

SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4101 of 31 July, 2014

LEGAL NOTICE NO. 141 OF 2014.

ENVIRONMENT ACT 2005

GREENHOUSE GAS EMISSIONS TRADING SCHEME (AMENDMENT) REGULATIONS 2014

In exercise of the powers conferred upon it by section 18 of the Environment Act 2005 and in order to transpose further transpose into the law of Gibraltar Directive 2008/101/EC of the European Parliament and of the Council of 19 November 2008 amending Directive 2003/87/EC so as to include aviation activities in the scheme for greenhouse gas emission allowance trading within the community and Directive 2004/101/EC of the European Parliament and of the Council of 27 October 2004 amending Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community, in respect of the Kyoto Protocol's project mechanisms, the Government has made the following Regulations—

Title and commencement.

1. These Regulations may be cited as the Greenhouse Gas Emissions Trading Scheme (Amendment) Regulations 2014 and come into operation on the day of publication.

Amendment of Regulations.

2.(1) The Greenhouse Gas Emissions Trading Scheme Regulations 2012 are amended in accordance with this regulation.

(2) In regulation 3(1)—

(a) before the definition of “current operator”, insert the following definition—

““commercial air transport operator” means an operator that, for remuneration, provides scheduled or non-scheduled air transport services to the public for the carriage of passengers, freight or mail;”;

- (b) before the definition of “Minister”, insert the following definition—

““Kyoto Protocol” means the Kyoto Protocol to the UNFCCC signed at Kyoto on 11th December 1997;”;

- (c) before the definition of “the Registries Regulation 2010”, insert the following definition—

““project activity” means a project activity approved by one or more Annex 1 Parties in accordance with Article 6 or Article 12 of the Kyoto Protocol and the decisions adopted pursuant to the UNFCCC or the Kyoto Protocol;”;

- (d) before the definition of “Union Registry”, insert the following definition—

““UNFCCC” means the United Nations Framework Convention on Climate Change signed in New York on 9 May 1992;”.

- (3) After regulation 35, insert the following—

“Project Activities.

35A. Schedule 12 shall have effect.”.

- (4) In Schedule 8, after paragraph 8, insert the following—

“Restriction on allocation of allowances.

9. No more than 1 million allowances from the special reserve may be allocated to R where he is eligible by reason of his compliance with paragraph 1(2)(b).”.

- (5) After paragraph 1(4) of Schedule 10, insert the following—

“(5) A request to the European Commission made by the Minister under Article 16(5) of the Directive must include the following information—

- (a) evidence that A has not complied with obligations under these Regulations;
 - (b) details of any enforcement action against A that has been taken by the regulator;
 - (c) a justification for the imposition of an operating ban at European Union level; and
 - (d) a recommendation for the scope of an operating ban at European Union level and any conditions that should be applied.”.
- (6) After Schedule 11, insert the following–

“SCHEDULE 12

Regulation 35A

PROJECT ACTIVITIES APPROVAL AND AUTHORISATION TO PARTICIPATE

Interpretation.

1. In this Schedule–

“Article 6 project activity” means a project within the meaning of Article 6 of the Kyoto Protocol;

“Article 12 project activity” means a project within the meaning of Article 12 of the Kyoto Protocol;

“approval” means, in relation to a proposed project activity–

- (a) the approval of an Article 6 project activity required by Article 6(1)(a) of the Kyoto Protocol; or
- (b) the approval of voluntary participation in an Article 12 project activity required by Article 12(5)(a) of the Kyoto Protocol;

Approval of and authorisation of participation in project activities.

2.(1) A person wishing to have a proposed project activity approved shall, in accordance with this regulation, apply to the Minister for approval of the proposed project activity.

(2) A person wishing to be authorised to participate in an Article 6 project activity shall, in accordance with this regulation, apply to the Minister for such authorisation.

(3) An application under this paragraph shall be made in the English language and shall contain the following information—

- (a) the applicant's name and address;
- (b) a description of the project activity or proposed project activity; and
- (c) any other information that the Minister may require for the purpose of determining the application.

(4) Any application made under this paragraph shall be made in such a form as may be required by the Minister.

(5) The Minister may require any information included in an application under this paragraph to be independently verified and a requirement under this paragraph may include a requirement for the verification to be provided by a person of a description specified by the Minister, and any costs related thereto will be borne by the applicant.

(6) An application under subparagraph (2) may be combined with an application under subparagraph (1).

(7) An application made under this paragraph may be withdrawn at any time before it is determined.

Request for further information.

3.(1) For the purposes of determining an application made under paragraph 2, the Minister may serve a notice on the applicant requesting further information as he considers necessary.

(2) The notice shall specify the information required and the time period for furnishing such further information.

(3) A notice under subparagraph (1) may include a requirement for information furnished to be independently verified and for the verification to be provided by a person of a description specified by the Minister.

(4) Costs relating to the verification of information required by a notice issued under this paragraph must be borne by the applicant.

(5) If an applicant fails to comply with a request under subparagraph (1), the Minister may serve a notice on the applicant stating that the application is deemed to have been withdrawn.

Determination of application.

4.(1) Where an application is duly made under paragraph 2, the Minister shall determine whether to approve the proposed project activity or to authorise the participation in accordance with this paragraph.

(2) When determining an application duly made under paragraph 2, the Minister may attach such conditions to an approval or authorization as he thinks necessary.

(3) The Minister may not approve a proposed project activity to be carried out in Gibraltar.

(4) The Minister may only approve a proposed project activity if he is satisfied that—

- (a) where a proposed project activity is 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 the body of common rights and obligations which binds all Member States within the European Union, including the temporary derogations set out in that Treaty; and
- (b) in relation to a proposed project activity for the production of hydro-electric power within a generating capacity of more than 20 megawatts, the development of the proposed project activity will respect the criteria and guidelines identified in the Report produced by the World Commission on Dams on 16th

November 2000 entitled “Dams and Development– A New Framework for Decision-Making”.

(5) The Minister may only authorise the applicant’s participation in a proposed project activity if he is satisfied that-

- (a) all project participants 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 a scheme pursuant to Article 25 of the Directive; and
- (b) to do so would be consistent with Article 11b (5) of the Directive.

Offence.

5.(1) It is an offence for a person to make a statement which he knows to be false or misleading in a material particular, or recklessly to make a statement which is false or misleading in a material particular, where the statement is made in the connection with an application under paragraph 2.

(2) A person convicted of an offence under subparagraph (1) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(3) Where a body corporate is guilty of an offence under this paragraph and that offence is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of-

- (a) a qualified person appointed as such for the purposes of these Regulations;
- (b) a director, manager, secretary of the body corporate; or
- (c) a person who was purporting to act in any such capacity;

he, as well as the body corporate, is guilty of the offence and is liable to be proceeded against and punished accordingly.

(4) For the purposes of subparagraph (3)(b), “director”, in relation to a body corporate whose affairs are managed by its members means a member of the body corporate.”

Dated 31st July, 2014.

DR J CORTES,
Minister with responsibility for the Environment.
For the Government.

EXPLANATORY MEMORANDUM

These Regulations transpose, in part, into the law of Gibraltar Directive 2008/101/EC of the European Parliament and of the Council of 19 November 2008 amending Directive 2003/87/EC so as to include aviation activities in the scheme for greenhouse gas emission allowance trading within the community, and Directive 2004/101/EC of the European Parliament and of the Council of 27 October 2004 amending Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community, in respect of the Kyoto Protocol's project mechanisms.