



STATUTORY INSTRUMENTS.

**S.I. No. 490 of 2012**



EUROPEAN COMMUNITIES (GREENHOUSE GAS EMISSIONS  
TRADING) REGULATIONS 2012

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CATEGORIES OF ACTIVITIES IN FIRST AND SECOND TRADING PERIODS

## EUROPEAN COMMUNITIES (GREENHOUSE GAS EMISSIONS TRADING) REGULATIONS 2012

I, PHIL HOGAN, Minister for the Environment, Community and Local Government, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and by sections 6 and 53 of the Environmental Protection Agency Act 1992 (No. 7 of 1992) and for the purpose of giving further effect to Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003<sup>1</sup>, as amended by Directive 2004/101/EC of the European Parliament and of the Council of 27 October 2004<sup>2</sup>, Directive 2008/101/EC of the European Parliament and of the Council of 19 November 2008<sup>3</sup>, and Directive 2009/29/EC of the European Parliament and of the Council of 23 April 2009<sup>4</sup>, and for the purpose of giving full effect to Commission Regulation (EU) No 1031/2010 of 12 November 2010<sup>5</sup>, hereby make the following regulations:

*Citation*

1. These Regulations may be cited as the European Communities (Greenhouse Gas Emissions Trading) Regulations 2012.

*Commencement*

2. (1) These Regulations (other than Regulations 15 and 28) come into operation on 30th November 2012.

(2) Regulations 15 and 28 come into operation on 1 January 2013.

*Interpretation*

3. (1) In these Regulations—

"1992 Act" means the Environmental Protection Agency Act 1992 (No. 7 of 1992);

"1996 Act" means the Waste Management Act 1996 (No. 10 of 1996);

"Agency" means the Environmental Protection Agency established under section 19 of the Environmental Protection Agency Act 1992 (No. 7 of 1992);

"allocate" means the intention to issue allowances as indicated in the final decision as notified to the Commission under Regulation 10;

<sup>1</sup>O.J. No. L 275 25.10.2003 p. 32

<sup>2</sup>O.J. No. L 338 13.11.2004 p. 18

<sup>3</sup>O.J. No. L 8 13.1.2009 p. 3

<sup>4</sup>O.J. No. L 140 5.6.2009 p. 63

<sup>5</sup>O.J. No. L 302 18.11.2010 p. 1

*Notice of the making of this Statutory Instrument was published in "Iris Oifigiúil" of 7th December, 2012.*

“allowance” means an allowance to emit one tonne of carbon dioxide equivalent during a specified period, which shall be valid only for the purposes of meeting the requirements of these Regulations and shall be transferable in accordance with the provisions of these Regulations;

“Annex I Party” means a Party listed in Annex I to the United Nations Framework Convention on Climate Change that has ratified the Kyoto Protocol as specified in Article 1(7) of the Protocol;

“approval” means, in relation to a proposed project activity, the approval or authorisation, as appropriate, required under Article 6 or Article 12 of the Protocol;

“assigned amount unit” is a unit issued pursuant to Article 3 of the Kyoto Protocol and the decisions adopted pursuant to the Convention and the Protocol;

“certified emission reduction unit” or "CER" means a unit issued pursuant to Article 12 of the Kyoto Protocol and the decisions adopted pursuant to the Convention or the Protocol;

“combustion” means any oxidation of fuels, regardless of the way in which the heat, electrical or mechanical energy produced by this process is used, and any other directly associated activities, including waste gas scrubbing, and is without prejudice to any decision taken under any national allocation plan in accordance with Regulation 10;

“Commission” means the Commission of the European Communities;

“Commission's Auctioning Regulation” means Commission Regulation (EU) No 1031/2010 of 12 November 2010<sup>5</sup> on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances pursuant to Directive 2003/87/EC<sup>1</sup>;

"Commission's Free Allocation Rules" means Commission Decision of 27 April 2011<sup>6</sup> determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of the Directive and any associated guidance published by the Commission;

“Commission’s Interpretation of Aviation Activities” means Commission Decision of 8 June 2009<sup>7</sup> on the detailed interpretation of the aviation activities listed in Annex I to Directive 2003/87/EC<sup>1</sup>;

“Commission’s Monitoring and Reporting Guidelines” means Commission Decision of 18 July 2007<sup>8</sup> establishing guidelines for the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87/EC<sup>1</sup>, as amended by Commission Decision of 17 December 2008<sup>9</sup> as regards the inclusion of monitoring and reporting guidelines for emissions of nitrous oxide,

<sup>6</sup>O.J. No. L 130 17.5.2011 p. 1

<sup>7</sup>O.J. No. L 149 12.6.2009 p. 69

<sup>8</sup>O.J. No. L 229 31.8.2007 p. 1

<sup>9</sup>O.J. No. L 24 28.1.2009 p. 18

by Commission Decision of 16 April 2009<sup>10</sup> as regards the inclusion of monitoring and reporting guidelines for emissions and tonne-kilometre data from aviation activities, and by Commission Decision of 8 June 2010<sup>11</sup> as regards the inclusion of monitoring and reporting guidelines for greenhouse gas emissions from the capture, transport and geological storage of carbon dioxide;

“Commission’s Monitoring and Reporting Regulation” means Commission Regulation (EU) No 601/2012 of 21 June 2012<sup>12</sup> on the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87/EC<sup>1</sup>;

"Commission's Restrictions on Industrial Gas Credits" means Commission Regulation (EU) No 550/2011 of 7 June 2011<sup>13</sup> on determining certain restrictions applicable to the use of international credits from projects involving industrial gases;

“Commission’s Verification and Accreditation Regulation” means Commission Regulation (EU) No 600/2012 of 21 June 2012<sup>14</sup> on the verification of greenhouse gas emission reports and tonne-kilometre reports and the accreditation of verifiers pursuant to Directive 2003/87/EC<sup>1</sup>;

“Community scheme” means the scheme for greenhouse gas emission allowance trading within the European Community provided for in the Directive;

“competent authority” means, in respect of the State, the Agency, and in respect of other Member States of the European Communities, any competent authority specified in the national law of that State as notified by the Commission;

“Convention” means the 1992 United Nations Framework Convention on Climate Change;

"direction" means a direction issued by the Agency pursuant to Regulation 20;

"Directive" means Directive 2003/87/EC of 13 October 2003<sup>1</sup> establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC<sup>15</sup>, as amended by Directive 2004/101/EC of 27 October 2004<sup>2</sup> in respect of the Kyoto Protocol’s project mechanisms, by Directive 2008/101/EC of 19 November 2008<sup>3</sup> so as to include aviation activities in the scheme for greenhouse gas emission allowance trading within the Community, by Regulation (EC) No 219/2009 of 11 March 2009<sup>16</sup> on adaptation to the regulatory procedure with scrutiny, and by Directive 2009/29/EC of 23 April 2009<sup>4</sup> so as to improve and extend the greenhouse gas emission allowance trading scheme of the Community;

"Directive 2009/31/EC" means Directive 2009/31/EC of 23 April 2009<sup>17</sup> on the geological storage of carbon dioxide;

<sup>10</sup>O.J. No. L 103 23.4.2009 p. 10

<sup>11</sup>O.J. No. L 155 22.6.2010 p. 34

<sup>12</sup>O.J. No. L 181 12.7.2012 p. 30

<sup>13</sup>O.J. No. L 149 8.6.2011 p. 1

<sup>14</sup>O.J. No. L 181 12.7.2012 p. 1

<sup>15</sup>O.J. No. L 257 10.10.1996 p. 26

<sup>16</sup>O.J. No. L 87 31.3.2009 p. 109

<sup>17</sup>O.J. No. L 140 5.6.2009 p. 114

“electricity generator” means an installation that, on or after 1 January 2005, has produced electricity for sale to third parties, and in which no activity listed in Schedule 1 is carried out other than the ‘combustion of fuels’;

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

“emission reduction unit” or "ERU" means a unit issued pursuant to Article 6 of the Protocol and the decisions adopted pursuant to the Convention or the Protocol;

“enactment” means an Act or statutory instrument or any portion of an Act or statutory instrument;

“greenhouse gases” means the gases listed in Schedule 2 and other gaseous constituents of the atmosphere, both natural and anthropogenic, that absorb and re-emit infrared radiation;

“greenhouse gas emissions permit” means a permit granted under Regulation 7;

“host country” means a country which is a Party to the Kyoto Protocol and in which a project activity will take place;

“installation” means, up to 31 December 2012, a stationary technical unit where one or more activities listed in Schedule 6 may be carried out and any other directly associated activities which have a technical connection with the said activities on that site and which could have an effect on emissions and pollution, and references to an installation include references to part of an installation;

“installation” means, from 1 January 2013, a stationary technical unit where one or more activities listed in Schedule 1 may be carried out and any other directly associated activities which have a technical connection with the said activities on that site and which could have an effect on emissions and pollution, and references to an installation include references to part of an installation;

“Kyoto period” means the five-year period beginning on 1 January 2008;

"LDCs" means Least Developed Countries as defined by the Committee for Economic Development and endorsed by the Economic and Social Council of the United Nations;

“Minister” means the Minister for the Environment, Community and Local Government;

“new entrant” means, up to 30 June 2011, any installation carrying out one or more of the activities indicated in Schedule 6 which has obtained a greenhouse gas emissions permit or an update of its greenhouse gas emissions permit because of a change in the nature or functioning or an extension of the installation subsequent to the notification to the Commission of the national allocation plan in accordance with Regulation 10;

“new entrant” means, after 30 June 2011—

- (a) any installation carrying out one or more of the activities indicated in Schedule 1, which has obtained a greenhouse gas emissions permit for the first time after 30 June 2011,
- (b) any installation carrying out an activity which is included in the Community scheme pursuant to Article 24(1) or (2) of the Directive for the first time, or
- (c) any installation carrying out one or more of the activities indicated in Schedule 1 or an activity which is included in the Community scheme pursuant to Article 24(1) or (2) of the Directive, which has had a significant extension after 30 June 2011, only in so far as this extension is concerned, and in accordance with the Commission's Free Allocation Rules;

“operator” means any person who operates or controls an installation or to whom decisive economic power over the technical functioning of the installation has been delegated;

“person” means any natural or legal person;

“pilot period” means the three-year period beginning on 1 January 2005;

“project activity” means a project activity within the meaning of Article 6 or Article 12 of the Protocol and the decisions adopted pursuant to the Convention or the Protocol;

“Protocol” means the 1997 Kyoto Protocol to the 1992 United Nations Framework Convention on Climate Change;

“public” means one or more persons and associations, organisations or groups of persons;

“removal unit” is a unit issued pursuant to Article 3 of the Kyoto Protocol and the decisions adopted pursuant to the Convention and the Protocol;

“statutory instrument” means an order, regulation, rule, bye-law, warrant, licence, certificate, direction, notice, guideline or other like document made, issued, granted or otherwise created by or under an Act and references, in relation to a statutory instrument, to “made” or to “made under” include references to made, issued, granted or otherwise created by or under such instrument; and

“tonne of carbon dioxide equivalent” means one metric tonne of carbon dioxide (CO<sub>2</sub>) or an amount of any other greenhouse gas listed in Schedule 2 with an equivalent global-warming potential.

(2) In these Regulations—

- (a) where an installation has not been put into operation, the person who will have control over the operation of the installation when it is put into operation shall be treated as the operator of the installation, and
- (b) where an installation has ceased to be in operation, the person who holds the greenhouse gas emissions permit which applies to the Schedule 1 activities carried out in the installation shall be treated as the operator of the installation.

(3) A word or expression that is used in these Regulations and is also used in the Directive has the same meaning in these Regulations that it has in the Directive.

#### *Purpose and Application*

4. (1) These Regulations provide for the implementation in the State of a scheme for greenhouse gas emissions allowance trading within the European Community in order to promote reductions of greenhouse gas emissions from activities in a cost effective and economically efficient manner.

(2) These Regulations apply to emissions from the activities listed in Schedule 1 and greenhouse gases listed in Schedule 2.

(3) These Regulations provide for-

- (a) the designation of the Agency as Focal Point and National Authority for the purposes of Articles 6 and 12, respectively, of the Protocol and the decisions adopted pursuant to the Convention and the Protocol,
- (b) the establishment of a registry, and designation of the Agency as national registry administrator, for the purposes of Article 7 of the Protocol and the decisions adopted pursuant to the Convention and the Protocol.

(4) These Regulations shall not apply to a proposed project activity to be carried out in Ireland.

#### *Greenhouse Gas Emissions Permits*

5. (1) No person shall carry out an activity listed in Schedule 6 resulting in emissions specified therein on or after 1 January 2005, except under and to the extent authorised by a greenhouse gas emissions permit issued by the Agency pursuant to these Regulations.

(2) No person shall carry out an activity listed in Schedule 1 at an installation resulting in emissions specified therein on or after 1 January 2013, except under and to the extent authorised by a greenhouse gas emissions permit issued by the Agency pursuant to these Regulations.

(3) A person who fails to comply with paragraph (1) or (2) is guilty of an offence.

*Applications for Greenhouse Gas Emissions Permits*

6. (1) An application to the Agency for a greenhouse gas emissions permit shall include a description of—

- (a) the installation and its activities, including the technology used,
- (b) the raw and auxiliary materials, the use of which is likely to lead to emissions of gases listed in Schedule 1 or Schedule 6,
- (c) the sources of emissions of gases listed in Schedule 1 or Schedule 6 from the installation,
- (d) the measures planned to monitor and report emissions in accordance with Regulation 18,
- (e) any other appropriate information requested by the Agency, and
- (f) a non-technical summary of the details referred to in the preceding subparagraphs of this paragraph.

(2) A person who fails to comply with paragraph (1) is guilty of an offence.

*Conditions for and Contents of Greenhouse Gas Emissions Permits*

7. (1) As soon as practicable after receipt of an application in accordance with Regulation 6, the Agency shall issue a greenhouse gas emissions permit to the operator granting authorisation to emit greenhouse gases from an installation if the Agency is satisfied the operator complies with the conditions of these Regulations and is capable of monitoring and reporting emissions.

(2) A greenhouse gas emissions permit may cover one or more installations on the same site operated by the same operator.

(3) Greenhouse gas emissions permits shall contain the following—

- (a) the name and address of the operator,
- (b) a description of the activities at and emissions from the installation,
- (c) a monitoring plan that fulfils the requirements under Regulation 18 and as approved by the Agency,
- (d) reporting requirements,
- (e) requirements to notify the Agency in relation to any planned changes to the nature or functioning of the installation or any extension or significant reduction of its capacity which may require updating the greenhouse gas emissions permit,
- (f) an obligation to surrender allowances, other than allowances issued under the European Communities (Greenhouse Gas Emissions Trading) (Aviation) Regulations 2010 (S.I. No. 261 of 2010), equal to

the total emissions of the installation in each calendar year, commencing on 1 January 2005, as verified in accordance with Regulation 19, within four months following the end of that year, and

(g) requirements to pay penalties for non-compliance under subparagraph (f) of this paragraph.

(4) An operator shall submit any updated monitoring plans to the Agency for approval.

(5) A person who fails to comply with paragraph (4) is guilty of an offence.

(6) From 1 January 2013, the Agency shall, at least every five years, review the greenhouse gas emissions permit and make any amendments as are appropriate.

*Changes relating to Installations*

8. (1) The operator shall inform the Agency of any planned changes to the nature or functioning of the installation, or any extension or significant reduction of its capacity in accordance with the Commission's Free Allocation Rules, which may require updating of the greenhouse gas emissions permit and where appropriate, the Agency shall update the greenhouse gas emissions permit accordingly.

(2) Where there is a change in the identity of the installation's operator, the Agency shall update the greenhouse gas emissions permit to include the name and address of the new operator.

(3) A person who fails to comply with paragraph (1) is guilty of an offence.

*Co-ordination with Integrated Pollution Prevention and Control Licensing*

9. (1) The Agency shall ensure that where installations carry out activities that are included in Schedule 1 to the 1992 Act, the conditions of, and procedure for, the issue of a greenhouse gas emissions permit are co-ordinated with those for integrated pollution prevention and control licences provided for in the 1992 Act and the 1996 Act.

(2) The Agency may integrate the requirements of Regulations 6, 7 and 8 into the procedures for integrated pollution prevention and control licensing provided for in the 1992 Act and the 1996 Act.

*National Allocation Plan in the Pilot and Kyoto Periods*

10. (1) In respect of each period specified in paragraph (3), the Agency shall develop a National Allocation Plan setting out the total quantity of allowances to be allocated for that period and how such allowances are to be allocated, in accordance with any direction provided by the Minister, including in relation to the total quantity of allowances available for allocation, and on the basis of objective and transparent criteria, including those listed in Schedule 3.

(2) In respect of the period specified in paragraph (3)(b), the Agency shall, in accordance with the direction provided by the Minister, state in each National

Allocation Plan Ireland's intention on the use of emission reduction units and certified emission reduction units. The Agency shall also specify in each Plan, in accordance with the overall direction provided by the Minister, the amount of emission reduction units and certified emission reduction units that may be used for the purposes of compliance with Regulation 16(3) in respect of each installation. The amount allowed shall be expressed as a percentage of the allocation for each installation.

(3) The periods in respect of which national allocation plans shall be developed shall be—

(a) the three year pilot period beginning on 1 January 2005, and

(b) the five-year Kyoto period beginning on 1 January 2008.

(4) The Agency shall publish draft plans for public comment and having taken due account of any such comments, notify the plans to the Commission and to other Member States of the European Communities—

(a) in respect of the pilot period, by 31 March 2004, and

(b) in respect of the Kyoto period, at least 18 months before the beginning of the period.

(5) The Agency may, following public consultation and any necessary consultation with the Minister in respect of directions provided by him, amend a national allocation plan in the light of any decision by the Commission to reject the plan or any aspect of the plan, as soon as practicable after being advised of such acceptance or rejection, and shall notify such amended plan to the Commission forthwith.

*Method of Allocation in the Pilot and Kyoto Periods*

11. For the pilot period, the Agency shall allocate at least 95 per cent of the allowances free of charge and for the Kyoto period, the Agency shall allocate at least 90 per cent of the allowances free of charge.

*Allocation and Issue of Allowances in the Pilot and Kyoto Periods*

12. (1) For each period referred to in Regulation 10(3), the Agency shall decide upon the allocation of allowances to the operator of each installation including the number of those allowances to be issued in each year of that period.

(2) Decisions under paragraph (1) shall—

(a) be based upon the national allocation plan for the relevant period as accepted by the Commission,

(b) take due account of comments from the public,

(c) be taken at least three months before the beginning of the pilot period and initiated at least 12 months before the beginning of the Kyoto period, and

(d) be published as soon as practicable.

(3) The Agency shall issue to greenhouse gas emissions permit holders a proportion of the total quantity of allowances for each year of each period referred to at paragraph (1) by 28 February of that year.

(4) For the purpose of Regulation 16(3), the Agency may, subject to paragraphs (5) and (6), approve the use of emission reduction units or certified emission reduction units through the issue and immediate surrender of one allowance in exchange for one emission reduction unit or one certified emission reduction unit held by an operator in the registry.

(5) Emission reduction units may not be used for compliance with Regulation 16(3) in respect of the period referred to in Regulation 10(3)(a).

(6) Emission reduction units or certified emission reduction units generated from project activities related to-

(a) nuclear facilities, or

(b) land use, land use change or forestry activities,

may not be used for the purpose of compliance with Regulation 16(3).

(7) For the period specified in Regulation 10(3)(b), an operator may only use emission reduction units or certified emission reduction units for compliance with Regulation 16(3) up to the limit specified in the National Allocation Plan for that period.

(8) The use of certified emission reduction units and emission reduction units shall be in accordance with any detailed provisions for a standardised and secured system of registries adopted by the Commission pursuant to Article 19 of the Directive.

(9) The use of certified emission reduction units and emission reduction units shall be in accordance with the Commission's Restrictions on Industrial Gas Credits and any detailed provisions on the use of specific credits from project types adopted by the Commission pursuant to Article 11a of the Directive.

*Community-wide Quantity of Allowances for the Third Trading Period*

13. (1) In respect of an installation carrying out one or more activities listed in Schedule 1, which is only included in the Community scheme from 2013 onwards, the operator of an installation shall, not later than 30 April 2010, submit to the Agency duly substantiated and independently verified emissions data, of such nature and in such form as shall be specified by the Agency for the purposes of the administration and implementation of the Directive with respect to the adjustment of the Community-wide quantity of allowances to be issued.

(2) The operator shall ensure that the data referred to in paragraph (1) are submitted in accordance with—

- (a) the provisions adopted pursuant to Article 14(1) of the Directive, and
  - (b) any detailed provisions on verification adopted by the Commission pursuant to Article 15 of the Directive to the satisfaction of the Agency.
- (3) (a) The Agency shall, not later than 30 June 2010, notify the Commission of the data received under this Regulation, if the Agency is satisfied that the operator has complied with paragraphs (1) and (2).
- (b) In the case of an installation emitting greenhouse gases other than CO<sub>2</sub>, the Agency may notify the Commission of a lower amount of emissions according to the emission reduction potential of the installation.

(4) The Agency may issue a direction to an operator to comply with paragraph (1) or (2).

(5) A person who fails to comply with paragraph (1) or (2) is guilty of an offence.

*National Implementation Measures for the Third and Subsequent Trading Periods*

14. (1) (a) An operator shall, not later than 30 June 2011, submit to the Agency information, of such nature and in such form as shall be specified by the Agency in accordance with the Commission's Free Allocation Rules, and any other requirements of the Agency which are necessary for the purposes of the administration and implementation of the Directive.

(b) The operator referred to in subparagraph (a) shall include an operator of an installation carrying out one or more activities listed in Schedule 1 to these Regulations, which is only included in the Community scheme from 2013 onwards.

(2) The operator shall ensure that the information referred to in paragraph (1) is submitted in accordance with—

- (a) the Commission's Free Allocation Rules,
- (b) the provisions adopted pursuant to Article 14(1) of the Directive, and
- (c) any detailed provisions on verification adopted by the Commission pursuant to Article 15 of the Directive,

to the satisfaction of the Agency.

(3) The Agency may issue a direction to an operator to comply with paragraph (1) or (2).

(4) A person who fails to comply with paragraph (1) or (2) is guilty of an offence.

(5) The Agency shall, not later than 30 September 2011 and in accordance with the Commission's Free Allocation Rules, publish and submit to the Commission the list of installations covered by the Directive in its territory and any free allocation to each installation in its territory.

(6) The Agency shall, not later than 28 February of each year and commencing after 1 January 2013, issue the quantity of allowances that are to be allocated for that year, calculated in accordance with Articles 10 and 10a of the Directive, and in accordance with the Commission's Free Allocation Rules.

(7) The Agency may not issue allowances free of charge under paragraph (6) to an installation whose inscription in the list referred to in paragraph (5) has been rejected by the Commission.

*Use of CERs and ERUs from Project Activities in the Community Scheme*

15. (1) The use of CERs and ERUs pursuant to this Regulation shall be in accordance with the Commission's Restrictions on Industrial Gas Credits and any detailed provisions on the use of specific credits from project types adopted by the Commission pursuant to Article 11a of the Directive, and in accordance with any detailed provisions for a standardised and secured system of registries adopted by the Commission pursuant to Article 19 of the Directive.

(2) (a) Subject to paragraph (1) and to the extent that the levels of CER and ERU use, allowed to an operator pursuant to Regulations 10 and 12 for the period from 2008 to 2012, have not been used up or an entitlement to use credits is granted under paragraph (5), an operator may request the Agency to issue allowances to it valid from 2013 onwards in exchange for CERs and ERUs issued in respect of emission reductions up until 2012 from project types which were eligible for use in the Community scheme during the period from 2008 to 2012.

(b) Until 31 March 2015, the Agency shall make an exchange under subparagraph (a) on request.

(3) (a) Subject to paragraph (1) and to the extent that the levels of CER and ERU use, allowed to an operator pursuant to Regulations 10 and 12 for the period from 2008 to 2012, have not been used up or an entitlement to use credits is granted under paragraph (5), the Agency shall allow an operator to exchange CERs and ERUs from projects that were registered before 2013 issued in respect of emission reductions from 2013 onwards for allowances valid from 2013 onwards.

(b) Subparagraph (a) shall apply to CERs and ERUs for all project types which were eligible for use in the Community scheme during the period from 2008 to 2012.

- (4) (a) Subject to paragraph (1) and to the extent that the levels of CER and ERU use, allowed to an operator pursuant to Regulations 10 and 12 for the period from 2008 to 2012, have not been used up or an entitlement to use credits is granted under paragraph (5), the Agency shall allow an operator to exchange CERs issued in respect of emission reductions from 2013 onwards for allowances from new projects started from 2013 onwards in LDCs.
- (b) Subparagraph (a) shall apply to CERs for all project types which were eligible for use in the Community scheme during the period from 2008 to 2012, until those countries have ratified a relevant agreement with the Community or until 2020, whichever is the earlier.
- (5) (a) Subject to paragraph (1) and to the extent that the levels of CER and ERU use, allowed to an operator pursuant to Regulations 10 and 12 for the period from 2008 to 2012, have not been used up or an entitlement to use credits is granted under paragraph (6), credits from projects or other emission reducing activities may be used in the Community scheme in accordance with agreements concluded with third countries, specifying levels of use.
- (b) In accordance with the agreements referred to in subparagraph (a), an operator shall be able to use credits from project activities in those third countries to comply with their obligations under the Community scheme.
- (6) (a) Subject to paragraph (1), an operator shall be allowed to use credits during the period from 2008 to 2020.
- (b) Subject to paragraph (1), a new entrant, including a new entrant in the period from 2008 to 2012 which received neither free allocation nor an entitlement to use CERs and ERUs in the period from 2008 to 2012, shall be able to use credits during the period from 2013 to 2020.
- (c) Subject to paragraph (1), a new sector shall be able to use credits during the period from 2013 to 2020.

*Transfer, Surrender and Cancellation of Allowances*

16. (1) Subject to Regulation 19, allowances shall be transferable between persons within the Community.

(2) Subject to paragraph (6), only allowances issued by a competent authority shall be recognised for the purpose of meeting an operator's obligations under paragraph (3).

- (3) (a) Subject to Regulation 12 and up to 30 April 2013, the operator of each installation shall surrender, by 30 April each year at the latest, a number of allowances, other than allowances issued under the European Communities (Greenhouse Gas Emissions Trading) (Aviation) Regulations 2010 (S.I. No. 261 of 2010), equal to the total emissions

from that installation during the preceding calendar year, as verified in accordance with Regulation 19.

- (b) Subject to Regulation 15 and from 1 May 2013, the operator of each installation shall surrender, by 30 April each year at the latest, a number of allowances, other than allowances issued under the European Communities (Greenhouse Gas Emissions Trading) (Aviation) Regulations 2010 (S.I. No. 261 of 2010), equal to the total emissions from that installation during the preceding calendar year, as verified in accordance with Regulation 19.

(4) The Agency shall cancel or cause to be cancelled allowances surrendered in accordance with paragraph (3).

(5) The Agency shall cancel or cause to be cancelled allowances at any time at the request of the person holding them.

(6) The transfer, surrender and cancellation of allowances shall be in accordance with any detailed provisions for a standardised and secured system of registries adopted by the Commission pursuant to Article 19 of the Directive.

(7) From 1 January 2013, an obligation to surrender allowances shall not arise in respect of emissions verified as captured and transported for permanent storage to a facility for which a permit is in force in accordance with Directive 2009/31/EC<sup>17</sup>.

(8) A person who fails to comply with paragraph (3) is guilty of an offence.

#### *Validity of Allowances*

17. (1) Allowances shall only be valid for emissions during the periods referred to in Regulation 10(3) for which they are issued.

(2) Allowances issued from 1 January 2013 onwards shall be valid for emissions during periods of eight years beginning on 1 January 2013.

(3) (a) Four months after the beginning of each period referred to in paragraph (2), allowances which are no longer valid and have not been surrendered and cancelled in accordance with Regulation 16 shall be cancelled or caused to be cancelled by the Agency.

(b) The Agency shall as soon as practicable issue allowances to persons for the current period to replace any allowances held by them which are cancelled or caused to be cancelled in accordance with subparagraph (a).

#### *Monitoring and Reporting of Emissions*

18. (1) The operator of an installation shall monitor emissions and, where relevant, activity data from that installation in accordance with-

(a) the principles set out at Schedule 4,

- (b) the Commission's Monitoring and Reporting Regulation,
- (c) the requirements of the Commission's Monitoring and Reporting Guidelines in relation to emissions and, where relevant, activity data occurring prior to 1 January 2013,
- (d) its monitoring plan as approved by the Agency under Regulation 7, and
- (e) any detailed provisions on monitoring and reporting of emissions adopted by the Commission pursuant to Article 14 of the Directive.

(2) The operator shall report the emissions and, where relevant, activity data as specified in the greenhouse gas emissions permit from each installation during each calendar year commencing on 1 January 2005, to the Agency, not later than 31 March of the following year in accordance with—

- (a) the conditions specified in the greenhouse gas emissions permit,
- (b) the principles set out in Schedule 4,
- (c) the detailed requirements of the Commission's Monitoring and Reporting Guidelines in relation to emissions and, where relevant, activity data occurring prior to 1 January 2013,
- (d) its monitoring plan as approved by the Agency under Regulation 7, and
- (e) any detailed provisions on monitoring and reporting adopted by the Commission pursuant to Article 14 of the Directive.

(3) A person who fails to comply with paragraph (1) or (2) is guilty of an offence.

#### *Verification and Accreditation*

19. (1) The operator shall ensure that the report referred to in Regulation 18(2) is verified in accordance with—

- (a) the criteria set out in Schedule 5,
- (b) the Commission's Verification and Accreditation Regulation, and
- (c) any detailed provisions on verification and accreditation adopted by the Commission pursuant to Article 15 of the Directive,

to the satisfaction of the Agency and shall provide a copy of the said verification report to the Agency when submitting the report specified in Regulation 18(2).

(2) An operator whose report has not been verified or has not submitted a verification report to the satisfaction of the Agency by 31 March each year in accordance with this Regulation, for emissions during the preceding year,

cannot make further transfers of allowances until a report from that operator has been verified as satisfactory.

(3) A person who fails to comply with paragraph (1) is guilty of an offence.

*Issue of Direction*

20. (1) The Agency may issue a direction to an operator to comply with Regulation 5, 6(1), 7(4), 8(1), 13, 14, 15, 16(3), 18 or 19.

(2) An operator who fails to comply with a direction issued to him or her is guilty of an offence.

*Direction*

21. A direction issued by the Agency shall—

- (a) be in writing,
- (b) be served in accordance with Regulation 22,
- (c) contain reasons for the direction, and
- (d) advise the recipient of his or her right of appeal pursuant to Regulation 23.

*Service of Direction*

22. (1) Where a direction is required to be issued by the Agency, the direction shall be in writing and shall be addressed to the operator and shall be given to the operator in one of the following ways—

- (a) by delivering it to the operator,
- (b) by leaving it at the address at which the operator carries on business,
- (c) by sending it by post in a pre-paid registered letter addressed to the operator at the address at which the operator carries on his or her business,
- (d) if an address for the service of a direction has been furnished by the operator, by leaving it at, or sending it by pre-paid registered post addressed to the operator, to that address,
- (e) by sending it by means of electronic mail or a facsimile machine, to a device or facility for the reception of electronic mail or facsimiles located at the address at which the operator carries on business or, if an address for the service of a direction has been furnished by the operator, that address:

provided that—

- (i) the sender's—

- (I) facility for the reception of electronic mail generates a message confirming a receipt of the electronic mail, or
  - (II) facsimile machine generates a message confirming successful transmission of the total number of pages of the direction, and
- (ii) the direction is also given in one of the other ways mentioned in any of the preceding paragraphs.
- (2) For the purposes of paragraph (1)—
- (a) a company registered under the Companies Acts is deemed to be ordinarily resident at its registered office, and
  - (b) every other body corporate and every unincorporated body is deemed to be ordinarily resident at its principal office or place of business.

(3) A copy of a direction, which has endorsed on it a certificate purporting to be signed by an officer of the Agency authorised in that behalf by the Agency stating that the copy is a true copy of the direction or reply may, without proof of signature of that person, be produced in every court and in all legal proceedings and is evidence, unless the contrary is shown, of the direction or reply.

*Appeal from a Direction Issued by the Agency*

23. (1) A direction issued by the Agency shall take effect—
- (a) where it is received by the person on whom it is served, or
  - (b) where an appeal is brought against the direction, on the day immediately following—
    - (i) the day on which the direction is confirmed on appeal or the appeal is withdrawn, or
    - (ii) the day specified in the direction.
- (2) The bringing of an appeal against a direction referred to in paragraph (1) shall not have the effect of suspending the operation of the direction, but the appellant may apply to the court to have the operation of the direction suspended until the appeal is disposed of and, on such application, the court may, if it thinks proper to do so, direct that the operation of the notice be suspended until the appeal is disposed of.
- (3) A person on whom a direction referred to in paragraph (1) is served may, within 7 days beginning on the day on which the direction is served on him or her, appeal against the direction to a judge of the District Court in the district court district in which the direction was served and in determining the appeal the judge may, if he or she is satisfied that it is reasonable to do so, confirm, vary or cancel the notice.

(4) Where, on the hearing of an appeal under this Regulation, a direction is confirmed, notwithstanding paragraph (1), the judge by whom the appeal is heard may, on the application of the appellant, suspend the operation of the direction for such period as in the circumstances of the case the judge considers appropriate.

(5) A person who—

- (a) brings an appeal under paragraph (3), or
- (b) applies for the suspension of the operation of a direction under paragraph (4) shall at the same time notify the Agency of the appeal or application, and the grounds for the appeal or application.

#### *Injunctive Relief*

24. (1) Where, on application by the Agency to the High Court, the Court is satisfied that an operator has failed to comply with a direction or a requirement of these Regulations, the Court may by order—

- (a) direct the person to comply with the direction or requirement, and
- (b) make such other provision, including provision in relation to the payment of costs, as the Court considers appropriate.

(2) An application for an order under this Regulation shall be by motion, and the High Court, when considering the matter, may make such interim or interlocutory order as it considers appropriate.

(3) An application for an order under this Regulation may be made whether or not there has been a prosecution for an offence under these Regulations in relation to the activity concerned, and shall not prejudice the initiation of a prosecution for an offence under these Regulations in relation to the activity concerned.

#### *Authorised Officer*

25. (1) The Agency may appoint in writing one or more of its officers, as it considers appropriate, to be an authorised officer or authorised officers for the purposes of ensuring compliance with these Regulations.

(2) Every authorised officer appointed under this Regulation shall be furnished with a warrant of his or her appointment and shall if requested by any person thereby affected, produce such warrant of appointment to that person for inspection.

(3) An appointment under this Regulation shall cease—

- (a) if the Agency revokes the appointment,
- (b) in the case of an appointment that is for a fixed period, on the expiry of the period, or

- (c) if the person appointed ceases to be an officer of the Agency.
- (4) An authorised officer may, for the purposes of these Regulations—
- (a) subject to paragraph (7) enter on any premises at all reasonable times for any purpose connected with these Regulations,
  - (b) at such premises inspect and take copies of, any books, records, other documents (including documents stored in non-legible form) or extracts therefrom, which he or she finds in the course of his or her inspection,
  - (c) remove such photographs, books, records or documents from such premises and detain them for such period as he or she reasonably considers to be necessary for the purposes of his or her functions under these Regulations,
  - (d) require the operator or his or her agent or employee or any person at the premises or person in charge of the premises and any person employed there to give to him or her such assistance and information and to produce to him or her such books, documents or other records (and in the case of documents or records stored in non-legible form, produce to him or her a legible reproduction thereof) that are in that person's power or procurement, as he or she may reasonably require for the purposes of his or her functions under these Regulations,
  - (e) direct that any matter or thing not be moved from the premises without his or her consent, or
  - (f) secure for later inspection any premises or part of any premises for such period as he or she considers reasonably necessary for the purposes of his or her functions under these Regulations.
- (5) When performing a function under these Regulations, an authorised officer may, subject to any warrant under paragraph (6), be accompanied by such number of authorised officers or members of the Garda Síochána as he or she considers appropriate.
- (6) An authorised officer shall not enter a dwelling other than—
- (a) with the consent of the occupier, or
  - (b) in accordance with a warrant issued under paragraph (7).
- (7) Upon the sworn information of an authorised officer, a judge of the District Court may, if satisfied that there are reasonable grounds for believing that books, records or other documents (including documents in non-legible form referred to in paragraph (4)(d)) are being kept or stored in any dwelling, issue a warrant authorising a named authorised officer accompanied by such other authorised officers or members of the Garda Síochána as may be necessary, at

any time or times, not later than one month from the date of issue of the warrant, to enter the dwelling and perform the functions of an authorised officer under subparagraphs (a) to (f) of paragraph (4).

(8) Any person who obstructs or interferes with an authorised officer or a member of the Garda Síochána in the course of exercising a power conferred on him or her by these Regulations or a warrant under paragraph (7), or impedes the exercise by the officer or member, as the case may be, of such power, or fails or refuses to comply with a request or requirement of, or to answer a question asked by, the officer or member pursuant to this Regulation, or in purported compliance with such request or requirement or in answer to such question gives information to the officer or member that he or she knows to be false or misleading in any material respect, is guilty of an offence.

(9) Where an authorised officer believes, upon reasonable grounds, that a person has committed an offence under these Regulations he or she may require that person to provide him or her with his or her name and the address at which he or she ordinarily resides.

(10) A person who falsely represents himself or herself to be an authorised officer is guilty of an offence.

(11) A statement or admission made by a person pursuant to a request or requirement or in answer to a question under this Regulation shall not be admissible as evidence in proceedings brought against that person for an offence (other than an offence under paragraph 8).

(12) In this Regulation—

“premises” means as respects entry pursuant to paragraph (4), any place and shall include any building, ship or other vessel, aircraft, railway wagon and includes a lorry or container used to transport vehicles, or a lorry found on the lands,

“record” includes, in addition to a record in writing—

- (a) a disc, tape, sound-track or other device in which information, sounds or signals are embodied so as to be capable (with or without the aid of some other instrument) of being reproduced in legible or audible form,
- (b) a film, tape or other device in which visual images are embodied so as to be capable (with or without the aid of some other instrument) of being reproduced in visual form,
- (c) a photograph, and any reference to a copy of a record includes—
  - (i) in the case of a record to which subparagraph (a) applies, a transcript of the sounds or signals embodied therein,

- (ii) in the case of a record to which subparagraph (b) applies, a still reproduction of the images embodied therein, and
- (iii) in the case of a record to which subparagraphs (a) and (b) apply, such a transcript together with such a still reproduction.

### *Offences*

26. (1) For the purposes of paragraphs (1) to (9) of this Regulation, sections 8, 9, 10, 11 and 12 of the Environmental Protection Agency Act 1992 (No. 7 of 1992) shall apply to the prosecution of an offence.

(2) A person guilty of an offence under Regulation 5, 6, 7, 8, 13, 14, 16, 18, 19, 20 or 25 shall be liable—

- (a) on summary conviction, to a Class B fine, or to imprisonment for any term not exceeding 12 months or, at the discretion of the court, to both such fine and such imprisonment, or
- (b) on conviction on indictment, to a fine not exceeding €15,000,000, or to imprisonment for a term not exceeding 10 years or, at the discretion of the court, to both such fine and such imprisonment.

(3) Where a person, after conviction of an offence under these Regulations, continues to contravene the Regulations, he or she shall be guilty of an offence on every day on which the contravention continues and for each such offence, he or she shall be liable to a fine, on summary conviction, not exceeding €1,000 or on conviction on indictment, not exceeding €130,000.

(4) Where an offence under these Regulations is committed by a body corporate or by a person acting on behalf of a body corporate and is proved to have been so committed with the consent, connivance of or approval of, or to have been facilitated by any neglect on the part of any director, manager, secretary or any other officer of such body, such person shall also be guilty of an offence.

(5) Where a court imposes a fine or affirms or varies a fine imposed by another court for an offence under these Regulations, prosecuted by the Agency, it shall, on the application of the Agency (made before the time of such imposition, affirmation or variation), provide by order for the payment of the amount of the fine to the Agency and such payment may be enforced by the Agency, as if it were due to it on foot of a decree or order made by the court in civil proceedings.

(6) An offence under these Regulations may be prosecuted summarily by the Agency.

(7) Notwithstanding the provisions of section 10(4) of the Petty Sessions (Ireland) Act 1851, summary proceedings for an offence under these Regulations may be commenced

- (a) at any time within 12 months from the date on which the offence was committed, or

- (b) at any time within 6 months from the date on which evidence sufficient, in the opinion of the person by whom the proceedings are initiated, to justify the proceedings, comes to such person's knowledge,

whichever is the later, provided that no such proceedings shall be initiated later than 5 years from the date on which the offence concerned was committed.

(8) For the purposes of this Regulation, a certificate signed by or on behalf of the person initiating the proceedings as to the date on which evidence relating to the offence came to his or her knowledge shall be prima facie evidence thereof and in any legal proceedings a document purporting to be a certificate issued for the purposes of this paragraph and to be so signed shall be deemed to be so signed and shall be admitted as evidence without proof of the signature of the person purporting to sign the certificate, unless the contrary is shown.

(9) Where a person is convicted of an offence under these Regulations, the court shall, unless it is satisfied that there are special and substantial reasons for not so doing, order the person to pay to the Agency the costs and expenses measured by the court, incurred by the Agency in relation to the investigation, detection and prosecution of the offence, including costs and expenses incurred in the taking of samples, the carrying out of tests, examinations and analyses and in respect of the remuneration and other expenses of directors, employees, consultants and advisers.

(10) The Agency shall publish the names of operators who are in breach of the requirements to surrender allowances as required by Regulation 16(3), and the details of such breach.

(11) An operator who fails to surrender allowances as required by Regulation 16(3) by 30 April of each year to cover its emissions during the preceding year shall be liable for payment to the Agency of an excess emissions penalty in the amount of €100 for each tonne of carbon dioxide equivalent emitted by that installation for which the operator has not surrendered allowances.

(12) The excess emissions penalty relating to allowances issued from 1 January 2013 onwards shall increase in accordance with the European index of consumer prices.

(13) Payment of the excess emissions penalty specified in this Regulation shall not release the operator from the obligation to surrender an amount of allowances equal to those excess emissions when surrendering allowances in the following calendar year.

(14) An excess emissions penalty under this Regulation may be recovered by the Agency as a simple contract debt in a court of competent jurisdiction.

#### *Access to Information*

27. The Agency shall make available to the public information on project activities, decisions relating to the allocation of allowances and the reports of emissions submitted to it by operators in accordance with the Commission's

Monitoring and Reporting Regulation and the provisions of the European Communities (Access to Information on the Environment) Regulations 2007 (S.I. No. 133 of 2007).

*Disclosure of Information and Confidentiality*

28. (1) The Agency, in consultation with the Commission, shall ensure that all decisions and reports relating to the quantity and allocation of allowances and to the monitoring, reporting and verification of emissions are immediately disclosed in an orderly manner ensuring non-discriminatory access.

(2) Information received as a result of the application of these Regulations shall be treated as confidential and shall not be disclosed to any other person or authority except:

- (a) for the purpose of the discharge of functions under these Regulations or the Directive;
- (b) with the consent of the person to whom the information applies;
- (c) when required, by an order of a court of competent jurisdiction, to disclose the information in civil or criminal proceedings; or
- (d) where otherwise provided in any other enactment.

*Competent Authority*

29. (1) The Agency is designated as the competent authority in the State for the purposes of these Regulations and the Directive and for the implementation of the Commission's Free Allocation Rules.

(2) The Agency is appointed as the auctioneer in the State for the purposes of these Regulations and the Commission's Auctioning Regulation.

(3) The Agency shall carry out all the obligations, on behalf of the State, relating to the joint procurement procedures arising under the Commission's Auctioning Regulation.

- (4) (a) The Agency, in consultation with the Minister and the Minister for Public Expenditure and Reform, shall deduct the reasonable costs incurred in administering the greenhouse gas emissions allowance trading scheme in the State from the auction proceeds due to the State in accordance with the Commission's Auctioning Regulation.
- (b) The Agency shall ensure that the auction proceeds due to the State, following the deduction of the costs referred to in subparagraph (a), are paid into an account, established by the Minister for Public Expenditure and Reform and disposed of for the benefit of the Exchequer.

(5) The Agency is designated as the competent authority in the State for the purposes of the Commission's Monitoring and Reporting Regulation.

(6) The Agency is designated as the competent authority in the State for the purposes of the Commission's Verification and Accreditation Regulation.

*Union Registry*

30. The Agency shall, in accordance with any detailed provisions for a standardised and secured system of registries adopted by the Commission pursuant to Article 19 of the Directive, manage its own accounts and the accounts in the Union Registry under the jurisdiction of the State.

*Reporting to the Commission*

31. The Agency shall submit to the Commission an annual report on the application of these Regulations, providing information on the arrangements for the allocation of allowances, the operation of the registry, the application of the implementing measures on monitoring and reporting, verification and accreditation and issues relating to compliance with these Regulations and the Directive, and the fiscal treatment of allowances, if any.

*Procedures for Inclusion of Additional Activities and Gases*

32. (1) From 2008, the Agency may, with the approval of the Minister, apply emissions allowance trading in accordance with these Regulations to activities and greenhouse gases which are not listed in Schedule 1, provided that inclusion of such activities and greenhouse gases is approved by the Commission and in accordance with any detailed provisions adopted pursuant to Article 24 of the Directive.

(2) Allocations to installations carrying out activities referred to in paragraph (1) shall be specified in national allocation plans referred to in Regulation 10.

*Amendment of Procedures for Integrated Pollution Prevention and Control Licensing*

33. (1) The 1992 Act shall apply to installations under these Regulations with the following modifications and with any other necessary modifications to that Act arising from the implementation of these Regulations, and references in that Act or to the provisions of that Act shall, unless the context otherwise requires, be construed as including references to these Regulations or the provisions of these Regulations.

(2) The Agency in issuing a licence pursuant to Part IV of the 1992 Act—

(a) shall not have regard to Sections 83(4)(a), 83(5)(a)(vi), 86(1)(a)(i), 86(1)(b)(i) and 90(4)(a)(i) in respect of greenhouse gas emissions, unless it is necessary to ensure that no significant local pollution is caused,

(b) may choose not to impose the requirements of Sections 83(5)(a)(viii), 86(1)(b)(vii) and 86(1)(b)(ix) in respect of greenhouse gas emissions, and

shall amend any licence issued as appropriate.

*Designation of Focal Point and National Authority and Establishment of Registry*

34. (1) Subject to Regulation 4(4), the Agency is designated-
- (a) the Focal Point for the purposes of Article 6 of the Protocol and the decisions adopted pursuant to the Convention and the Protocol, and
  - (b) the National Authority for the purposes of Article 12 of the Protocol and the decisions adopted pursuant to the Convention and the Protocol.
- (2) (a) The Agency shall establish and maintain a national registry to ensure the accurate accounting of the issuance, holding, transfer, acquisition, cancellation and retirement of emission reduction units, certified emissions reduction units, assigned amount units and removal units and the carry-over of emissions reduction units, certified emission reduction units and assigned amount units.
- (b) The Agency is designated national registry administrator for the purposes of Article 7 of the Protocol and the decisions adopted pursuant to the Convention and the Protocol.

*Approval of Project Activities*

35. (1) (a) Any person may apply to the Agency for approval in respect of a proposed project activity.
- (b) Certified emission reduction units or emission reduction units arising from an application under paragraph (2) shall, in the first instance, be registered in the registry provided for in Regulation 34(2)(a).
- (2) (a) An application for approval in respect of a proposed project activity shall be made in such form and shall contain such information as the Agency may require.
- (b) As a minimum, an application should contain-
- (i) a description of the proposed project activity, including a project design document,
  - (ii) a declaration signed by the applicant that participation by all parties to the project is voluntary and that the information supplied as part of the application is complete and accurate, and
  - (iii) a letter of approval from the designated Focal Point or National Authority, as appropriate, for the host country.
- (3) An application under paragraph (2) shall be accompanied by the fee payable in accordance with Regulation 37.
- (4) As soon as practicable after receipt of an application in accordance with paragraphs (2) and (3), the Agency shall respond in writing to the applicant indicating either that-

- (a) approval is granted, with or without conditions, or
- (b) approval is refused and the reason for the refusal.

(5) For the purposes of determining an application under paragraph (2), the Agency shall satisfy itself that-

- (a) in accordance with Article 11b(1) of the Directive, in respect of a project activity to be undertaken in a country which has signed a Treaty of Accession with the European Union, the baseline used for determining the emissions reductions from the project activity complies with all legislation of the European Union, subject only to any temporary derogations set out in that Treaty,
- (b) the project participants of the project activity have headquarters either in a country that has concluded the international agreement relating to such projects or in a country or sub-federal or regional entity which is linked to the Community scheme pursuant to Article 25 of the Directive,
- (c) participation in the proposed project activity is consistent with Ireland's obligations under Article 11b(5) of the Directive,
- (d) in accordance with Article 11b(6) of the Directive, relevant international criteria and guidelines will be respected during the development of hydroelectric power production project activities with a generating capacity exceeding 20 MW.

(6) An application under paragraph (2) may be withdrawn at any time before it is determined.

(7) The Agency shall not issue an approval in respect of a proposed project activity where certified emissions reduction units or emission reduction units are generated from a nuclear facility.

*Power of the Agency to Request Further Information*

36. (1) The Agency may, in the case of an application under Regulation 35(2), request the applicant to provide further information on the proposed project activity.

(2) A request for further information under paragraph (1) shall be made in writing, and shall state the reason for the request and the time within which the further information is to be provided.

*Fees for Letters of Approval*

37. (1) Each application for approval under Regulation 35 shall be accompanied by a fee of €1 for every 100 certified emission reduction units or emissions reduction units anticipated to accrue from the proposed project activity, subject to a minimum fee of €500 and a maximum fee of €5,000 per application.

(2) An application in respect of which the full fee has not been paid may, after giving notice in writing to the applicant and allowing a reasonable period for a response, be deemed invalid by the Agency and returned to the applicant together with any part of the fee paid.

(3) Where an application is withdrawn in accordance with Regulation 35(6), the Agency may, at its discretion, refund all or part of the application fee.

(4) The Agency may require any information included in an application, or further information submitted pursuant to a request from the Agency, to be independently verified to enable it to properly assess the application. A requirement under this provision may include a requirement for verification to be provided by a person designated by the Agency and for the applicant to defray or contribute towards the cost of any such verification.

(5) Notwithstanding any other provision of these Regulations, the Agency shall have an absolute discretion to refund or waive all or any part of the fee payable in respect of a particular application where it is satisfied that the payment in full of the fee would not be just and reasonable in the particular circumstances of the application or the proposed project activity.

#### *Revocation*

38. (1) The following are revoked-

- (a) the European Communities (Greenhouse Gas Emissions Trading) Regulations 2004 (S.I. No. 437 of 2004),
- (b) the European Communities (Greenhouse Gas Emissions Trading) (Amendment) Regulations 2005 (S.I. No. 706 of 2005),
- (c) the Kyoto Protocol Flexible Mechanisms Regulations 2006 (S.I. No. 244 of 2006),
- (d) the European Communities (Greenhouse Gas Emissions Trading) (Amendment) Regulations 2010 (S.I. No. 161 of 2010), and
- (e) the European Communities (Greenhouse Gas Emissions Trading) (Amendment) Regulations 2011 (S.I. No. 127 of 2011).

(2) With effect from 1 January 2013, Regulations 5(1), 10, 11, 12, 17(1) and 32(2) and Schedules 3 and 6 of these Regulations are revoked.

## SCHEDULE 1

## CATEGORIES OF ACTIVITIES

1. Installations or parts of installations used for research, development and testing of new products and processes and installations exclusively using biomass are not covered by these Regulations.

2. The thresholds values given below generally refer to production capacities or outputs. Where several activities falling under the same category are carried out in the same installation, the capacities of such activities are added together.

3. When the total rated thermal input of an installation is calculated in order to decide upon its inclusion in the Community scheme, the rated thermal inputs of all technical units which are part of it, in which fuels are combusted within the installation, are added together. These units could include all types of boilers, burners, turbines, heaters, furnaces, incinerators, calciners, kilns, ovens, dryers, engines, fuel cells, chemical looping combustion units, flares, and thermal or catalytic post-combustion units. Units with a rated thermal input under 3 MW and units which use exclusively biomass shall not be taken into account for the purposes of this calculation. "Units using exclusively biomass" includes units which use fossil fuels only during start-up or shut-down of the unit.

4. If a unit serves an activity for which the threshold is not expressed as total rated thermal input, the threshold of this activity shall take precedence for the decision about the inclusion in the Community scheme.

5. When the capacity threshold of any activity in this Schedule is found to be exceeded in an installation, all units in which fuels are combusted, other than units for the incineration of hazardous or municipal waste, shall be included in the greenhouse gas emission permit.

6. The detailed interpretation of these activities is set out in the Commission's Guidance document, Guidance on Interpretation of Annex I of the EU ETS Directive (excl. aviation activities).

7. From 1 January 2012 all flights which arrive at or depart from an aerodrome situated in the territory of a Member State to which the Treaty applies shall be included.

<b>Activities</b>	<b>Greenhouse gases</b>
Combustion of fuels in installations with a total rated thermal input exceeding 20 MW (except in installations for the incineration of hazardous or municipal waste)	Carbon dioxide
Refining of mineral oil	Carbon dioxide
Production of coke	Carbon dioxide
Metal ore (including sulphide ore) roasting or sintering, including pelletisation	Carbon dioxide
Production of pig iron or steel (primary or secondary fusion) including continuous casting, with a capacity exceeding 2.5 tonnes per hour	Carbon dioxide

Activities	Greenhouse gases
Production or processing of ferrous metals (including ferro-alloys) where combustion units with a total rated thermal input exceeding 20 MW are operated. Processing includes, inter alia, rolling mills, re-heaters, annealing furnaces, smitheries, foundries, coating and pickling	Carbon dioxide
Production of primary aluminium	Carbon dioxide and perfluorocarbons
Production of secondary aluminium where combustion units with a total rated thermal input exceeding 20 MW are operated	Carbon dioxide
Production or processing of non-ferrous metals, including production of alloys, refining, foundry casting, etc., where combustion units with a total rated thermal input (including fuels used as reducing agents) exceeding 20 MW are operated	Carbon dioxide
Production of cement clinker in rotary kilns with a production capacity exceeding 500 tonnes per day or in other furnaces with a production capacity exceeding 50 tonnes per day	Carbon dioxide
Production of lime or calcination of dolomite or magnesite in rotary kilns or in other furnaces with a production capacity exceeding 50 tonnes per day	Carbon dioxide
Manufacture of glass including glass fibre with a melting capacity exceeding 20 tonnes per day	Carbon dioxide
Manufacture of ceramic products by firing, in particular roofing tiles, bricks, refractory bricks, tiles, stoneware or porcelain, with a production capacity exceeding 75 tonnes per day	Carbon dioxide
Manufacture of mineral wool insulation material using glass, rock or slag with a melting capacity exceeding 20 tonnes per day	Carbon dioxide
Drying or calcination of gypsum or production of plaster boards and other gypsum products, where combustion units with a total rated thermal input exceeding 20 MW are operated	Carbon dioxide
Production of pulp from timber or other fibrous materials	Carbon dioxide
Production of paper or cardboard with a production capacity exceeding 20 tonnes per day	Carbon dioxide
Production of carbon black involving the carbonisation of organic substances such as oils, tars, cracker and distillation residues, where combustion units with a total rated thermal input exceeding 20 MW are operated	Carbon dioxide
Production of nitric acid	Carbon dioxide and nitrous oxide
Production of adipic acid	Carbon dioxide and nitrous oxide
Production of glyoxal and glyoxylic acid	Carbon dioxide and nitrous oxide
Production of ammonia	Carbon dioxide
Production of bulk organic chemicals by cracking, reforming, partial or full oxidation or by similar processes, with a production capacity exceeding 100 tonnes per day	Carbon dioxide
Production of hydrogen (H <sub>2</sub> ) and synthesis gas by reforming or partial oxidation with a production capacity exceeding 25 tonnes per day	Carbon dioxide
Production of soda ash (Na <sub>2</sub> CO <sub>3</sub> ) and sodium bicarbonate (NaHCO <sub>3</sub> )	Carbon dioxide

Activities	Greenhouse gases
Capture of greenhouse gases from installations covered by these Regulations for the purpose of transport and geological storage in a storage site permitted under Directive 2009/31/EC <sup>17</sup>	Carbon dioxide
Transport of greenhouse gases by pipelines for geological storage in a storage site permitted under Directive 2009/31/EC <sup>17</sup>	Carbon dioxide
Geological storage of greenhouse gases in a storage site permitted under Directive 2009/31/EC <sup>17</sup>	Carbon dioxide
<p data-bbox="250 407 873 443">Aviation</p> <p data-bbox="250 443 873 533">Flights which depart from or arrive in an aerodrome situated in the territory of a Member State to which the Treaty applies.</p> <p data-bbox="250 533 873 623">The detailed interpretation of these aviation activities, including the exemptions, is set out in the Commission's Interpretation of Aviation Activities.</p> <p data-bbox="250 623 873 659">This activity shall not include:</p> <ul style="list-style-type: none"> <li data-bbox="282 659 873 863">(a) flights performed exclusively for the transport, on official mission, of a reigning Monarch and his immediate family, Heads of State, Heads of Government and Government Ministers, of a country other than a Member State, where this is substantiated by an appropriate status indicator in the flight plan;</li> <li data-bbox="282 863 873 926">(b) military flights performed by military aircraft and customs and police flights;</li> <li data-bbox="282 926 873 1052">(c) flights related to search and rescue, fire-fighting flights, humanitarian flights and emergency medical service flights authorised by the appropriate competent authority;</li> <li data-bbox="282 1052 873 1142">(d) any flights performed exclusively under visual flight rules as defined in Annex 2 to the Chicago Convention;</li> <li data-bbox="282 1142 873 1241">(e) flights terminating at the aerodrome from which the aircraft has taken off and during which no intermediate landing has been made;</li> <li data-bbox="282 1241 873 1430">(f) training flights performed exclusively for the purpose of obtaining a licence, or a rating in the case of cockpit flight crew where this is substantiated by an appropriate remark in the flight plan provided that the flight does not serve for the transport of passengers and/or cargo or for the positioning or ferrying of the aircraft;</li> <li data-bbox="282 1430 873 1549">(g) flights performed exclusively for the purpose of scientific research or for the purpose of checking, testing or certifying aircraft or equipment whether airborne or ground-based;</li> <li data-bbox="282 1549 873 1619">(h) flights performed by aircraft with a certified maximum take-off mass of less than 5,700 kg;</li> <li data-bbox="282 1619 873 1793">(i) flights performed in the framework of public service obligations imposed in accordance with Regulation (EEC) No 2408/92<sup>18</sup> on routes within outermost regions, as specified in Article 299(2) of the Treaty, or on routes where the capacity offered does not exceed 30,000 seats per year; and</li> </ul>	Carbon dioxide

<sup>18</sup>O.J. No. L 240 24.8.1992 p. 8

Activities	Greenhouse gases
<p>(j) flights which, but for this point, would fall within this activity, performed by a commercial air transport operator operating either:</p> <ul style="list-style-type: none"> <li>— fewer than 243 flights per period for three consecutive four-month periods, or</li> <li>— flights with total annual emissions lower than 10,000 tonnes per year.</li> </ul> <p>Flights performed exclusively for the transport, on official mission, of a reigning Monarch and his immediate family, Heads of State, Heads of Government and Government Ministers, of a Member State may not be excluded under this point.</p>	

SCHEDULE 2

GREENHOUSE GASES

Carbon dioxide (CO<sub>2</sub>)

Methane (CH<sub>4</sub>)

Nitrous Oxide (N<sub>2</sub>O)

Hydrofluorocarbons (HFCs)

Perfluorocarbons (PFCs)

Sulphur Hexafluoride (SF<sub>6</sub>)

## SCHEDULE 3

## CRITERIA FOR NATIONAL ALLOCATION PLANS

1. The total quantity of allowances to be allocated for the relevant period shall be consistent with the national obligation to limit emissions pursuant to Decision 2002/358/EC<sup>19</sup> concerning the approval, on behalf of the European Community, of the Kyoto Protocol to the United Nations Framework Convention on Climate Change and the joint fulfilment of commitments thereunder and the Kyoto Protocol, taking into account, on the one hand, the proportion of overall emissions that these allowances represent in comparison with emissions from sources not covered by these Regulations and, on the other hand, national energy policies, and should be consistent with the National Climate Change Strategy. The total quantity of allowances to be allocated shall not be more than is likely to be needed for the strict application of the criteria of this Schedule. Prior to 2008, the quantity shall be consistent with a path towards achieving or over-achieving the national target under Decision 2002/358/EC<sup>19</sup> concerning the approval, on behalf of the European Community, of the Kyoto Protocol to the United Nations Framework Convention on Climate Change and the joint fulfilment of commitments thereunder and the Kyoto Protocol.

2. The total quantity of allowances to be allocated shall be consistent with assessments of actual and projected progress towards fulfilling the national contributions to the European Community's commitments made pursuant to Decision 93/389/EEC<sup>20</sup> for a monitoring mechanism of Community CO<sub>2</sub> and other greenhouse gas emissions, as amended by Decision 1999/296/EC<sup>21</sup>.

3. Quantities of allowances to be allocated shall be consistent with the potential, including the technological potential, of activities covered by this scheme to reduce emissions. The distribution of allowances may be based on average emissions of greenhouse gases by product in each activity and achievable progress in each activity.

4. The plan shall be consistent with other Community legislative and policy instruments. Account should be taken of unavoidable increases in emissions resulting from new legislative requirements.

5. The plan shall not discriminate between companies or sectors in such a way as to unduly favour certain undertakings or activities in accordance with the requirements of the Treaty of the European Communities, in particular Articles 87 and 88 thereof.

6. The plan shall contain information on the manner in which new entrants will be able to begin participating in the Community scheme.

7. The plan may accommodate early action and shall contain information on the manner in which early action is taken into account. Benchmarks derived from reference documents concerning the best available technologies may be

<sup>19</sup>O.J. No. L 130 15.5.2002 p. 1

<sup>20</sup>O.J. No. L 167 9.7.1993 p. 31

<sup>21</sup>O.J. No. L 117 5.5.1999 p. 35

employed in developing national allocation plans, and these benchmarks can incorporate an element of accommodating early action.

8. The plan shall contain information on the manner in which clean technology, including energy efficient technologies, are taken into account.

9. The plan shall include provisions for comments to be expressed by the public, and contain information on the arrangements by which due account will be taken of these comments before a decision on the allocation of allowances is taken.

10. The plan shall contain a list of the installations covered by these Regulations with the quantities of allowances intended to be allocated to each.

11. The plan may contain information on the manner in which the existence of competition from countries or entities outside the European Union will be taken into account.

12. The plan shall specify the maximum amount of emission reduction units and certified emission reduction units which may be used by operators in the Community scheme as a percentage of the allocation of the allowances to each installation.

## SCHEDULE 4

## PRINCIPLES FOR MONITORING AND REPORTING

**Monitoring and reporting of emissions from stationary installations**

This Schedule shall be construed in conjunction with the Commission's Monitoring and Reporting Guidelines up to 31 December 2012 and in accordance with the Commission's Monitoring and Reporting Regulation from 1 January 2013.

**Monitoring of carbon dioxide emissions**

Emissions shall be monitored either by calculation or on the basis of measurement.

**Calculation**

Calculations of emissions shall be performed using the formula:

$$\text{Activity data} \times \text{Emission factor} \times \text{Oxidation factor}$$

Activity data (fuel used, production rate, etc.) shall be monitored on the basis of supply data or measurement.

Emission factors accepted or approved by the Agency shall be used. Activity-specific emission factors are acceptable for all fuels. Default factors are acceptable for all fuels except non-commercial ones (waste fuels such as tyres and industrial process gases). Seam-specific defaults for coal, and EU-specific or producer country-specific defaults for natural gas shall be further elaborated. IPCC default values are acceptable for refinery products. The emission factor for biomass shall be zero.

If the emission factor does not take account of the fact that some of the carbon is not oxidised, then an additional oxidation factor shall be used. If activity-specific emission factors have been calculated and already take oxidation into account, then an oxidation factor need not be applied.

Default oxidation factors developed by the InterGovernmental Panel on Climate Change shall be used, unless the operator can demonstrate that activity-specific factors are more accurate.

A separate calculation shall be made for each activity, installation and for each fuel.

**Measurement**

Measurement of emissions shall use standardised or accepted methods, and shall be corroborated by a supporting calculation of emissions.

**Monitoring of emissions of other greenhouse gases**

Standardised or accepted methods shall be used, developed by the Commission in collaboration with all relevant stakeholders and adopted in accordance with the procedure referred to in Article 23(3) of the Directive.

**Reporting of emissions**

Each operator shall including the following information in the report for an installation:

A. Data identifying the installation, including:—

- name of the installation;
- its address, including postcode where applicable, and country;
- type and number of activities specified in Schedules 1 and 6 carried out in the installation;
- address, telephone, fax and email details for a contact person; and
- name of the owner of the installation, and of any parent company.

B. For each activity specified in Schedules 1 and 6 carried out on the site for which emissions are calculated:—

- activity data;
- emission factors;
- oxidation factors;
- total emissions; and
- uncertainty.

C. For each activity specified in Schedules 1 and 6 carried out on the site for which emissions are measured:—

- total emissions;
- information on the reliability of measurement methods; and
- uncertainty.

D. For emissions for combustion, the report shall also include the oxidation factor, unless oxidation has already been taken into account in the development of an activity-specific emission factor.

## SCHEDULE 5

## CRITERIA FOR VERIFICATION

**Verification of emissions from stationary installations****General Principles**

1. Emissions from each activity listed in Schedules 1 and 6 shall be subject to verification.

2. The verification process shall include consideration of the report submitted pursuant to Regulation 18(2) and of monitoring during the preceding year. It shall address the reliability, credibility and accuracy of monitoring systems and the reported data and information relating to emissions, in particular:

- (a) the reported activity data and related measurements and calculations;
- (b) the choice and the employment of emission factors;
- (c) the calculations leading to the determination of the overall emissions; and
- (d) if measurement is used, the appropriateness of the choice and the employment of measuring methods.

3. Reported emissions may only be validated if reliable and credible data and information allow the emissions to be determined with a high degree of certainty. A high degree of certainty requires the operator to show that:-

- (a) the reported data is free of inconsistencies;
- (b) the collection of the data has been carried out in accordance with the applicable scientific standards; and
- (c) the relevant records of the installation are complete and consistent.

4. The verifier shall be given access to all sites and information in relation to the subject of the verification.

5. The verifier shall take into account whether the installation is registered under the Community eco-management and audit scheme provided for in Regulation (EC) No 761/2001 of the European Parliament and of the Council of 19 March 2001 allowing voluntary participation by organisations in a Community eco-management and audit scheme (EMAS)<sup>22</sup>.

**Methodology****Strategic analysis**

6. The verification shall be based on a strategic analysis of all the activities carried out in the installation. This requires the verifier to have an overview of all the activities and their significance for emissions.

<sup>22</sup>O.J. No. L 114 24.4.2001 p. 1

**Process analysis**

7. The verification of the information submitted shall, where appropriate, be carried out on the site of the installation. The verifier shall use spot-checks to determine the reliability of the reported data and information.

**Risk analysis**

8. The verifier shall submit all the sources of emissions in the installation to an evaluation with regard to the reliability of the data of each source contributing to the overall emissions of the installation.

9. On the basis of this analysis the verifier shall explicitly identify those sources with a high risk of error and other aspects of the monitoring and reporting procedure which are likely to contribute to errors in the determination of the overall emissions. This especially involves the choice of the emission factors and the calculations necessary to determine the level of the emissions from individual sources. Particular attention shall be given to those sources with a high risk of error and the above mentioned aspects of the monitoring procedure.

10. The verifier shall take into consideration any effective risk control methods applied by the operator with a view to minimising the degree of uncertainty.

**Report**

11. The verifier shall prepare a report on the validation process stating whether the report pursuant to Regulation 18(2) is satisfactory. This report shall specify all issues relevant to the work carried out. A statement that the report pursuant to Regulation 18(2) is satisfactory may be made if, in the opinion of the verifier, the total emissions are not materially mis-stated.

**Minimum competency requirements for the verifier**

12. The verifier shall be independent of the operator, carry out his activities in a sound and objective professional manner, and understand:

- (a) the provisions of these Regulations, the Commission's Monitoring and Reporting Regulation, the Commission's Verification and Accreditation Regulation and the Directive, as well as relevant standards and guidance adopted by the Commission pursuant to Article 14(1);
- (b) the legislative, regulatory and administrative requirements relevant to the activities being verified; and
- (c) the generation of all information related to each source of emissions in the installation, in particular, relating to the collection, measurement, calculation and reporting of data.

## SCHEDULE 6

## CATEGORIES OF ACTIVITIES IN FIRST AND SECOND TRADING PERIODS

The threshold values given in this Schedule generally refer to production capacities or outputs. Where one operator carries out several activities falling under the same subheading in the same installation or on the same site, the capacities of such activities are added together.

Installations or parts of installations used exclusively for research, development and testing of new products and processes are not covered by these Regulations.

Activities		Greenhouse gases
E1.1	<i>Energy activities</i> Combustion installations with a rated thermal input exceeding 20 MW (except hazardous or municipal waste installations)	Carbon dioxide
E1.2	Mineral oil refineries	Carbon dioxide
E1.3	Coke ovens	Carbon dioxide
E2.1	<i>Production and processing of ferrous metals</i> Metal ore (including sulphide ore) roasting or sintering installations	Carbon dioxide
E2.2	Installations for the production of pig iron or steel (primary or secondary fusion) including continuous casting, with a capacity exceeding 2.5 tonnes per hour	Carbon dioxide
E3.1	<i>Mineral industry</i> Installations for the production of cement clinker in rotary kilns with a production capacity exceeding 500 tonnes per day or lime in rotary kilns with a production capacity exceeding 50 tonnes per day or in other furnaces with a production capacity exceeding 50 tonnes per day.	Carbon dioxide
E3.2	Installations for the manufacture of glass including glass fibre with a melting capacity exceeding 20 tonnes per day	Carbon dioxide
E3.3	Installations for the manufacture of ceramic products by firing, in particular roofing tiles, bricks, refractory bricks, tiles, stoneware or porcelain, with a production capacity exceeding 75 tonnes per day, and/or with a kiln capacity exceeding 4 m <sup>3</sup> and with a setting density per kiln exceeding 300 kg/m <sup>3</sup>	Carbon dioxide
E4.1	<i>Other activities</i> Industrial plants for the production of (a) pulp from timber or other fibrous materials  (b) paper and board with a production capacity exceeding 20 tonnes per day	Carbon dioxide  Carbon dioxide



GIVEN under my Official Seal,  
29 November 2012.

PHIL HOGAN,  
Minister for the Environment, Community and Local  
Government.

## EXPLANATORY NOTE

*(This note is not part of the Instrument and does not purport to be a legal interpretation)*

These Regulations provide for the transposition of Directive 2009/29/EC, the purpose of which is to improve and extend the greenhouse gas emission allowance trading scheme of the Community.

The 2009 Directive aims to improve and extend the Emissions Trading Scheme (ETS) and to provide for a more efficient, more harmonised and fairer system. These changes involve substantial amendments to the original emissions trading Directive 2003/87/EC. Increased efficiency will be achieved by means of a longer trading period, a robust and annually declining emissions cap, and a substantial increase in the amount of auctioning. Greater harmonisation has been agreed in many areas, including with respect to the cap-setting and the rules for transitional free allocation. The fairness of the system has been substantially increased by the move towards EU-wide free allocation rules for industrial installations and by the introduction of a redistribution mechanism that entitles new Member States to auction more allowances. These regulations complete the transposition process.

Transposing the 2009 Directive presented an opportunity to consolidate the national Regulations which have been made to date on matters related to the EU ETS, with the exception of Regulations related to the inclusion of emissions from aviation. Accordingly, these Regulations incorporate full transposition of Directive 2003/87/EC, as amended by Directive 2004/101/EC of 27 October 2004, Directive 2008/101/EC of 19 November 2008, Regulation (EC) No 219/2009 of 11 March 2009, and Directive 2009/29/EC of 23 April 2009. As a consequence of this consolidation, the following Regulations are revoked:

- the European Communities (Greenhouse Gas Emissions Trading) Regulations 2004 (S.I. No. 437 of 2004),
- the European Communities (Greenhouse Gas Emissions Trading) (Amendment) Regulations 2005 (S.I. No. 706 of 2005),
- the Kyoto Protocol Flexible Mechanisms Regulations 2006 (S.I. No. 244 of 2006),
- the European Communities (Greenhouse Gas Emissions Trading) (Amendment) Regulations 2010 (S.I. No. 161 of 2010), and
- the European Communities (Greenhouse Gas Emissions Trading) (Amendment) Regulations 2011 (S.I. No. 127 of 2011).

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