant capacity extensions of excluded installations**

**4.—**(1) Where an excluded installation has had a significant capacity extension in the period—

- (a) beginning—
  - (i) after 30th June 2011, or
  - (ii) on or before that date, but where the added capacity was capable of determination only after 30th September 2011; and
- (b) ending before 1st January in the entry year,

the operator of the excluded installation may apply to the regulator for an allocation of allowances from the new entrant reserve for each scheme year commencing with the entry year and the regulator must make a notice of determination in respect of the application.

(2) An application under sub-paragraph (1) must be made—

- (a) where the entry year is 2015, by the later of—
  - (i) 31st December 2015;
  - (ii) the last day of the 12 month period beginning with the start of changed operation of the installation; or
  - (iii) where sub-paragraph (1)(a)(ii) applies, the last day of the 12 month period beginning with the date of determination of added capacity;
- (b) where the entry year is any year after 2015, the later of—
  - (i) 31st January in the entry year;
  - (ii) the last day of the 12 month period beginning with the start of changed operation of the installation; or
  - (iii) where sub-paragraph (1)(a)(ii) applies, the last day of the 12 month period beginning with the date of determination of added capacity.

(3) An application under sub-paragraph (1) must contain—

- (a) all relevant information regarding each parameter listed in Annex 5 to the Free Allocation Decision for each separate sub-installation;
  - (b) the installed capacity, and a calculation of the added capacity, for each such sub-installation;
  - (c) any other information necessary to demonstrate that the criteria for a significant capacity extension have been met; and
  - (d) a statement that the information referred to in sub-paragraphs (a) to (c) has been verified.
- (4) If the regulator approves the calculation of extended capacity the regulator must calculate—
- (a) the activity levels (for the extended capacity only) of the sub-installations to which the significant capacity extension applies in accordance with Article 18(1) and (2) of the Free Allocation Decision;
  - (b) the preliminary number of allowances to be allocated for each sub-installation insofar as the extension is concerned in accordance with Articles 19(1) to (3) and 20 of the Free Allocation Decision; and
  - (c) the preliminary total annual amount of allowances to be allocated for the installation insofar as the extension is concerned.
- (5) The result of any calculation under sub-paragraph (4) must be included in the notice of the determination of an application under sub-paragraph (1).

**Notification of preliminary annual number of allowances: significant capacity extensions of excluded installations**

5.—(1) The regulator must, within 28 days after the date of the notice referred to in paragraph 4(1) notify the preliminary total annual amount of allowances calculated under paragraph 4(4)(c) to—

- (a) the authority;
- (b) the Secretary of State (where the Secretary of State is not the authority); and
- (c) the European Commission, pursuant to Article 19(4) of the Free Allocation Decision.

(2) Where the European Commission notifies the regulator that the preliminary total annual amount is rejected the regulator must, as soon as is reasonably practicable, notify the operator giving the reasons for rejection provided by the European Commission.

**Calculation of final total annual amount of allowances allocated free of charge: significant capacity extensions of excluded installations**

6.—(1) Where the European Commission approves the preliminary total annual amount notified under paragraph 5(1), the regulator must calculate the final total annual amount of allowances allocated for the installation concerned insofar as the extension is concerned.

(2) The regulator must, as soon as is reasonably practicable after the European Commission approves the preliminary total annual amount, notify the final total annual amount to—

- (a) the operator;
- (b) the authority;
- (c) the registry administrator (where the registry administrator is not the regulator); and
- (d) the Secretary of State (where the Secretary of State is not the authority).

(3) For the purpose of this paragraph, the final total annual amount is the preliminary total annual amount, adjusted by the linear reduction factor referred to in Article 10a(7) of the Directive (using the preliminary total annual amount for 2013 as a reference).

**Adjustment of allocation: significant capacity reduction of excluded installation**

7.—(1) Sub-paragraph (2) applies where an excluded installation has had a significant capacity reduction in the period—

- (a) beginning—
  - (i) after 30th June 2011, or
  - (ii) on or before that date, but where the added capacity was capable of determination only after 30th September 2011; and
- (b) ending before 1st January in the entry year.

(2) Where this sub-paragraph applies, the operator must, by the relevant date, submit to the regulator a notice containing—

- (a) a statement of the reduced capacity, and of the installed capacity of the sub-installation after taking into account the capacity reduction; and
- (b) a statement that the data submitted under paragraph (a) have been verified.

(3) In sub-paragraph (2), the relevant date is—

- (a) where the entry year is 2015, the later of—
  - (i) 31st December 2015; or
  - (ii) the last day of the period of 7 months following the date of the change of capacity;
- (b) where the entry year is any year after 2015, the later of—
  - (i) 31st December in the year prior to the entry year; or
  - (ii) the last day of the period of 7 months following the date of the change of capacity.

(4) Once the operator has submitted the information required under sub-paragraph (2) the regulator must—

- (a) calculate the activity levels for the reduced capacity of the sub-installation to which the significant capacity reduction relates in accordance with Article 18(1) of the Free Allocation Decision;
- (b) calculate the preliminary annual number of allowances allocated to each sub-installation insofar as the significant capacity reduction is concerned, in accordance with Article 19(1) of the Free Allocation Decision;
- (c) reduce the preliminary annual number of allowances allocated to each sub-installation by the preliminary annual number of allowances allocated to each sub-installation insofar as the significant capacity reduction is concerned, in accordance with article 21(2) of the Free Allocation Decision; and
- (d) revise the preliminary total annual amount for the installation concerned in accordance with the methodology applied to determine the preliminary total annual amount prior to the significant capacity reduction.

(5) The regulator must notify the registry administrator to withhold the allocation of allowances to the operator of an installation for as long as any of the following circumstances obtain—

- (a) the regulator is investigating whether or not there has been a significant capacity reduction in relation to the installation;
- (b) the information required under sub-paragraph (2)—
  - (i) has not been submitted in accordance with that sub-paragraph; or

- (ii) has been submitted but is insufficient;
  - (c) the operator has submitted a statement under sub-paragraph (2)(a), but has not submitted the statement under sub-paragraph (2)(b);
  - (d) the regulator is carrying out functions under sub-paragraph (4);
  - (e) a notification has been given to the European Commission pursuant to paragraph 9(3)(d) and the notified amount of allowances has not been approved by the European Commission; or
  - (f) a notification has been made to the registry administrator under regulation 80(11) but the necessary changes to the national allocation table have not been made.
- (6) The registry administrator must comply with a notification made under sub-paragraph (5).
- (7) Where sub-paragraph (5) applies, the regulator—
- (a) must notify the operator of the decision to withhold allowances; and
  - (b) may, if the regulator considers it appropriate to do so, notify the operator that—
    - (i) the allocation of allowances will be permanently reduced; or
    - (ii) the allowances (or a proportion of them) will be issued.
- (8) Where the European Commission approves the preliminary total annual amount of allowances notified under paragraph 9(1), the regulator must treat the installed capacity of the sub-installation after having had a significant capacity reduction as the sub-installation's initial installed capacity when assessing any subsequent significant capacity change under Schedule 6.

**Adjustment of allocation: permanent cessation of regulated activities at an excluded installation**

- 8.—(1) For the purposes of this paragraph, an installation permanently ceases the carrying out of regulated activities where any of the following conditions are met—
- (a) the permit or licence for the installation has been surrendered or revoked, or otherwise ceased to have effect before 1st January in the entry year;
  - (b) the operation of regulated activities at the installation became technically impossible before 1st January in the entry year;
  - (c) the installation was carrying out regulated activities, but ceased to do so before 1st January in the entry year, and it is technically impossible for it to resume doing so;
  - (d) subject to sub-paragraph (2), the operator suspends the carrying out of regulated activities at the installation before 1st January in the entry year; and
    - (i) the suspension is continuing after 1st January in the entry year; and
    - (ii) subject to sub-paragraph (5), the carrying out of regulated activities has not recommenced within the period of 6 months following the date of suspension.
- (2) Sub-paragraph (1)(d) does not apply if the installation is kept in reserve or on standby, or is operated on a seasonal basis, provided that—
- (a) the operator holds a permit and a licence for the installation;
  - (b) it is technically possible to commence the carrying out of regulated activities without making physical changes to the installation; and
  - (c) regular maintenance of the installation is carried out.
- (3) Subject to sub-paragraph (6), no allocation of allowances may be made to the operator of an installation in any year following the year in which the installation has permanently ceased the carrying out of regulated activities.
- (4) For the purpose of sub-paragraph (3), where an installation permanently ceases the carrying out of regulated activities by virtue of meeting the condition in sub-paragraph

(1)(d), the date of the permanent cessation is deemed to be the date on which the operator suspends the carrying out of regulated activities at the installation.

(5) The operator may apply to the regulator, before the period of 6 months mentioned in sub-paragraph (1)(d)(ii) expires, for that period of 6 months to be extended to a period not exceeding 18 months where—

- (a) the carrying out of regulated activities at the installation cannot be recommenced within that period of 6 months due to exceptional and unforeseeable circumstances; and
- (b) those circumstances—
  - (i) could not have been avoided even if all due care had been exercised; and
  - (ii) were beyond the control of the operator.

(6) Where regulated activities at the installation recommence after the expiry of the relevant period, the operator may apply for an allocation of allowances under paragraph 2 of Schedule 6.

(7) Where—

- (a) the operator suspends the carrying out of regulated activities at the installation before 1st January in the entry year; and
- (b) the operator intends to recommence regulated activities before the expiry of the relevant period,

the operator may, within a period of one month beginning with the date of suspension, apply for the suspension to be treated as temporary.

(8) An application under sub-paragraph (7) must include evidence that the carrying out of regulated activities will recommence within the relevant period.

(9) If the application under sub-paragraph (8) is granted, allowances may be issued to the operator notwithstanding that the relevant period has not expired.

(10) Where—

- (a) the operator suspends the carrying out of regulated activities at the installation before 1st January in the entry year;
- (b) the suspension is continuing after 1st January in the entry year;
- (c) the operator does not make an application under sub-paragraph (7); and
- (d) the operator has not made an application under regulation 13(1),

the operator must notify the regulator of the suspension.

(11) A notification under sub-paragraph (10) must be made by—

- (a) where the entry year is 2015, 31st December 2015;
- (b) where the entry year is any other scheme year, 31st January in the entry year.

(12) The regulator must notify the registry administrator to withhold the allocation of allowances to the operator of an installation for as long as any of the following circumstances obtains—

- (a) the regulator is investigating whether or not the installation has permanently ceased the carrying out of regulated activities;
- (b) sub-paragraphs (10)(a) and (b) apply, but the operator has not made an application under sub-paragraph (7);
- (c) an operator has made an application under sub-paragraph (7) but the application—
  - (i) has not been determined; or
  - (ii) has been refused and the relevant period has not expired;
- (d) an application under regulation 13(1) has been made but has not been determined;
- (e) a notice of surrender or revocation has been given but has not taken effect;

- (f) an appeal against such a notice has been made but has not been determined or withdrawn;
  - (g) a notification has been made to the registry administrator under regulation 80(11) but the necessary changes to the allocation table have not been made.
- (13) The registry administrator must comply with a notification made under sub-paragraph (12).
- (14) Where the regulator makes a notification under sub-paragraph (12) the regulator—
- (a) must notify the operator of the decision to do so as soon as is reasonably practicable; and
  - (b) may, if the regulator considers it appropriate to do so, notify the operator that—
    - (i) the allocation of allowances will be permanently reduced; or
    - (ii) the allowances (or a proportion of them) will be issued.
- (15) In this paragraph—
- (a) a “licence” for an installation is a permit in force issued in relation to that installation in accordance with—
    - (i) Directive 2008/1/EC of the European Parliament and of the Council concerning integrated pollution prevention and control<sup>(a)</sup>, as amended for time to time; or
    - (ii) Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions (integrated pollution prevention and control)<sup>(b)</sup>, as amended for time to time;
  - (b) “relevant period” means the period of 6 months following the date the operator suspends the carrying out of regulated activities at the installation, or any longer period allowed pursuant to sub-paragraph (5).

**Adjustment of allocation to an installation: partial cessation of regulated activities of excluded installation**

9.—(1) Sub-paragraph (2) applies where, in the year prior to the entry year, one sub-installation of an excluded installation which contributes to—

- (a) at least 30% of the final annual amount of allowances allocated to the installation; or
- (b) the allocation of more than 50,000 allowances,

is operated at an activity level which is 50% or less than the activity level originally used for calculating the allocation in respect of the sub-installation (“the initial activity level”).

(2) Where this sub-paragraph applies the operator must notify the regulator of the reduction in activity levels, stating the amount of the reduction and the sub-installation to which it applies by—

- (a) where the entry year is 2015, 31st December 2015;
- (b) where the entry year is any year after 2015, the later of—
  - (i) 31st December in the year prior to the entry year; or
  - (ii) the last day of the one month period beginning with the date the reduction in activity levels occurred.

(3) Once the operator has notified the regulator of the reduction in activity levels, the regulator must—

- (a) adjust the allocation of allowances in accordance with sub-paragraph (4);

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(a) OJ No L 24, 29.1.2008, p 8.

(b) OJ No L 334, 17.12.2010, p 17.

- (b) revise the preliminary annual number of allowances allocated in respect of each sub-installation; and
  - (c) revise the preliminary total annual amount of allowances to be allocated, commencing with the entry year.
- (4) Where the activity level of a sub-installation during the year prior to the entry year was at a level which constitutes a reduction of—
- (a) 50% or more but less than 75% compared with the initial activity level, the operator is entitled to receive a quantity of allowances representing 50% of the final total annual amount of allocated allowances in respect of that sub-installation, commencing with the entry year;
  - (b) 75% or more but less than 90% compared with the initial activity level, the operator is entitled to receive a quantity of allowances representing 25% of the final total annual amount of allocated allowances in respect of that sub-installation, commencing with the entry year;
  - (c) 90% or more compared with to the initial activity level, the operator is entitled to no allowances in respect of that sub-installation, commencing with the entry year.
- (5) The regulator must notify the registry administrator to withhold the allocation of allowances to the operator of an installation for as long as any of the following circumstances obtains—
- (a) the regulator is investigating whether or not, in the year prior to the entry year, a sub-installation was operating at an activity level which constitutes a reduction of 50% or more compared with the initial activity level;
  - (b) the information required under sub-paragraph (2)—
    - (i) has not been submitted in accordance with that sub-paragraph; or
    - (ii) has been submitted but is insufficient;
  - (c) the regulator is carrying out functions under sub-paragraph (3);
  - (d) a notification has been given to the European Commission pursuant to paragraph 9(1) and the notified amount of allowances has not yet been approved by it;
  - (e) a notification has been made to the registry administrator under regulation 80(11) but the necessary changes to the allocation table have not yet been made.
- (6) The registry administrator must comply with a notification made under sub-paragraph (5).
- (7) Where sub-paragraph (5) applies, the regulator—
- (a) must notify the operator of the decision to withhold the allocation of allowances; and
  - (b) may, if the regulator considers it appropriate to do so, notify the operator that—
    - (i) the allocation of allowances will be permanently reduced; or
    - (ii) the allowances (or a proportion of them) will be issued.
- (8) In this paragraph—
- (a) “activity level” means the activity level used for calculating the sub-installation’s allocation in accordance with Article 9 of the Free Allocation Decision; and
  - (b) “final total annual amount” means the amount of allowances calculated in respect of the activity level originally used for calculating the allocation in respect of the sub-installation, in accordance with Article 10(9) of the Free Allocation Decision.

**Notification of preliminary annual number of allowances: significant capacity reductions and partial cessation of regulated activities**

**10.—**(1) The regulator must, within 28 days after the date of making a calculation under—

- (a) paragraph 7(4) (significant capacity reductions); or
- (b) paragraph 8(3) (partial cessation of regulated activities),

notify the revised preliminary total annual amount of allowances to the persons mentioned in sub-paragraph (3).

(2) A notification given to the operator under sub-paragraph (1) may specify a period within which a fee for making the calculation must be paid.

(3) The persons referred to in sub-paragraph (1) are—

- (a) the operator;
- (b) the authority;
- (c) the Secretary of State (where the Secretary of State is not the authority); and
- (d) the European Commission, pursuant to Article 24(2) of the Free Allocation Decision.

(4) Where the European Commission notifies the regulator that the revised preliminary total annual amount of allowances is rejected the regulator must, as soon as is reasonably practicable, notify the operator giving the reasons for rejection provided by the European Commission.

#### **Calculation of final total annual amount of allowances: significant capacity reductions and partial cessation of regulated activities**

**11.**—(1) Where the European Commission approves the revised preliminary total annual amount of allowances notified under paragraph 10(1), the regulator must calculate the revised final total annual amount of allowances allocated for the installation concerned.

(2) For the purposes of sub-paragraph (1) the revised final total annual amount is—

- (a) the revised preliminary total annual amount notified under paragraph 10(1); but
- (b) in the case of a significant capacity reduction, that amount as multiplied by the cross-sectoral correction factor under Article 10(9) of the Free Allocation Decision.

(3) The regulator must, as soon as is reasonably practicable after the European Commission approves the revised preliminary total annual amount of allowances, notify that amount to —

- (a) the operator;
- (b) the registry administrator (where the registry administrator is not the regulator);
- (c) the authority; and
- (d) the Secretary of State (where the Secretary of State is not the authority).

#### **Recovery of allowances**

**12.**—(1) This sub-paragraph applies where an operator (“P”) of an installation which used to be an excluded installation has been issued allowances to which P is not entitled—

- (a) as a result of a failure to notify the regulator of any change to an installation’s capacity, activity level or operation before 1st January in the entry year;
- (b) where the installation’s allocation is not adjusted in sufficient time to take account of a change in the installation’s capacity, activity level or operation before 1st January in the entry year;
- (c) where the operator is issued with allowances under paragraph 8(9) but the installation does not recommence the carrying out of regulated activities at the installation within the relevant period (within the meaning of paragraph 8(15)(b));
- (d) as a result of an error of the regulator or registry administrator in relation to the period before 1st January in the entry year.

(2) Where sub-paragraph (1) applies, the regulator must serve a notice on P instructing P to return a sum of allowances equal to those to which P is not entitled.

(3) The notice under sub-paragraph (2) must specify—

- (a) the number of allowances to which the operator is not entitled;
- (b) the reasons why the operator is not entitled to those allowances;
- (c) the process by which those allowances must be returned; and
- (d) the date by which those allowances must be returned.

(4) An operator must comply with a notice given under sub-paragraph (2).”.

1st November 2015

*Bourne*  
Parliamentary Under Secretary of State  
Department of Energy and Climate Change

### **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emissions allowances trading within the Community<sup>(a)</sup> (“the Directive”) is implemented in the United Kingdom by the Greenhouse Gas Emissions Trading Scheme Regulations 2012 (S.I. 2012/3038) (“the 2012 Regulations”). Those Regulations consolidated (with amendments) and replaced the previous implementing Regulations, namely the Greenhouse Gas Emissions Trading Scheme Regulations 2005 (S.I. 2005/925) and the Aviation Greenhouse Gas Emissions Trading Scheme Regulations 2010 (S.I. 2010/1996).

*Regulations 2* adds new definitions to the 2012 Regulations.

*Regulation 3* amends regulation 13 of the 2012 Regulations to provide a deadline for an application to surrender a permit, where an operator suspends the carrying out of regulated activities at an installation while it is an excluded installation, the suspension is ongoing after the installation ceases to be an excluded installation and the operator does not recommence the carrying out of regulated activities at the installation within the period of 6 months beginning with the date of the suspension.

*Regulations 4 and 5, and Regulation 14* make provision for the addition of Schedule 6A to the 2012 Regulations. Schedule 6A provides for the allocation of allowances to operators of installations which cease to be excluded installations, and for the adjustment of such allocations, in respect of changes in the capacity or activity level of the installation which occurred while it was an excluded installation.

*Regulation 6* inserts regulations 58A and 58B into the 2012 Regulations. Regulation 58A provides for a penalty when an operator of an installation which ceases to be an excluded installation fails to notify the regulator of a significant capacity reduction or partial cessation which occurred while the installation is was excluded installation. Regulation 58B provides for a penalty when an operator of an excluded installation which ceases to be an excluded installation fails to notify the regulator that the operator has suspended the carrying out of regulated activities at the installation.

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(a) OJ No L 275, 25.10.2003, p 32: the Directive was amended by European Parliament and Council Directives 2004/101/EC (OJ No L 338, 13.11.2004, p 18), 2008/101/EC (OJ No L 8, 13.1.2009, p 3) and 2009/29/EC (OJ No L 140 5.6.2009, p 63), and by Regulation (EC) No 219/2009 of the European Parliament and of the Council (OJ No L 87, 31.3.2009, p 109) and by Regulation No 421/2014 of the European Parliament and of the Council (OJ No L 129, 30.4.2014, p 1).

*Regulation 7* provides for a penalty for failing to return allowances, for an operator of an installation which ceases to be an excluded installation.

*Regulation 8* provides for a penalty when an operator of an installation which ceases to be an excluded installation provides false or misleading information in relation to a significant capacity reduction or partial cessation which occurred while the installation is was excluded installation.

*Regulations 9 and 10* provide for rights of appeal in respect of decisions of the regulator or notifications give to the operator of an excluded installation, in relation to changes of capacity of activity levels which occur while an installation is an excluded installation.

*Regulation 11* makes a minor amendment to regulation 80 of the 2012 Regulations.

*Regulation 12* amends Schedule 4 of the 2012 Regulations, to amend the cross-referencing to Schedule 6.

*Regulation 13* amends Schedule 6 of the 2012 Regulations. It provides that Schedule 6 does not apply in relation to changes of capacity of activity level which occur while an installation which has ceased to be an excluded installation was an excluded installation. It also provides that where an installation permanently ceases regulated activities following a suspension of such activities, the date of the permanent cessation is deemed to be the date on which the suspension occurred.

A full regulatory impact assessment has not been produced for this instrument as no significant impact on the private or voluntary sectors is foreseen.

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