

Rules made under s.23.

**GREENHOUSE GAS EMISSIONS TRADING SCHEME  
RULES 2004**

**Repealed by LN. 2012/211 as from 1.1.2013**

**(LN. 2004/118)**

**23.12.2004**

Amending enactments	Relevant current provisions	Commencement date
LN. 2010/148	rr. 9(3) & 20(12)(b)	9.9.2010

**EU Legislation/International Agreements involved:**

Directive 96/61/EC

Directive 2003/87/EC

Directive 2008/101/EC

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**GREENHOUSE GAS EMISSIONS TRADING SCHEME RULES 2004**

## **GREENHOUSE GAS EMISSIONS TRADING SCHEME RULES 2004**

*In exercise of the powers conferred on him by section 23 of the Interpretation and General Clauses Act as read together with section 337 of the Public Health Ordinance and in order to transpose into the law of Gibraltar Council Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC, the Governor has made the following Rules—*

### **PART 1** **GENERAL**

#### **Title.**

1. These Rules may be cited as the Greenhouse Gas Emissions Trading Scheme Rules 2004.

#### **Interpretation.**

2.(1) In these Rules—

“address” means, in relation to electronic communications, any number or address used for the purposes of such communications;

“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 the Directive and shall be transferable in accordance with the provisions of the Directive;

“change in operation” means, in relation to an installation, a change in the nature, functioning or scope of the installation which—

(a) affects any information included in the greenhouse gas emissions permit pursuant to rule 8(7)(d); or

(b) might, in the opinion of the regulator, require any monitoring and reporting condition to be amended;

(c)

“Directive” means Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC;

“electronic communication” means a communication transmitted (whether from one person to another, from one device to another or from a person to a device or vice versa)-

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(a) by means of a telecommunications network (within the meaning of the Telecommunications Act 2000); or

(b) by other means but while in an electronic form;

“enforcement notice” has the meaning given by rule 22(1);

“excluded installation” means an installation in respect of which the operator holds a valid certificate under rule 10(3) stating that the installation is an excluded installation;

“greenhouse gas emissions” means the release of greenhouse gases into the atmosphere from sources in an installation;

“greenhouse gas emissions permit” means a permit granted under rule 9;

“greenhouse gases” means carbon dioxide (CO<sub>2</sub>), Methane (CH<sub>4</sub>), Nitrous Oxide (N<sub>2</sub>O), Nitrofluorocarbons (HFCs), Perfluorocarbons (PFCs) and Sulphur Hexafluoride (SF<sub>6</sub>);

“installation” means (except where it appears in Schedule 1)–

- (a) a stationary technical unit where one or more Schedule 1 activities are carried out; and
- (b) any other location on the same site where any other directly associated activities are carried out which have a technical connection with the activities carried out in the stationary technical unit and which could have an effect on greenhouse gas emissions and pollution,

and references to an installation include references to part of an installation;

“Minister” means the minister with responsibility for the environment;

“monitoring and reporting condition” means a condition of a greenhouse gas emissions permit imposed pursuant to rule 9(2) (but excluding conditions imposed pursuant to rule 9(2)(c));

“Monitoring and Reporting Decision” means Commission Decision 2004/156/EC;

“national allocation plan” has the meaning given by rule 18(1);

“operator” means, subject to sub-rule (2), in relation to an installation, the person who has control over its operation;

“Pollution Prevention Act” means the Pollution Prevention and Control Act 2001;

“regulator” means the Environmental Agency Limited or such other person as the Minister may, from time to time, appoint by notice in the Gazette;

“reportable emissions” means, in relation to an installation, the total specified emissions (expressed in tonnes of carbon dioxide equivalent) which arise from the Schedule 1 activities carried out in that installation; and “annual reportable emissions” means, subject to rule 10(7) the reportable emissions arising during any scheme year;

“revocation notice” has the meaning given by rule 16(1);

“Schedule 1 activity” means an activity falling within a description in Schedule 1;

“scheme year” means a year beginning with 1st January in a phase referred to in rule 17(2);

“specified emissions” means in relation to any Schedule 1 activity the greenhouse gas emissions specified in that Schedule in relation to that activity;

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

“variation notice” has the meaning given by rule 12(8);

(2) For the purposes of these Rules where—

- (a) 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;
- (b) 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; and
- (c) a permit holder has ceased to be the operator of an installation to which a greenhouse gas emissions permit relates references

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to the operator, other than in rule 15(2)(a) or (6)(a), shall be read as references to the permit holder.

#### **Application of these Rules to the Crown.**

3.(1) Subject to the provisions of this rule, these Rules bind the Crown.

(2) No contravention by the Crown of any provision of these Rules shall make the Crown criminally liable under rule 29 but the Supreme Court may, on the application of the regulator, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(3) Notwithstanding sub-rule (2), the provisions of these Rules apply to persons in the service of the Crown as they apply to other persons.

(4) If the Governor certifies that it appears to him, as respects any Crown premises that it is requisite or expedient that, in the interests of national security, that powers of entry and inspection for purposes connected with the execution of these Rules should not be exercisable in relation to those premises, those powers shall not be exercisable in relation to those premises; and in this sub-rule “specified” means specified in the certificate and “Crown premises” means premises held or used by or on behalf of the Crown.

#### **Notices.**

4.(1) Any notice or other document served or given under these Rules by the regulator or any notice served by the Minister under these Rules shall be in writing and shall be served in accordance with sub-rule (2).

(2) Any notice or other document referred to in sub-rule (1) may be served on or given to a person by—

- (a) leaving it at his proper address;
- (b) sending it by post to him at that address; or
- (c) where an address for service using electronic communications has been given by that person, sending it using electronic communications to that person at that address.

(3) Any such notice or other document may—

- (a) in the case of a body corporate (other than a limited liability partnership), be served on the secretary or clerk of that body;
- (b) in the case of a limited liability partnership, be served on a member; or



- (c) in the case of a partnership (other than a limited liability partnership), be served on or given to a partner or person having the control or management of the partnership business.

(4) For the purpose of this rule, the proper address of any person on or to whom any such notice or other document is to be served or given shall be his last known address, except that—

- (a) in the case of a body corporate (other than a limited liability partnership) or its secretary or clerk, it shall be the address of the registered or principal office of that body;
- (b) in the case of a limited liability partnership or a member of a limited liability partnership, it shall be the registered or principal office of that partnership;
- (c) in the case of a partnership (other than a limited liability partnership) or person having the control or management of the partnership business, it shall be the principal office of the partnership,

and for the purposes of this sub-rule the principal office of a company registered outside Gibraltar or of a partnership carrying on business outside Gibraltar shall be its principal office within Gibraltar.

(5) If the person to be served with or given any such notice or document has specified an address in Gibraltar other than his proper address within the meaning of sub-rule (4) as the one at which he or someone on his behalf will accept notices or documents of the same description as that notice or document, that address shall also be treated for the purposes of this rule as his proper address.

(6) Where a notice or document is served or given using electronic communications, the service is deemed to be effected by properly addressing and transmitting the electronic communication.

#### **Applications.**

5.(1) The regulator may require any application or type of application made to it under any provision of these Rules to be made on a form made available by the regulator.

(2) A form made available by the regulator under sub-rule (1) shall specify the information required by the regulator to determine the application, which shall include any information required to be contained in the application by the provision of these Rules under which the application is made.

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(3) Where the regulator makes available a form under sub-rule (1) in relation to the making of applications to it under a provision of these Rules any application made to it under that provision shall be made on that form.

(4) Any application made under these Rules may, with the agreement of the regulator, be sent to the regulator electronically.

(5) Where an application which is required to be accompanied by a fee is sent electronically, the fee may be sent to the regulator separately from the application but, the application shall not be treated as having been received by the regulator until the fee has also been received.

(6) An application made under these Rules may be withdrawn at any time before it is determined.

## **PART 2**

### **GREENHOUSE GAS EMISSIONS PERMITS**

#### **Requirement for greenhouse gas emissions permit to carry out Schedule 1 activities.**

6. No person shall carry out a Schedule 1 activity resulting in specified emissions after 1 January 2005, except under and to the extent authorised by a greenhouse gas emissions permit.

#### **Applications for greenhouse gas emissions permits.**

7.(1) An application for a greenhouse gas emissions permit shall be made to the regulator in accordance with this rule and shall be accompanied by the fee prescribed in respect of the application in rule 16

(2) An application under sub-rule (1) shall contain the following information—

- (a) the name of the applicant, his telephone number and postal address and, if different, any address to which correspondence relating to the application should be sent and, if the applicant is a body corporate, its registered number, the postal address of its registered or principal office and, if that body corporate is a subsidiary of a holding company (within the meaning of the Companies Act the name of the ultimate holding company and the postal address of its principal office);
- (b) the postal address of the site of the installation, a description of that site and the location of the installation on that site;

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- (c) a description of the installation and the Schedule 1 activities to be carried out in the installation including a description of the technology used;
- (d) the raw and auxiliary materials used in carrying out Schedule 1 activities in the installation, the use of which is likely to lead to specified emissions;
- (e) the sources of specified emissions from the Schedule 1 activities carried out in the installation;
- (f) a description of the measures which are planned to monitor and report specified emissions in accordance with the Monitoring and Reporting Decision;
- (g) a description, including the reference number, of any environmental licence issued in relation to the installation;
- (h) any additional information which the applicant wishes the regulator to take into account in considering the application; and
- (i) a non-technical summary of the information referred to in paragraphs (c) to (h).

(3) For the purpose of sub-rule (2)(g), “environmental licence” means a permit granted under the Pollution Prevention Act.

(4) Where an application is for a greenhouse gas emissions permit to operate more than one installation the application shall contain the information required by sub-rule (2) in relation to each installation.

(5) Where, before the entry into force of these Rules, a person has made to the regulator an application which, if made after the entry into force of these Rules would have complied with sub-rule (1), it shall be deemed to be an application under sub-rule (1) made on the date of entry into force of these Rules.

(6) The regulator may, by notice to the applicant, require him to furnish such further information specified in the notice, within the period so specified, as the regulator may require for the purpose of determining the application and if the applicant fails to furnish the specified information within the period specified, the application shall, if the regulator gives notice to the applicant that it treats the application as having been withdrawn, be deemed to have been withdrawn at the end of that period.

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### GREENHOUSE GAS EMISSIONS TRADING SCHEME RULES 2004 Determination of applications and grant of greenhouse gas emissions permits.

8.(1) The regulator shall give notice of its determination of an application for a greenhouse gas emissions permit within a period of two months beginning on the date on which it received the application or within such longer period as may be agreed in writing with the applicant.

(2) For the purpose of calculating the period of two months mentioned in sub-rule (1) no account shall be taken of any period beginning with the date on which notice is served on the applicant under rule 7(6) and ending on the date on which the applicant furnishes the information specified in the notice.

(3) If the regulator fails to give notice of its determination of an application for a greenhouse gas emissions permit within the period allowed by or under sub-rule (1), the application shall, if the applicant notifies the regulator that he treats the application as having been refused, be deemed to have been refused at the end of that period.

(4) Subject to sub-rule (5) where an application is duly made to the regulator, the regulator shall either grant the greenhouse gas emissions permit subject to the conditions required or authorised to be imposed by rule 9 or refuse the application.

(5) A greenhouse gas emissions permit shall not be granted if the regulator—

- (a) considers that the stationary technical unit described in the application does not, or will not when it is put into operation, fall within the definition of an installation in rule 2;
- (b) considers that the applicant will not be the operator of the installation concerned after the grant of the permit; or
- (c) is not satisfied that the applicant will ensure that the installation is operated so as to comply with the monitoring and reporting conditions which would be included in the permit.

(6) A greenhouse gas emissions permit may authorise the operation of more than one installation on the same site operated by the same operator but may not otherwise authorise the operation of more than one installation.

(7) A greenhouse gas emissions permit authorising the operation of an installation shall include—

- (a) the name and postal address of the operator and, if different, any address to which correspondence should be sent;

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- (b) the postal address of the site of the installation and its grid reference (or for offshore installations equivalent information identifying the installation and its location);
- (c) a description of the site and the location of the installation on that site;
- (d) a description of the installation, the Schedule 1 activities to be carried out in the installation and the specified emissions from those activities.

#### (8) Where—

- (a) the conditions of a greenhouse gas emissions permit have been varied under rule 13 or affected by a partial transfer, surrender or revocation under rules 13 to 15 or
- (b) there is more than one greenhouse gas emissions permit applying to installations on the same site operated by the same operator,

the regulator may replace the permit with a consolidated permit applying to the same Schedule 1 activities and subject to the same conditions as the permit being replaced.

#### **Conditions of greenhouse gas emissions permits.**

9.(1) There shall be included in a greenhouse gas emissions permit such conditions as the regulator considers appropriate and in particular such conditions as the regulator considers appropriate to comply with sub-rules (2) to (6).

(2) A greenhouse gas emissions permit shall include conditions concerning the monitoring and reporting of specified emissions from the installation to which it relates and, in particular—

- (a) such conditions as the regulator considers appropriate to ensure that any specified emissions from the Schedule 1 activity to which it relates are monitored and reported in accordance with the Monitoring and Reporting Decision, including conditions—
  - (i) specifying the monitoring methodology and frequency; and
  - (ii) requiring the operator to submit reports of the annual reportable emissions to the regulator and concerning the timing of such reports;

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- (b) a requirement that all reports submitted pursuant to conditions imposed under sub-sub-rule (a)(ii) are verified in accordance with the criteria set out in Schedule 2 and that the regulator is informed of the results of any such verification; and
- (c) a requirement that an operator notifies the regulator as soon as he becomes aware of any factor which might prevent him from complying with any of the conditions included in a greenhouse gas emissions permit pursuant to this sub-rule.

(3) A greenhouse gas emissions permit shall contain such conditions as the regulator considers appropriate to ensure that the operator surrenders allowances other than allowances issued pursuant to Chapter II of the Directive, equal to the annual reportable emissions from the installation within four months of the end of the scheme year during which those emissions arose.

(4) A greenhouse gas emissions permit shall provide that, where an operator fails to comply with a condition imposed pursuant to sub-rule (3) in respect of a scheme year (“a non-compliance year”), for the purpose of assessing compliance with that condition in relation to the later scheme year determined in accordance with sub-rule (5) the annual reportable emissions from the installation shall be deemed to be increased by an amount equal to the amount of annual reportable emissions in respect of which the operator failed to comply with that condition in the non-compliance year.

(5) For the purposes of sub-rule (4) the “later scheme year” shall be the scheme year following the non-compliance year, or where the non-compliance results from an error in the report submitted by an operator under a monitoring and reporting condition, the scheme year following discovery of the error.

(6) A greenhouse gas emissions permit shall contain a condition stating that in relation to any period for which the installation is an excluded installation (the “exclusion period”)–

- (a) the operator shall be deemed to be in compliance with any conditions imposed pursuant to sub-rules (2) and (3) and
- (b) the operator shall be required to notify the regulator of any change in operation during the exclusion period, at least 2 months before the end of that exclusion period.

(7) Where a certificate under rule 10(3) stating that an installation is an excluded installation is revoked in accordance with rule 10(4) during a scheme year, the annual reportable emissions from the installation for that

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scheme year shall be the reportable emissions from the installation from the date that the certificate was revoked to the end of that scheme year.

(8) The regulator shall periodically review the conditions of greenhouse gas emissions permits and may do so at any time.

(9) Without prejudice to sub-rule (8), a review of a greenhouse gas emissions permit under this rule shall be carried out if any amendment is made to the Monitoring and Reporting Decision.

### **Excluded installations.**

10.(1) Where the European Commission has provided for the temporary exclusion of an installation under Article 27(2) of the Directive, the operator of the installation may apply to the regulator for a certificate stating that the installation is an excluded installation.

(2) An application under sub-rule (1) shall—

- (a) identify the installation in question;
- (b) contain the name and postal address of the operator and, if different, any address to which correspondence should be sent;
- (c) contain a copy of the greenhouse gas emissions permit relating to the installation identified in paragraph (a);
- (d) identify the regulator which granted that permit; and
- (e) identify the national policy by virtue of which the European Commission has provided for the temporary exclusion of the installation.

(3) Where an application is duly made, the regulator shall serve on the regulator and the operator a certificate which shall—

- (a) identify the installation;
- (b) identify the operator and the regulator of that installation;
- (c) state the duration of the exclusion; and
- (d) specify any conditions applying to the exclusion.

(4) Where an operator fails to comply with the conditions referred to in sub-rule (3)(d) the regulator may serve a notice on the operator and the regulator revoking the certificate served under sub-rule (3).

(5) Where the regulator effects a transfer or partial transfer under rule 13 of a greenhouse gas emissions permit which relates to an excluded installation, the regulator shall notify the Minister of the transfer or partial transfer and provide a copy of the endorsed permit and any new permit granted which relates to that installation.

(6) Where the regulator notifies the Minister in accordance with sub-rule (5)–

- (a) in the case of a transfer of the whole greenhouse gas emissions permit, if the Minister is satisfied that the installation will continue to be covered by the national policy identified in the application under sub-rule (1), the Minister shall serve a notice on the operator and regulator including a copy of the certificate served under sub-rule (3) and specifying the change of operator;
- (b) in the case of a partial transfer, the regulator shall revoke the certificate served under sub-rule (3) and if the Minister is satisfied that any part of the installation will continue to be covered by the national policy identified in the application under sub-rule (1) the regulator shall serve on the operator and the regulator of that part a certificate under sub-rule (3) in relation to that part;
- (c) in any other case, the regulator shall serve a notice on the operator revoking the certificate served under sub-rule (3).

**Proposed change in operation.**

11.(1) Subject to sub-rule (4) where an operator of an installation who holds a greenhouse gas emissions permit in respect of the Schedule 1 activities carried out in the installation proposes to make a change in operation the operator shall, at least 14 days before making the change, notify the regulator.

(2) A notification under sub-rule (1) shall be in writing and shall contain a description of the proposed change in operation including a brief explanation of whether and, if so, why it–

- (a) affects any information included in the greenhouse gas emissions permit pursuant to rule 8(7)(d); or
- (b) might require any monitoring and reporting condition to be amended.



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(3) The regulator shall, by notice served on the operator, acknowledge receipt of any notification received under sub-rule (1)

(4) Sub-rule (1) shall not apply where—

- (a) a change in operation is to be made more than 2 months before the end of the period for which the installation to which the change relates is an excluded installation; or
- (b) the operator applies under rule 12(2) for the variation of the conditions of his greenhouse gas emissions permit before making the proposed change in operation and the application contains a description of that change.

### **Variation of provisions of greenhouse gas emissions permits.**

12.(1) The regulator may at any time vary any provision of a greenhouse gas emissions permit and shall do so if it appears to the regulator at that time, whether as a result of a review under rule 10(8) or otherwise, that rule 8(7) or 9 requires provisions to be included in the permit which are different from the subsisting provisions.

(2) An operator of an installation who holds a greenhouse gas emissions permit in respect of the Schedule 1 activity carried out in that installation may apply to the regulator for the variation of the provisions of his permit.

(3) An application under sub-rule (2) shall be made in accordance with sub-rule (4) and shall be accompanied by any fee prescribed in respect of the application in rule 16.

(4) An application under sub-rule (2) shall contain the following information—

- (a) the name of the operator, his telephone number and postal address and, if different, the address to which correspondence should be sent;
- (b) the postal address of the site of the installation to which the greenhouse gas emissions permit relates;
- (c) if relevant, a description of the proposed change in operation requiring the variation and a statement of any change as respects the matters dealt with in rule 7(2)(c) to (f) which would result if the proposed change in operation were made;

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(d) an indication of the variations of the provisions of the greenhouse gas emissions permit which the operator wishes the regulator to make; and

(e) any additional information which the operator wishes the regulator to take into account in considering his application.

(5) The regulator may, by notice to the operator, require him to furnish such further information specified in the notice, within the period so specified, as the regulator may require for the purpose of determining the application; and if the operator fails to furnish the specified information within the period specified in the notice, the application shall, if the regulator gives notice to the operator that it treats the application as having been withdrawn, be deemed to have been withdrawn at the end of that period.

(6) Where an application is duly made to the regulator under sub-rule (2), the regulator shall determine whether to vary the provisions of the greenhouse gas emissions permit and shall give notice of its determination within two months beginning with the day on which the regulator received the application or within such longer period as may be agreed in writing with the operator.

(7) For the purpose of calculating the periods mentioned in sub-rule (6) no account shall be taken of any period beginning with the date on which notice is served on an operator under sub-rule (6) and ending on the date on which the operator furnishes the information specified in the notice.

(8) Where the regulator decides to vary the provisions of the greenhouse gas emissions permit, whether on an application under sub-rule (2) or otherwise, it shall serve a notice on the operator (a “variation notice”) specifying the variations of the provisions of the permit and the date or dates on which the variations are to take effect and, unless the notice is withdrawn, the variations specified in the notice shall take effect on the date or dates so specified.

(9) A variation notice served under sub-rule (8) shall, unless served for the purpose of determining an application under sub-rule (2), require the operator to pay, within such period as may be specified in the notice, the fee prescribed in respect of the variation notice in rule 16.

(10) Where the regulator decides on an application under sub-rule (2) not to vary the provisions of the greenhouse gas emissions permit, it shall give notice of its decision to the operator.

(11) If the regulator fails to give notice of its determination of an application under sub-rule (2) within the period allowed by or under sub-rules (6) and (7), the application shall, if the operator notifies the regulator

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that he treats the application as having been refused, be deemed to have been refused at the end of that period.

#### **Transfer of greenhouse gas emissions permits.**

13. (1) Where the operator of an installation wishes to transfer, in whole or in part, his greenhouse gas emissions permit to another person (“the proposed transferee”) the operator and the proposed transferee shall jointly make an application to the regulator to effect the transfer.

(2) An application under sub-rule (1) shall be accompanied by the greenhouse gas emissions permit, the fee prescribed in respect of the transfer in rule 16 and shall contain the operator’s and the proposed transferee’s telephone number and postal address and, if different, any address to which correspondence relating to the application should be sent.

(3) Where the operator wishes to transfer only part of his greenhouse gas emissions permit (a “partial transfer”), an application under sub-rule (1) shall—

- (a) identify the Schedule 1 activity to which the transfer applies (the “transferred activity”);
- (b) identify the installation in which that transferred activity is carried out (the “transferred unit”).

(4) The regulator shall effect the transfer unless the regulator considers that—

- (a) the proposed transferee will not be the operator of the transferred unit after the transfer is effected; or
- (b) the proposed transferee will not ensure that the installation is operated so as to comply with any monitoring and reporting condition.

(5) The regulator shall effect a transfer under this rule by—

- (a) in the case of a partial transfer—
  - (i) issuing a new greenhouse gas emissions permit to the proposed transferee which—
    - (aa) applies to the transferred activity;
    - (bb) identifies the transferred unit; and

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- (cc) includes the conditions required by sub-rule (6); and
- (ii) returning the original greenhouse gas emissions permit to the operator, endorsed to record the transfer and varied to—
  - (aa) identify the Schedule 1 activity and the specified emissions from that activity;
  - (bb) describe the installation after the transfer; and
  - (cc) specify the conditions applying after the transfer as required by sub-rule (6);
- (b) in the case of a transfer of the whole greenhouse gas emissions permit, causing the permit to be endorsed with the name and other particulars of the proposed transferee as the operator of the transferred unit,

and the transfer shall take effect from such date as may be agreed with the applicants and specified in the endorsement and, in the case of a partial transfer, the new greenhouse gas emissions permit.

(6) In the case of a partial transfer effected under this rule, the conditions included in the new greenhouse gas emissions permit and the original greenhouse gas emissions permit after the transfer shall be the same as the conditions included in the original permit immediately before the transfer in so far as they are relevant, respectively, to any installation to which the new permit relates or the original permit continues to relate but subject to such variations as, in the opinion of the regulator, are necessary to take account of the transfer.

(7) If within the period of two months beginning with the date on which the regulator receives an application under sub-rule (1), or within such longer period as the regulator and the applicants may agree in writing, the regulator has neither effected the transfer nor given notice to the applicants that it has rejected the application, the application shall, if the applicants notify the regulator in writing that they are treating the application as having been refused, be deemed to have been refused at the end of that period or that longer period, as the case may be.

(8) The regulator may, by notice, require the operator or the proposed transferee to furnish such further information specified in the notice, within the period so specified, as the regulator may require for the purpose of determining an application under this rule.

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(9) Where a notice is served on an operator or proposed transferee under sub-rule (8)–

- (a) for the purpose of calculating the period of two months mentioned in sub-rule (7) no account shall be taken of the period beginning with the date on which the notice is served and ending on the date on which the information specified in the notice is furnished; and
- (b) if the specified information is not furnished within the period specified, the application shall, if the regulator gives notice to the operator and proposed transferee that it treats the application as having been withdrawn, be deemed to have been withdrawn at the end of that period.

#### **Applications to surrender a greenhouse gas emissions permit.**

14.(1) Where an operator has ceased carrying out the Schedule 1 activities authorised by a greenhouse gas emissions permit (in whole or in part), the operator may–

- (a) if he has ceased carrying out all of the Schedule 1 activities covered by the greenhouse gas emissions permit, apply to the regulator to surrender the whole permit;
- (b) in any other case, apply to the regulator to surrender the greenhouse gas emissions permit in so far as it authorises the carrying out of the particular Schedule 1 activities (“the surrender activities”) which he has ceased carrying out (a “partial surrender”).

(2) An application under sub-rule (1) shall be accompanied by the fee prescribed in respect of the application in rule 16 and shall contain the following information–

- (a) the operator's telephone number and postal address and, if different, any address to which correspondence relating to the application should be sent;
- (b) in the case of a partial surrender, a description of the surrender activities and a description identifying the part of the installation in which the surrender activities were carried out; and
- (c) except where the application relates to an excluded installation, a report specifying the reportable emissions from the installation or, in the case of a partial surrender, the reportable emissions from the part of the installation relating to the surrender

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activities, from the beginning of the scheme year until the date on which the operator ceased carrying out the surrender activities, which report shall be prepared and verified in accordance with the relevant monitoring and reporting conditions.

(3) Where—

- (a) the application relates to an excluded installation; or
- (b) the operator has surrendered allowances equal to—
  - (i) the reportable emissions specified in a report referred to in sub-rule (2)(c);
  - (ii) where an operator has failed to comply with a condition of a greenhouse gas emissions permit imposed pursuant to rule 9(3) in respect of the previous scheme year, the annual reportable emissions in respect of which the operator failed to comply with that condition in that year;
  - (iii) where an application to surrender is made in the scheme year following discovery of an error in the report submitted by an operator under a monitoring and reporting condition in relation to any scheme year, the annual reportable emissions in respect of which, as a result of that error, the operator failed to comply with the condition of a greenhouse gas emissions permit imposed pursuant to rule 9(3) in respect of that scheme year; and
  - (iv) where a supplementary decision has been made under rule 18(7) the total number of allowances which have been issued into accounts in respect of the installation which would not have been included in a decision under rule 18(1)(b) or, if applicable, 18(1)(c) in respect of the installation if the statement referred to in rule 18(7)(a) had not been false or misleading,

the regulator shall accept the application for surrender or partial surrender of the greenhouse gas emissions permit and give the operator notice of its determination and the greenhouse gas emissions permit shall cease to have effect or, in the case of a partial surrender, shall cease to have effect to the extent surrendered, on the date specified in the notice of determination.

(4) If, in the case of a partial surrender, the regulator is of the opinion that it is necessary to vary the conditions included in the greenhouse gas

### **GREENHOUSE GAS EMISSIONS TRADING SCHEME RULES 2004**

emissions permit to take account of the surrender, the regulator shall specify the necessary variations in the notice of determination given under sub-rule (3) and the variations specified in the notice shall take effect on the date specified in the notice.

(5) If neither of the conditions for surrender in sub-rule (3) is met, the regulator shall give to the operator notice of its determination stating that the application has been refused.

(6) The regulator shall give notice of its determination of an application under this rule within the period of three months beginning with the date on which the regulator receives the application or within such longer period as the regulator and the operator may agree in writing.

(7) If the regulator fails to give notice of its determination accepting the surrender or refusing the application within the period allowed by or under sub-rule (6) the application shall, if the operator notifies the regulator that he treats the application as having been refused, be deemed to have been refused at the end of that period.

(8) The regulator may, by notice to the operator, require him to furnish such further information specified in the notice, within the period so specified, as the regulator may require for the purpose of determining an application under this rule.

(9) Where a notice is served on an operator under sub-rule (8)–

- (a) for the purpose of calculating the period of three months mentioned in sub-rule (6) no account shall be taken of the period beginning with the date on which the notice is served and ending on the date on which the information specified in the notice is furnished; and
- (b) if the specified information is not furnished within the period specified the application shall, if the regulator gives notice to the operator that it treats the application as having been withdrawn, be deemed to have been withdrawn at the end of that period.

### **Revocation of greenhouse gas emissions permits.**

15.(1) The regulator may at any time revoke a greenhouse gas emissions permit, in whole or in part, by serving a notice (“a revocation notice”) on the operator.

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(2) Without prejudice to the generality of sub-rule (1) and subject to sub-rule (3), the regulator may serve a notice under this rule in relation to a greenhouse gas emissions permit where—

- (a) the permit holder has ceased to be the operator of the installation which carries out the Schedule 1 activities covered by the permit; or
- (b) Schedule 1 activities are no longer carried out in the installation.

(3) The regulator may not revoke a greenhouse gas emissions permit under sub-rule (2)(b) until the end of the relevant phase referred to in rule 17(2) if the national allocation plan for that phase provides for allowances to continue to be issued to the operator in respect of the Schedule 1 activities which were carried out in the installation.

(4) A revocation notice may—

- (a) revoke a greenhouse gas emissions permit entirely; or
- (b) revoke a greenhouse gas emissions permit only in so far as it authorises the carrying out of particular Schedule 1 activities.

(5) A revocation notice shall specify—

- (a) in the case of a revocation mentioned in sub-sub-rule (b) of sub-rule (4) (a “partial revocation”), the extent to which the greenhouse gas emissions permit is being revoked; and
- (b) in all cases, the date on which the revocation shall take effect, which shall be at least 28 days after the date on which the notice is served.

(6) Except where a revocation notice relates to an excluded installation, a revocation notice shall specify that the operator is required to—

- (a) submit to the regulator by the date specified in the notice a report specifying the reportable emissions from the beginning of the scheme year in which the revocation notice is served until the date on which the installation to which the revocation notice relates ceased carrying out a Schedule 1 activity or the permit holder ceased being the operator of the installation and such report shall be prepared and verified in accordance with the relevant monitoring and reporting conditions; and



- (b) surrender by the date specified in the notice allowances equivalent to—
- (i) the reportable emissions specified in that report;
  - (ii) where an operator has failed to comply with a condition of a greenhouse gas emissions permit imposed pursuant to rule 9(3) in respect of the previous scheme year, the annual reportable emissions in respect of which the operator failed to comply with that condition in that year;
  - (iii) where an application to surrender is made in the scheme year following discovery of an error in the report submitted by an operator under a monitoring and reporting condition in relation to any scheme year, the annual reportable emissions in respect of which, as a result of that error, the operator failed to comply with a condition of a greenhouse gas emissions permit imposed pursuant to rule 9(3) in respect of that scheme year; and
  - (iv) where a supplementary decision has been made under rule 18(7), the total number of allowances which have been issued into accounts in respect of the installation which would not have been included in a decision under rule 18(1)(b) or, if applicable, 18(1)(c) in respect of the installation if the statement referred to in rule 18(7)(a) had not been false or misleading.

(7) Subject to sub-rule (8) and rule 24 a greenhouse gas emissions permit shall cease to have effect, or, in the case of a partial revocation, shall cease to have effect to the extent specified in the revocation notice, from the date specified in the notice.

(8) The greenhouse gas emissions permit shall cease to have effect to authorise the carrying out of a Schedule 1 activity from the date specified in the revocation notice but any monitoring and reporting condition shall continue to have effect in so far as it is not superseded by the requirements of the notice specified pursuant to sub-rule (6) until the regulator certifies that the requirements of the notice specified pursuant to sub-rule (6) have been complied with.

(9) The requirements specified in a revocation notice pursuant to sub-rule (6)(a) shall be treated as if they were monitoring and reporting conditions and the requirements specified in a revocation notice pursuant to sub-rule (6)(b) shall be treated as if they were conditions of the greenhouse gas emissions permit imposed pursuant to rule 9(3).

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(10) The regulator may, before the date on which the revocation notice takes effect, withdraw the notice.

#### **Fees and charges.**

16.(1) The following fees are prescribed and shall be payable to the regulator—

- (a) in respect of an application for a greenhouse gas emissions permit under rule 7(1), £530;
- (b) in respect of an application for the variation of the conditions of a greenhouse gas emissions permit under rule 12(2) (except where the regulator considers that the application relates to changes of a purely administrative nature), £240;
- (c) in respect of an application under rule 13(1) to transfer a greenhouse gas emissions permit, in whole or in part, £240; and
- (d) in respect of an application under rule 14(1) to surrender a greenhouse gas emissions permit, in whole or in part, £280.

(2) Except where the regulator considers that a variation relates to changes of a purely administrative nature, where a regulator serves a variation notice under rule 12(8) varying the conditions of a greenhouse gas emissions permit, the fee prescribed in respect of the variation shall be £240 and shall be payable by the date specified in the variation notice.

### **PART 3 ALLOWANCES**

#### **National Allocation Plans.**

17.(1) In respect of each period specified in sub-rule (2), the Minister shall develop a plan in respect of installations in Gibraltar in accordance with Articles 9(1) and 10 and Annex III of the Directive (a “national allocation plan”).

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

- (a) the three year period beginning on 1st January 2005 (“the first phase”); and
- (b) the five year period beginning on 1st January 2008 and each subsequent five year period (“the second and subsequent phases”).

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### **GREENHOUSE GAS EMISSIONS TRADING SCHEME RULES 2004** **Allocation and issue of allowances.**

**1962-08**  
**Repealed**  
**Subsidiary**  
**2004/118**

18.(1) For each phase referred to in rule 17(2) the Minister shall decide upon—

- (a) the total quantity of allowances to be allocated for that phase;
- (b) the allocation of allowances to each installation including the number of those allowances to be issued in each scheme year in that phase; and
- (c) where there is more than one greenhouse gas emissions permit relating to an installation, the division of the allowances allocated to that installation under paragraph (b) between each part of the installation to which a separate greenhouse gas emissions permit relates.

(2) Decisions under sub-rule (1) shall—

- (a) be based upon the national allocation plan for the relevant phase as accepted by the European Commission under Article 9 of the Directive; and
- (b) take due account of comments from the public in accordance with the provisions of the national allocation plan.

(3) Subject to sub-rules (4), (6) and (7) the number of allowances issued each scheme year into accounts in respect of each permitted installation shall be the amount allocated in the decision under sub-rule (1)(b) and if applicable, (1)(c) to that installation and, subject to sub-rule (5) shall be issued by 28th February in each scheme year of each phase referred to in rule 17(2) to the holder of the greenhouse gas emissions permit in respect of that installation.

(4) Where allowances allocated in respect of an installation in any phase referred to in rule 17(2)(b) are cancelled in accordance with Article 12(3) of the Directive, allowances equal to the number of allowances cancelled shall be issued to the holder of the greenhouse gas emissions permit in respect of that installation for the following phase.

(5) Where, after the decision in sub-rule (1) has been made, a partial transfer under rule 13(5) is effected in relation to an installation, the allowances allocated to that installation under sub-rule (1)(b) and if applicable, (1)(c) or issued in respect of that installation under sub-rule (4) shall be issued for each scheme year remaining in the phase during which the transfer occurred to the holder of the original greenhouse gas emissions permit.

(6) Where the European Commission has provided for additional allowances to be allocated in respect of an installation, or installations of any description, under Article 29(1) of the Directive, the Minister may issue such additional allowances as have been authorised by the European Commission to the holder of the greenhouse gas emissions permit in respect of that installation or of each installation falling within that description.

(7) Where—

- (a) a person has made a statement which is false or misleading in a material particular in response to a request for information from the Minister for the purposes of developing a national allocation plan under rule 17(1) or failed to correct any such statement made for that purpose before the entry into force of these Rules; and
- (b) as a result of that statement the number allocated in respect of an installation to which the statement relates in a decision under sub-rule (1)(b) or, if applicable, sub-rule (1)(c) is greater than it would otherwise have been,

the number of allowances to be issued into accounts in respect of that installation in each scheme year in the recovery phase shall be the amount provided for in a supplementary decision by the Minister

(8) A supplementary decision under sub-rule (7) shall ensure that the total number of allowances issued in respect of an installation in the phase to which the supplementary decision applies shall be reduced by the amount by which the numbers provided for in the decision under sub-rule (1)(b) or, if applicable, (1)(c) in respect of the preceding phase exceeded the number that the decision under sub-rule (1)(b) or, if applicable, (1)(c) would have provided for that installation if the statement referred to in sub-rule (7)(a) had not been false or misleading.

(9) The Minister shall as soon as practicable publish his supplementary decision under sub-rule (7).

(10) In sub-rule (7), the “recovery phase” means the earliest phase for which allowances allocated to that installation under sub-rule (1)(b) or (1)(c) have not already been issued into accounts.

**Registry.**

19.(1) The Minister shall establish and maintain a registry in accordance with the requirements of Article 19 of the Directive.

### **GREENHOUSE GAS EMISSIONS TRADING SCHEME RULES 2004**

(2) The Minister shall ensure that the registry operates so that allowances are transferred, surrendered and cancelled in accordance with Articles 12 and 13 of the Directive.

(3) Where—

- (a) an operator fails to submit to the regulator the report required to be submitted to the regulator by conditions of the greenhouse gas emissions permit imposed pursuant to rule 9(2)(a)(ii) or the report submitted is incomplete; or
- (b) the report submitted to the regulator in accordance with conditions of the greenhouse gas emissions permit imposed pursuant to rule 9(2)(a)(ii) or part of such report cannot be verified in accordance with the condition imposed pursuant to rule 9(2)(b)

the operator or, where the installation is covered by a notice under rule 20(10)(b) authorising a pool, the pool administrator, may not make further transfers of allowances until the report has been submitted to the regulator and has been verified in accordance with the conditions of the greenhouse gas emissions permit imposed pursuant to rule 9(2)(b) or the regulator has notified a determination in accordance with rule 23.

(4) To the extent to which any function under sub-rule (3) is exercisable in relation to a particular installation, the Minister may delegate that function to the regulator of that installation.

#### **Pooling.**

20.(1) One or more operators of installations to which this rule applies may make a joint application to the regulator to form a pool for the first phase or second phase referred to in rule 17(2) or both.

(2) This rule applies to installations which carry out activities which—

- (a) fall within the same description in Schedule 1; and
- (b) do not fall within any description in Schedule 1 of the Pollution Prevention Act.

(3) An application under sub-rule (1) shall be made at least 6 months before the start of the phase in which the operators wish to form a pool and shall—

- (a) identify the installations to be included in the pool;

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### GREENHOUSE GAS EMISSIONS TRADING SCHEME RULES 2004

- (b) contain the names and postal addresses of the operators of those installations and, if different, any addresses to which correspondence should be sent;
- (c) contain a copy of the greenhouse gas emissions permit in respect of each of those installations and identify the regulator which granted that permit;
- (d) nominate a person to act as pool administrator and contain a declaration from that person that he is willing to act as pool administrator;
- (e) specify whether the pool should apply for the first or second phase referred to in rule 17(2), or both; and
- (f) contain evidence that the pool administrator will be able to fulfil the obligations in sub-rule (12).

(4) Where an application is duly made under sub-rule (1) and the regulator considers it appropriate to allow the pool, he shall submit a copy to the Minister who shall ensure its transmission to the European Commission.

(5) The Minister shall notify

- (a) the operator of each installation to be included in the pool; and
- (b) the person nominated to act as pool administrator under sub-rule (3)(d),

of whether he considers it appropriate to allow the pool.

(6) If the European Commission rejects the application within 3 months of the date it receives the application the Minister shall notify—

- (a) the operator of each installation to be included in the pool;
- (b) the person nominated to act as pool administrator under sub-rule (3)(d),

that the application has been rejected and of the reasons given by the European Commission for the rejection.

(7) Where operators are notified under sub-rule (6) that the European Commission has rejected their application, they may submit an amended application to the Minister.

(8) If the Minister considers that the amended application addresses the reasons given by the European Commission for rejection of the application,

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1962-08

**Repealed**  
**Subsidiary**  
**2004/118**

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the Minister shall ensure the transmission of the amended application to the European Commission.

(9) The regulator shall notify—

- (a) the operator of each installation to be included in the pool;
- (b) the person nominated to act as pool administrator under sub-rule (3)(d),

of whether it considers that the amended application addresses the reasons given by the European Commission for rejection of the application.

(10) If the European Commission does not reject the application within 3 months of the date it receives the application or accepts an amended application submitted under sub-rule (8)(b) the regulator shall serve a notice authorising the pool on—

- (a) the operator of each installation to be included in the pool;
- (b) the person nominated to act as pool administrator under sub-rule (3)(d).

(11) A notice under sub-rule 10(b) shall—

- (a) identify the installations included in the pool;
- (b) identify the person who will act as pool administrator;
- (c) specify any conditions applying to the approval of the pool; and
- (d) specify the phase for which the pool is approved.

(12) For the duration of the period for which a group of installations are covered by a notice under sub-rule 9(b) authorising the pool—

- (a) the allowances issued in respect of each installation referred to in sub-rule (11)(a) shall be issued to the pool administrator;
- (b) the pool administrator shall surrender allowances other than allowances issued pursuant to Chapter II of the Directive, equal to the annual reportable emissions from all the installations within the pool for which he is acting as pool administrator (as increased if required by rule 9(4) within 4 months of the end of the scheme year during which those emissions arose; and

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- (c) rule 30 shall apply to a pool administrator who fails to comply with the obligation in sub-sub-rule (b) as it applies to an operator who fails to comply with a condition imposed pursuant to rule 9(3).

(13) An operator of an installation that is included in a notice authorising a pool in accordance with rule 11(a) shall be deemed to be in compliance with any condition of a greenhouse gas emissions permit imposed pursuant to rule 9(3).

(14) Where the pool administrator fails to pay a civil penalty under rule 31 by the due date determined in accordance with rule 32(4) the regulator shall revoke the notice under rule 9(b) authorising the pool.

#### **PART 4 ENFORCEMENT**

#### **Duty of regulator to enforce compliance with monitoring and reporting conditions.**

21. While a greenhouse gas emissions permit is in force it shall be the duty of the regulator to take such action under these Rules as may be necessary for the purpose of ensuring that the monitoring and reporting conditions are complied with.

#### **Enforcement notices.**

22.(1) If the regulator is of the opinion that an operator has contravened, is contravening or is likely to contravene any monitoring and reporting condition, the regulator may serve on him a notice (an “enforcement notice”).

(2) An enforcement notice shall—

- (a) state that the regulator is of the opinion that an operator has contravened, is contravening or is likely to contravene any monitoring and reporting condition;
- (b) specify the matters constituting the contravention or the matters making it likely that the contravention will arise, as the case may be;
- (c) specify the steps that must be taken to comply with the monitoring and reporting condition or, to the extent possible, to remedy any failure to comply with the monitoring and reporting condition, as the case may be; and



(d) specify the period within which those steps must be taken.

(3) The regulator may withdraw an enforcement notice at any time.

#### **Power of the regulator to determine reportable emissions.**

23.(1) Where—

- (a) an operator served notice on the regulator in accordance with a condition of the greenhouse gas emissions permit imposed pursuant to rule 9(2)(c) notifying it of factors that might prevent him from complying with the monitoring and reporting conditions of the permit and requesting the regulator to determine all or part of the annual reportable emissions from the installation or, in respect of the surrender or revocation of a greenhouse gas emissions permit (in whole or part), the reportable emissions from the installation for the period specified in rule 14(2)(c) or 15(6)(a);
- (b) an operator fails to comply with the conditions included in a greenhouse gas emissions permit pursuant to rule 9(2)(a)(ii) or 9(2)(b); or
- (c) an operator fails to comply with the requirements included in a revocation notice pursuant to rule 15(6)(a),

the regulator shall determine the reportable emissions from the installation in the relevant period and the regulator's determination of the reportable emissions shall be treated as the reportable emissions from that installation for the period to which the determination relates.

(2) When determining annual reportable emissions under sub-rule (1) the regulator shall take account of the requirements set out in Schedule 2.

(3) The regulator shall notify any determination under sub-rule (1) to the operator of the installation.

(4) Where a regulator makes a determination under sub-rule (1) it may recover the cost of making that determination from the operator concerned.

## **PART 5 APPEALS**

#### **Appeals against a decision of, or a notice served by, the regulator.**

24.(1) Subject to sub-rule (3), the following persons, namely—

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### GREENHOUSE GAS EMISSIONS TRADING SCHEME RULES 2004

- (a) a person who has been refused the grant of a greenhouse gas emissions permit under rule 9;
- (b) a person who has been refused the variation of the conditions of a greenhouse gas emissions permit on an application under rule 12(2);
- (c) a person who is aggrieved by the conditions attached to his greenhouse gas emissions permit following an application under rule 7 or by a variation notice following an application under rule 12(2);
- (d) a person whose application under rule 13(1) for a regulator to effect the transfer of a greenhouse gas emissions permit has been refused or who is aggrieved by the conditions attached to his greenhouse gas emissions permit to take account of such a transfer;
- (e) a person whose application under rule 14(1) to surrender a greenhouse gas emissions permit has been refused, or who, in the case of a partial surrender, is aggrieved by the conditions attached to his greenhouse gas emissions permit to take account of the surrender; or
- (f) a person who is aggrieved by the regulator's determination of reportable emissions under rule 23,

may appeal against the decision of the regulator to the Supreme Court.

(2) Subject to sub-rule (3), a person on whom a variation notice is served, other than following an application under rule 12 (2) or on whom a revocation notice or an enforcement notice is served may appeal against the notice to the Supreme Court.

(3) Sub-rules (1) and (2) shall not apply where the decision or notice, as the case may be, implements a direction of the regulator given under sub-rule (4) or rule 33.

(4) On determining an appeal against a decision of a regulator under sub-rule (1) the court may—

- (a) affirm the decision;
- (b) where the decision was a refusal to grant a greenhouse gas emissions permit or to vary the conditions of a greenhouse gas emissions permit, direct the regulator to grant the permit or to vary the conditions of the permit, as the case may be;

- (c) where the decision was as to the conditions attached to a greenhouse gas emissions permit, quash all or any of the conditions of the permit;
- (d) where the decision was a refusal to effect the transfer or accept the surrender of a greenhouse gas emissions permit, direct the regulator to effect the transfer or accept the surrender, as the case may be; or
- (e) where the decision was to determine the amount of reportable emissions from an installation, quash the determination and direct the regulator to re-determine the reportable emissions,

and where it exercises any of the powers in paragraph (b) or (c) it may give directions as to the conditions to be attached to the permit.

(5) Where an appeal is brought under sub-rule (1)(c), (d) or (e) in relation to the conditions attached to a greenhouse gas emissions permit, the bringing of the appeal shall not have the effect of suspending the operation of the conditions.

(6) Where an appeal is brought under sub-rule (2) against a variation notice or an enforcement notice, the bringing of the appeal shall not have the effect of suspending the operation of the notice.

(7) Where an appeal is brought under sub-rule (2) against a revocation notice, the revocation shall not take effect pending the final determination or the withdrawal of the appeal.

(8) Where an appeal is brought against a determination of reportable emissions the determination shall not be used for the purpose of checking compliance with a condition included in a greenhouse gas emissions permit pursuant to rule 9(3) or the conditions for surrender of a permit in rule 14(3)(b) pending the final determination or the withdrawal of the appeal.

(9) Rule 10 shall apply where the court, in exercising any of the powers in sub-rule (4) gives directions as to the conditions to be attached to a greenhouse gas emissions permit as they would apply to the regulator when determining the conditions of the permit.

#### **Appeals for reconsideration of decisions.**

25.(1) A person who has been served a notice under rule 32(3)(b), or a penalty under rule 30 or 31 may appeal to the Supreme Court against the notice or penalty as the case may be.

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(2) A person who is aggrieved by a decision under rule 20(4), (8) or (14) may appeal to the Supreme Court against the decision.

(3) A person who is aggrieved by any decision under rule 10(3), (4) or (6) may appeal to the Supreme Court against the decision.

(4) A person who is aggrieved by a supplementary decision under rule 18(7) may appeal to the Supreme Court against the decision.

(5) Where an appeal is made under this rule, the Supreme Court shall reconsider the decision and may affirm, reverse, or vary the decision.

(6) Where an appeal is made under this rule, the decision or notice to which the appeal relates shall not take effect pending the final determination or withdrawal of the appeal.

### **PART 6 INFORMATION**

#### **Information.**

26.(1) For the purposes of the discharge of its functions under these Rules, the Minister may, by notice served on the regulator, require the regulator to furnish such information about the discharge of its functions as a regulator as it may require.

(2) For the purpose of the discharge of its functions under these Rules, the Minister or the regulator may, by notice served on any person, require that person to furnish such information as is specified in the notice, in such form and within such period following service of the notice or at such time as is so specified.

(3) The information which a person may be required to furnish by a notice served under sub-rule (2) includes information, which, although it is not in the possession of that person or would not otherwise come into the possession of that person, is information which it is reasonable to require that person to compile for the purpose of complying with that notice.

#### **Publication of operators subject to penalties.**

27. As soon as possible after the expiry of the period of 4 months after the end of each scheme year of each phase referred to in rule 17(2) the regulator shall publish a list of the names of operators who are liable to a civil penalty under rule 30 or 31.

#### **National security.**

### **GREENHOUSE GAS EMISSIONS TRADING SCHEME RULES 2004**

28.(1) No information included in a national allocation plan developed under rule 17(1) in a decision made under rule 18(1) or in a supplementary decision made under rule 18(7) shall be published, if, in the opinion of the Governor the inclusion of that information, or information of that description, would be contrary to the interests of national security.

(2) No information shall be included in the list published under rule 27 if in the opinion of the Governor, the inclusion of that information, or information of that description, would be contrary to the interests of national security.

### **PART 7**

#### **OFFENCES AND CIVIL PENALTIES**

#### **Offences.**

29.(1) It is an offence for a person to—

- (a) contravene rule 6;
- (b) fail to comply with or to contravene a condition of a greenhouse gas emissions permit (except where such failure to comply or contravention falls within rule 30 or 31);
- (c) fail to comply with rule 11(1)
- (d) fail to comply with the requirements of an enforcement notice;
- (e) fail, without reasonable excuse, to comply with any requirement imposed by a notice under rule 7(6), 12(5), 13(8), 14(8) or 27(2);
- (f) 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-
  - (i) in purported compliance with a requirement imposed by a notice under rule 7(6), 12(5), 13(8), 14(8) or 27(2);
  - (ii) for the purpose of obtaining the grant of a greenhouse gas emissions permit to himself or any other person, or the variation, transfer or surrender of a greenhouse gas emissions permit;
  - (iii) for the purpose of obtaining a certificate under rule 10;

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(iv) for the purpose of obtaining a notice authorising a pool under rule 20; or

(v) as part of the verification of a report required under a monitoring and reporting condition; or

(g) fail to correct any statement, within 10 days, made before the entry into force of these Rules in response to a request for information from the Minister expressed to be for the purpose of developing a national allocation plan, if the making of that statement after the entry into force of these Rules in purported compliance with a requirement imposed by a notice under rule 26(2) would have been an offence under paragraph (f).

(2) It is an offence for a person if that person—

(h) intentionally, makes a false entry in any record required to be kept under the condition of a greenhouse gas emissions permit; or

(i) with intent to deceive, forges or uses a document issued or authorised to be issued under a condition of a greenhouse gas emissions permit or required for any purpose under a condition of such a permit or to make or to have in his possession a document so closely resembling any such document as to be likely to deceive.

(3) A person guilty of an offence under sub-rule (1) or (2) shall be liable—

(a) on summary conviction, to a fine not exceeding level 4 on the standard scale or to imprisonment for a term not exceeding three months or to both;

(b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both.

(4) Where an offence under this rule committed by—

(a) a body corporate (other than a limited liability partnership) is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director, manager, secretary, or other similar officer of the body corporate or a person who was purporting to act in any such capacity; or

(b) a limited liability partnership and is proved to have been committed with the consent or connivance of, or to have been

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attributable to any neglect on the part of, any member of the limited liability partnership or a person who was purporting to act as such;

that person as well as the body corporate or the limited liability partnership shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(5) Where the affairs of a body corporate (other than a limited liability partnership) are managed by its members, sub-rule (4) shall apply in relation to the acts or defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(6) Where the commission by any person of an offence under this rule is due to the act or default of some other person, that other person may be charged with and convicted of the offence by virtue of this sub-rule whether or not proceedings for the offence are taken against the first-mentioned person.

#### **Civil penalties: excess emissions.**

30.(1) Any operator who fails to comply with a condition imposed pursuant to rule 10(3) in respect of an installation shall be liable to a penalty.

(2) The amount of the penalty to which the operator of an installation is liable under sub-rule (1) shall be the excess emissions of the installation multiplied by the excess emissions penalty.

(3) For the purpose of sub-rule (2)–

- (a) “excess emissions” means, in respect of an installation, the amount in tonnes of carbon dioxide equivalent by which the annual reportable emissions from the installation exceeded the number of allowances surrendered for that installation;
- (b) “excess emissions penalty” means–
  - (i) in respect of excess emissions which relate to reportable emissions which were released between 1st January 2005 and 31st December 2007, 40 Euro; and
  - (ii) in respect of excess emissions which relate to reportable emissions which were released on or after 1st January 2008, 100 Euro.

(4) In relation to sub-rule (3)(b), the reference to an amount in Euro shall be taken to be a reference to Gibraltar pound equivalent of that number of Euro, converted by reference to the rate of conversion published in the C

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series of the Official Journal of the European Communities in September of the scheme year preceding that in which the liability for the penalty arose.

### **Civil penalties: understatement of reportable emissions.**

31.(1) Subject to sub-rule (2), where—

- (a) in relation to an application for surrender of a greenhouse gas emissions permit under rule 14 the report contained in the application in accordance with rule 14(2)(c) understates the reportable emissions of the installation to which the report relates; or
- (b) in relation to the revocation of a greenhouse gas emissions permit under rule 16 the report submitted in accordance with the requirements included in a revocation notice pursuant to rule 15(6)(a) understates the reportable emissions from the installation to which the report relates,

the operator shall be liable to a penalty equal to the amount of the understatement of reportable emissions multiplied by the excess emissions penalty under rule 30(3)(b) which applied to excess emissions in the year in which the understatement was made.

(2) Conduct falling with sub-rule (1) shall not give rise to liability to a penalty under this rule if the person who made the understatement—

- (a) surrenders or cancels allowances equal to the amount of the understatement; and
- (b) satisfies the regulator that he did not knowingly or recklessly understate the reportable emissions from the installation.

### **Civil penalties: general.**

32.(1) In this rule “civil penalty” means any penalty which—

- (a) is imposed by or under these Rules; and
- (b) arises otherwise than in consequence of a person’s conviction for a criminal offence.

(2) Where a person is liable to a civil penalty, the court shall—

- (a) assess the amount due by way of penalty; and
- (b) notify the person liable to the penalty of that amount.



(4) A penalty shall be due on the day (the “due date”) following the expiry of a period of 28 days beginning on the date on which the person is notified by the regulator under sub-rule (3)(b) or the final determination of an appeal under these Rules, whichever is the later, and shall be paid to the regulator.

(5) Where the court makes an assessment under sub-rule (3) of any penalty to which a person is liable the amount of that penalty shall carry interest for the period which—

- (a) begins on the due date; and
- (b) ends with the day before the day on which the assessed penalty is paid.

(6) Interest under this rule shall be payable at a rate of one percentage point above LIBOR on a day to day basis.

(7) For the purposes of sub-rule (6) “LIBOR” means the sterling three months London interbank offered rate in force during the period between the due date and the date on which the penalty is paid.

(8) Where an amount has been assessed and notified to any person under sub-rule (3) the amount and any interest incurred under sub-rule (5) shall be recoverable as if it were a civil debt.

### PART 8

#### MISCELLANEOUS POWERS

##### **Directions to regulator.**

33.(1) Subject to sub-rule (5), the Minister may give directions to the regulator of a general or specific character with respect to the carrying out of any of its functions under these Rules.

(2) Without prejudice to the generality of the power conferred by sub-rule (1), a direction under that sub-rule may direct the regulator—

- (a) to exercise any of its powers under these Rules or to do so in such circumstances as may be specified in the directions or in such manner as may be so specified; or
- (b) not to exercise those powers, or not to do so in such circumstances or such manner as may be specified in the directions.

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(3) Any direction given under these Rules shall be in writing and may be varied or revoked by a further direction.

(4) It shall be a duty of the regulator to comply with any direction which is given to it under these Rules.

#### **Guidance to regulator.**

34.(1) The Minister may issue guidance to the regulator with respect to the carrying out of any of its functions under these Rules.

(2) The regulator, in carrying out any of its functions under these Rules, shall have regard to any guidance issued by the Minister under this rule.

**Activities**

**PART 1: ACTIVITIES AND SPECIFIED EMISSIONS.**

<i>Activities</i>	<i>Specified emissions</i>
<b>1. Energy Activities</b>	
1.1. Activities of combustion installations with a rated thermal input exceeding 20 megawatts (excluding hazardous or municipal waste installations).	Carbon dioxide
1.2. Activities of mineral oil refineries.	Carbon dioxide
1.3. Activities of coke ovens.	Carbon dioxide
<b>2. Production and processing of ferrous metals</b>	
2.1. Activities of metal ore (including sulphide ore) roasting and sintering installations.	Carbon dioxide
2.2. Activities of installations for the production of pig iron or steel (primary or secondary fusion), including continuous casting, with a capacity of more than 2.5 tonnes per hour.	Carbon dioxide
<b>3. Mineral Industries</b>	
3.1 Activities of installations for the production of cement clinker in rotary kilns with a production capacity of more than 500 tonnes per day.	Carbon dioxide
3.2. Activities of installations for the production of lime in rotary kilns or other furnaces with a production capacity of more than 50 tonnes per tonnes per day.	Carbon dioxide
3.3. Activities of installations for the manufacture of glass including glass fibre where the melting capacity of the plant is more than 20 tonnes per day.	Carbon dioxide
3.4. Activities of installations for the manufacture of ceramic products (including roofing tiles, bricks, refractory bricks, tiles, stoneware or porcelain) by	Carbon dioxide

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firing in kilns where—

- (i) the kiln production capacity is more than 75 tonnes per day; or
- (ii) the kiln capacity is more than 4m<sup>3</sup> and the setting density is more than 300 kg/m<sup>3</sup>.

#### 4. Other activities

4.1. Activities of industrial plants for the production of pulp from timber or other fibrous materials. Carbon dioxide

4.2. Activities of industrial plants for the production of paper and board with a production capacity of more than 20 tonnes per day. Carbon dioxide

#### PART 2: INTERPRETATION OF SCHEDULE 1.

1. The following rules apply for the interpretation of Part 1 of this Schedule.
2. An activity shall not be taken to be an activity falling within Part 1 if it is carried out for research, development or testing of new products or processes.
- 3.(1) This paragraph applies for the purpose of determining whether an activity carried out in a stationary technical unit falls within the description of an activity in Part 1 which refers to capacity.
  - (2) Where a person carries out several activities falling within the same description in Part 1 in different parts of the same stationary technical unit or in different stationary technical units on the same site, the capacities of each part or unit, as the case may be, shall be added together and the total capacity shall be attributed to each part or unit for the purpose of determining whether the activity carried out in each part or unit falls within a description in Part 1.
  - (3) For the purposes of sub-paragraph (2) no account shall be taken of capacity when determining whether activities fall within the same description.

### CRITERIA FOR VERIFICATION REFERRED TO IN ARTICLE 15

#### **General Principles**

1. Emissions from each activity listed in Schedule 1 shall be subject to verification.
2. The verification process shall include consideration of the report pursuant to Article 14(3) of the Directive 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 (EMAS).

#### **Methodology**

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**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.

**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 abovementioned 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 Article 14(3) is satisfactory. This report shall specify all issues relevant to the work carried out. A statement that the report pursuant to Article 14(3) is satisfactory may be made if, in the opinion of the verifier, the total emissions are not materially misstated.

**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 this Directive, as well as relevant standards and guidance adopted by the Commission pursuant to Article 14(1);

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- (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.