

**EXPLANATORY MEMORANDUM TO THE
THE GREENHOUSE GAS EMISSIONS TRADING SCHEME
(AMENDMENT) REGULATIONS 2004**

2004 No. 3390

1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

- 2.1 This instrument amends the Greenhouse Gas Emissions Trading Scheme Regulations 2003 (S.I. 2003/3311) (the “ETS Regulations”) to enable regulators in the UK to recover the costs of administering the Scheme in the financial year 2004/5 which relate to the holding of a greenhouse gas emissions permit. Costs will be recovered by the regulators through an annual subsistence charge collected from operators of installations who hold a greenhouse gas emissions permit under the ETS Regulations.

- 2.2 This instrument also allows the Secretary of State to request information from regulators and other persons for the purposes of the discharge of her functions under the ETS Regulations, and amends the offence under Regulation 32(1)(g) to give it proper effect. This reflects the fact that Regulation 29 did not originally extend to the Secretary of State.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

- 3.1 The Regulations correct an omission in regulation 29 of the ETS Regulations by including the Secretary of State in the list of persons who can serve a notice requesting information from a regulator or other persons under regulation 29(1) or (2). There is a consequential amendment to regulation 4(1) and a new regulation 32(1)(g) is substituted. The substitution of the offence in regulation 32(1)(g) also addresses concerns which the Department had about the application of the previous provision. The substituted provision therefore covers all information submitted to the Secretary of State for the purposes of developing the NAP and includes a deadline for correcting any false or misleading information to ensure that the offence is sufficiently precise.

- 3.2 The procedure for free issue of correcting instruments in paragraph 3.4.11 and 3.4.12 of the Statutory Instrument Practice have not been

applied because the main reason for making the regulations at this time is to provide for a subsistence charge.

4. Legislative Background

- 4.1 The ETS Regulations transposed into UK law the requirements of the Emissions Trading Directive (Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the European Community). The regulations make it an offence to carry out an activity covered by the scheme after 1 January 2005 unless the operator holds a greenhouse gas emissions permit.
- 4.2 Under the ETS Regulations, the regulators are given functions in relation to greenhouse gas emissions permits in particular an obligation to enforce the monitoring and reporting conditions of greenhouse gas emissions permits (regulation 22 of the ETS Regulations).
- 4.3 Regulation 17 of the ETS Regulations provides for fees to be paid by the operator on application for a permit and in relation to the variation, transfer and surrender of permits. The regulations do not provide for a charge in relation to the subsistence of the permit.
- 4.4 These amending regulations provide for a subsistence charge to be payable to the regulator in the financial year 2004/5 by persons holding a greenhouse gas emissions permit to cover the costs of administering the scheme which relate to the subsistence of the permit in that year.

5. Extent

- 5.1 This instrument applies to all of the United Kingdom .

6. European Convention on Human Rights

Not applicable

7. Policy background

- 7.1 The EU Emissions Trading Scheme aims to promote reduction of greenhouse gas emissions in order to combat the serious threat of climate change. Operators of installations covered by the EU Emissions Trading Scheme must hold a greenhouse gas emissions permit and are allocated emission allowances (which they are able to trade). The conditions of the permit require operators to monitor and report the emissions of CO₂ from their installation and to surrender allowances by 30 April 2006 and in each subsequent year to cover those emissions in the previous calendar year.
- 7.2 At the time of consulting on the ETS Regulations, Government discussed with the regulators the need to provide for a charge for the subsistence of the permit. However, a subsistence charge was not included in the regulations at the time because there was insufficient information on the likely level of the costs to be incurred by the

regulators and therefore the level of charge required to cover the regulator costs.

7.3 These amending regulations require operators to pay a charge to cover the costs of administering the scheme which relate to the subsistence of the permit in the financial year 2004/5 principally:

- ❖ Set-up costs relating to preparations for carrying out regulator functions under the scheme;
- ❖ Reviewing and approving monitoring and reporting plans submitted to the regulator by operators in accordance with a condition of their permits;
- ❖ Inspection, compliance and enforcement costs.

7.4 The charges have been calculated on the basis of cost reflectivity – that is, the charges reflect the costs incurred in administering the requirements of the ETS Regulations in the year 2004/5.

7.5 We have considered consultation responses and amended the Regulations where appropriate. Consultees expressed dissatisfaction with the level of fees, including seeking further details of regulator costs. Following a review of relevant regulator costs and the proposed charges during the consultation period, the charges have been revised downwards by approximately 5% but any further reduction would be inconsistent with cost reflectivity policies. We intend to publish further information justifying the level of fees and providing a more comprehensive breakdown of cost estimates.

7.6 It is intended that there will be a subsistence charge for the years subsequent to the financial year 2004/5. The level of the charges was consulted upon as part of the consultation on these amending regulations. The relevant provisions will be included in regulations further amending the ETS Regulations which are expected to enter into force in mid-February 2005.

8. Impact

8.1 A Regulatory Impact Assessment is attached to this memorandum.

8.2 The impact on the public sector is to allow the regulators to recover their costs and therefore to carry out their duties under the ETS Regulations effectively.

9. Contact

Chris Dodwell at the Department for Environment, Food and Rural Affairs Tel: 020 7082 8091 or e-mail: chris.dodwell@defra.gsi.gov.uk can answer any queries regarding the instrument.

Regulatory Impact Assessment

Proposed Subsistence Charges for the EU Emissions Trading Scheme

1. Title of Proposal

The Greenhouse Gas Emissions Trading Scheme (Amendment) Regulations amend the Greenhouse Gas Emissions Trading Scheme Regulations 2003¹ (“the ETS Regulations”) so that UK regulators can collect a 2004/05 subsistence charge from installations within the EU Emissions Trading Scheme (“the Scheme”). The charge will recover the costs of regulators’ responsibilities under the Scheme, including approving monitoring and reporting plans and inspection and enforcement.

Unless otherwise stated, this RIA reflects the position in the UK.

2. Purpose and intended effect of measure

(i) Objective

The purpose of this amendment is to enable regulators in the UK to recover costs incurred through carrying out their responsibility under the EU Emissions Trading Directive² (“ETS Directive”) and ETS Regulations. The costs will be recovered by the regulators through an annual subsistence charge collected from operators of installations in the Scheme, and in the first year – from operators of installations that are temporarily excluded from later years of the Scheme. These Regulations relate only to the subsistence charge for the first year – that is, 2004/05. The powers to levy subsistence charges in subsequent years will be included in a second set of Regulation amendments that are scheduled to be introduced in early 2005.

There are three main activities performed by the regulators that need to be recovered by the proposed subsistence charges:

- **Set up costs:** This covers the costs incurred by the regulators in setting up the systems necessary for carrying out their functions under the EU ETS Regulations, including preparation of guidance to explain how the Scheme works, developing IT systems to track applications and provide a database of permitted installations, and establishing a help-desk to deal with inquiries.
- **Monitoring & Reporting.** This covers assessment and approval of the plans developed by operators for monitoring and reporting emissions of carbon dioxide and is essential to ensure that operators comply with the requirements of the Commission’s Monitoring and Reporting Decision³ (“M & R Decision”). The operator’s report will then be verified by accredited verifiers to check that the operator has monitored emissions in accordance with the plan and that the data reported is accurate and free from errors. The approval of

¹ ETS Regulations 2003 (SI 2003/3311) (<http://www.legislation.hmso.gov.uk/si/si2003/20033311.htm>)

² Directive 2003/87/EC

(http://europa.eu.int/eur-lex/pri/en/oj/dat/2003/l_275/l_27520031025en00320046.pdf)

³ Commission Decision of 29/01/2004 establishing guidelines for the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87/EC of the European Parliament and of the Council (http://europa.eu.int/comm/environment/climat/pdf/c2004_130_en.pdf)

monitoring and reporting plans is a one-off activity. Regulatory effort in assessing such plans is broadly proportional to the level of emissions, as the requirements of the M&R Decision are divided according to the level of emissions from an installation. Plans developed by larger emitters will generally be more complex, require more accurate monitoring and take longer to assess. Regulators will need to recover costs of approving the plans prepared by installations that are temporary excluded from Scheme, since they will enter the Scheme in later years (either in 2007 or 2008) depending on circumstances.

- **Inspection and Compliance.** This covers items such as periodic inspection of installations to check compliance with permits and following up issues raised during the verification process and enforcement actions. Compliance effort is linked to standard checks and is broadly the same regardless of the level of emissions. However, inspection frequencies have been allocated on a risk basis with larger installations inspected on a more frequent basis.

As the overall level of regulatory effort varies in part with the level of emissions, the installations are grouped into 3 bands so costs and charges can be apportioned fairly. These groupings are:

- Band A installations discharging less than 50ktCO₂/yr,
- Band B between 50 to 500 ktCO₂/yr and
- Band C discharging more than 500 ktCO₂/yr.

These bands are the same as those in the Commission's M& R Decision. Charge levels are then derived by apportioning them between the number of installations in each band. To determine the band into which an installation falls, regulators will consider emissions calculated in the installation's monitoring and reporting plan, with cross reference to the installation's allocation in the National Allocation Plan (NAP).

The EU Climate Change Committee recently approved the UK's application under Article 27 of the Directive to temporarily exclude installations within the UK Emissions Trading Scheme. As part of the demonstration of equivalence, these opted out installations are required to develop a monitoring and reporting plan in accordance with the Commission's M & R Decision. These plans will be checked by the regulators and will then apply when the installations enter the Scheme in 2007. These installations will therefore be subject to the subsistence charge for the first year set out in this amendment and the subsistence charge for the third year to be provided for in later amendments.

The UK intends to make a further application to the Commission to opt out installations with Climate Change Agreements. The success of this application and the number of installations covered will not be known until early February 2005. If the application is successful, these installations will then need to follow the approved plan when they enter the Scheme in phase 2.

The first year's charge has therefore been tailored to recover costs of reviewing the monitoring and reporting plans and some set up costs. Other fixed costs, set up costs, registry management costs and compliance and enforcement costs will then be recovered in the second and third years (to be provided for in later amendments to the regulations).

Full details of the proposed costs of the subsistence charge are in section 5.

(ii) Background

The ETS Directive establishes a scheme for greenhouse gas emission allowance trading within the Community. It aims to promote reductions of greenhouse gas emissions in a cost-effective and economically efficient manner. The Directive was transposed into UK law through the ETS Regulations which came into force on 31 December 2003. The Scheme commences on 1 January 2005.

Over 1000 installations throughout England, Northern Ireland, Scotland and Wales fall into the Scheme. Each installation must obtain a Greenhouse Gas Permit from the regulator, and monitor and report CO₂ emissions during phase 1 (2005 to 2007). The regulators responsible for administering the Scheme are: Environment Agency (England and Wales), Scottish Environment Protection Agency (Scotland), Chief Inspector (Northern Ireland) and the Secretary of State (Department of Trade and Industry) for Offshore installations.

Installations covered by the Scheme⁴ will be granted free allowances for Phase 1 of the Scheme based on their historic emissions, or where insufficient data is available, benchmarks. The method used to calculate an installation's allocation is contained within the UK's National Allocation Plan⁵. The European Commission (the Commission) has conditionally approved the UK's NAP. The UK is intending to issue allowances to operators in February 2005 in line with the deadlines in the Directive. By 30 April each year the installation must surrender the number of allowances equivalent to their annual CO₂ emissions in the previous calendar year. Allowances can be traded across the EU.

Under the ETS Regulations, regulators are required to carry out certain functions in relation to the permitting of installations covered by the Scheme and the enforcement of the requirements of such permits.

Section 17 of the ETS Regulations currently allows for regulators to charge: in respect of an application for a permit (£530), to vary a permit (£240), to transfer a permit (£240) and to surrender a permit (£280). The Regulations do not prescribe an ongoing subsistence charge. Previous consultation on the implementation of the EU emissions trading Directive⁶ made it clear that such a charge would be imposed to cover the costs of reviewing monitoring and reporting plans, inspections and enforcement but that this would be introduced at a later date as there was insufficient information at the time of making the ETS Regulations on which to ascertain the level of the charge to be fully cost reflective.

Charges for other activities intended to be performed by the regulator, such as charges for the checking of allocations to new entrants and opening registry trading accounts for entities that do not operate an installation will be dealt with in subsequent amendments to the Regulations.

⁴ Installations in which an operator carries out an activity listed in Schedule 1 to the ETS Regulations resulting in specified emissions.

⁵ www.defra.gov.uk/corporate/consult/euetsnap-stagethree/index.htm and www.scotland.gov.uk/climatechange and

⁶ Consultation Paper on the Draft Implementing Regulations of the EU ETS. Sept 2003. Paragraph 63. Available at: <http://www.defra.gov.uk/corporate/consult/euets-regs/consultdoc.pdf>

(iii) Previous consultation

Government discussed the need for regulators to levy a subsistence charge in the consultation document for the UK ETS Regulations in Autumn 2003. However, the Regulations did not provide for a subsistence charge at the time because there was insufficient information on the likely level of the charge required to recover regulator costs⁷.

The consultation on the ETS Regulations indicated that it was not proposed to impose a subsistence charge on the operator of an installation whilst it is temporarily excluded from the scheme under regulation 10 of the ETS Regulations. . It is proposed that all installations will pay the subsistence charge for the financial year 2004/5 to cover the costs of assessing monitoring and reporting plans and associated set up costs. This is because installations covered by temporary exclusion will need Monitoring and Reporting Plans when they subsequently join the Scheme and these costs are therefore incurred by Regulators in relation to all installations irrespective of whether they are temporarily excluded from the scheme. Later amendments will explain that operators of installations which are covered by a temporary exclusion certificate will be exempt from paying the subsistence charge for subsequent years or part of year for which it continues to be an excluded installation

In January 2004, a partial RIA was released with the consultation document accompanying the Draft National Allocation Plan. This RIA noted: that *'There will be an annual subsistence charge, payable to the regulator...'* Feedback during this consultation highlighted operator concerns over administration and subsistence charges, particularly for smaller installations.

The subsequent consultation document⁸ accompanying the National Allocation Plan submitted to the Commission in May 2004 noted that the Government was committed to minimising charges for smaller installations and biomass fuelled installations, and that details of a charging regime would be released for comment later in the summer.

When receiving their GHG Permit, operators were informed that a subsistence charge would be charged in due course. The permit stated *'Annual subsistence charges will be payable in respect of the subsistence of this permit. Operators will be notified of the requirements and the charge level'*.

The regulators have since developed financial models to determine the amount of effort required to administer the Scheme during phase one, and hence the level of the subsistence charge. Government released these for a 6 week period of public comment and intends to implement the amendment early next year. This tight timetable is to ensure that charging can commence in early 2005 in order for regulators to recover their costs for the current financial year.

(iv) Risk assessment

Given the large amount of CO₂ covered by the EU ETS, the number of installations affected and significant financial implications, it is important for the Scheme to have

⁷ Consultation Paper on the Draft Implementing Regulations of the EU ETS. Sept 2003. Paragraph 63. Available at: <http://www.defra.gov.uk/corporate/consult/euets-regs/consultdoc.pdf>

⁸ Available at: www.defra.gov.uk/corporate/consult/euetsnap-stagethree/index.htm

robust compliance checks and enforcement measures. The Environment Agency also require sufficient resources to effectively manage the registry. These will ensure that the Scheme operates effectively and efficiently, and the public are confident in the Scheme's administration and achievements. The imposition of a subsistence charge is necessary to recover regulator costs of enforcing the requirements of permits and monitoring plans.

If no statutory provision for a subsistence charge were made:

- Operators may be reluctant to pay a subsistence charge if it is voluntary.
- Regulators would not have the resources required to check that operators are meeting the requirements of the Regulations.
- Regulators would not have resources to undertake enforcement action where monitoring and reporting conditions are not being met.
- Without adequate monitoring and enforcement by the regulators, the scheme is unlikely to operate effectively to promote reductions of carbon dioxide emissions in a cost effective and economically efficient manner. The UK would also not be complying with its obligations under the Emissions Trading Directive.
- There is a risk of financial fraud in estimating emissions and in trading.
- There is a risk of infraction proceedings being brought against the UK if the Directive is not implemented properly.

3. Options

To recover the subsistence costs of regulator activities described above, government and regulators have discussed several options:

1. To fund regulator costs through public funds such as Grant in Aid (GIA);
2. Amend the Regulations to impose a requirement on operators holding a permit to pay a subsistence charge;
3. Amend the Regulations to enable the regulators to develop a charging scheme to cover subsistence charges;
4. Amend the Regulations to impose a requirement on operators holding a permit to pay a subsistence charge, but with express provision for the fees and charges set out in regulation 17 of the Regulations to be superseded by a charging scheme once this is developed by regulators in the future.

Option 4 is the preferred approach for the following reasons:

- While considerable Government funding has been used to establish the Scheme in the UK, the Government does not consider that further Government funds should be used to resource the regulators to perform the tasks discussed above.
- Charging operators is in accordance with Government policy on the polluter pays principle. This approach will be further discussed in the Charging Handbook currently under development by Defra and regulators.

- Government now have a clear indication of the potential subsistence costs of the Scheme and these can be written into the regulations;
- It is desirable in the future for regulators to develop their own charging schemes, subject to certain procedural requirements, to amend the level of fees and charges rather than requiring an amendment of the regulations each time the level of the charge needs to change.

Government proposes to implement option 4 in two stages: a set of amending regulations imposing an obligation on operators of installations to pay a subsistence charge for 2004/05 (as described in this RIA to accompany the amendment) and then a provision for subsistence charges in 2005/06 and subsequent years and for regulators to develop and implement their own a charging scheme.. The next set of regulation amendments will provide for subsequent year subsistence charges and for regulator charging schemes.

In order to determine the level of the subsistence charge to include in the Regulations, Government considered the following options:

1. Equivalent charge for all participants, irrespective of size and scale of emissions
2. A tiered charge that reflects the average effort of administering the Scheme for installations falling into particular bands based on their annual CO₂ emissions (Group A less than 50,000t CO₂ per year, Group B between 50,000 and Group C more than 500,000 tCO₂ per year)
3. Tiered charge which caps the costs for smaller emitters. This approach would reflect a polluter pays principle.

Option 2 was chosen because:

1. An equivalent charge for all participants would not be cost reflective and the smaller installations would be subsidising the costs of the larger installations.
2. The tiered charge which takes into account the differentiated levels of effort required to administer the Scheme for different scales of emitters is deemed to be the most cost reflective approach in line with long established principles of cost reflectivity and cost recovery. These principles have been reaffirmed recently by the joint Defra/Agency Review of Charging, with input from across Government departments⁹.
3. Capping the costs for smaller emitters would not be cost reflective and would mean that larger installations would be subsidising the smaller installations.

4. Benefits

(i) Economic

There are no net economic benefits of this amendment. It simply means that regulators can recover the costs of administering and enforcing the Scheme not

⁹ Some recommendation from the charging review are to be consulted on as part of the Environment Agencies 2005/2006 charging proposals. The first stage of the review has been completed and submitted to Ministers.

already covered by the charges provided for in the Regulations (in relation to applications for permits, variation, transfer and surrender of permits). The resources required to do this are estimated to be £3.8M for the 2004/05 financial year. The proposed option allows this resource required to be paid for by the participants of the Scheme.

The proposed amendment will allow regulators to carry out their duties effectively and therefore the UK will be in compliance with the ETS Directive.

(ii) Environmental

The environmental benefits the Scheme is expected to achieve in the UK in Phase 1 were set out in the UK NAP published in May 2004.¹⁰ It is difficult to quantify what proportion of these emissions reductions will be encouraged through adequate compliance and enforcement by the regulators. However, it is important that there is adequate enforcement of the scheme to ensure it delivers cost effective emissions reductions, and for operators and other market participants to have confidence in the robustness of the enforcement. To carry out proper checks on compliance and enforcement the regulators need to be sufficiently funded.

(iii) Social

The proposed amendment is not expected to cause any social impacts.

5. Costs

(i) Economic

The subsistence charge will cover the following regulator costs of implementing the EU ETS Scheme:

- Direct (or Variable) costs covering items such as
 - Ongoing Inspection/compliance effort
 - Monitoring and Reporting assessment
 - Travel and Subsistence

- Indirect (or “Fixed” costs) covering
 - Accommodation
 - IT support
 - Legal support
 - Head Office Costs
 - Other overheads
 - Current Cost Depreciation
 - Rate of Return
 - Pension costs

Based on the current numbers of installations with GHG Permits: 829 in England and Wales, 119 in Scotland, 91 offshore installations and 30 in Northern Ireland there are 1066 installations, the cost of the one-off review of monitoring and reporting plans is estimated to be £1.1M for 2004/05.

¹⁰ Available at: <http://www.defra.gov.uk/corporate/consult/euetsnap-stagethree/index.htm>

Indirect (“fixed”) costs such as setting up the permitting database system will not vary. Set up costs are fixed at £0.8M.

Annual costs of the compliance and inspection programme will vary depending on the number of installations within the Scheme. These are estimated to be £2M for 2004/05 based on a total of 1060 installations.

The proposed charges in Table 1 have been derived using the principle of cost reflectivity (i.e. the charge reflects the cost of regulatory effort). As regulatory effort is linked to the scale of emissions from the installation and therefore band into which it falls, charges are in turn linked to this. The charges also include consideration of the impact of retail price index.

Table 1: Charge for the financial year 2004/2005

	<i>Amount of annual specified emissions from the installation to which the greenhouse gas emissions permit relates-</i>		
	<i>Less than 50 kilotonnes per year</i>	<i>Between 50 and 500 kilotonnes per year</i>	<i>Greater than 500 kilotonnes per year</i>
Charge	£2,260	£4,470	£8,670

To enable regulators to recover costs for work undertaken in the 2004/2005 financial year, the first subsistence charge is based on recovering the costs that are suitable to be recovered from all EU ETS participants, including those that are (UK ETS) or are intending (CCAs) to opt out of the Scheme. This means that the first year’s charge will recover costs associated with:

- Reviewing monitoring and reporting plans
- Setting up regulator EU ETS teams
- Developing management systems
- Developing guidance and running seminars on monitoring and reporting
- Meeting attendance Emissions Trading Group, Monitoring, Reporting and Verification Group, Working group 3 etc
- System for tracking monitoring and reporting Plans
- General permit changes/updates
- Some inspection and compliance activities - reactive response e.g to check permit scopes rather than M and R, and ensure compliance with temporary exclusion requirements (e.g. that regulators are informed if exclusion is revoked etc).
- Emissions Trading Helpdesk
- Liaison with other competent authorities and territorial authorities
- Policy development

The charges will be based on a financial year starting from 1st April 2004. The first subsistence charge to be invoiced in early 2005 will cover the period 1st April 2004 to 31 March 2005.

The charge will be pro rated for the part of the year that the permit is in place. So if an operator applies part way through the year or a temporary exclusion certificate is revoked, the operator will pay a full application charge with a reduced subsistence charge proportionate to the number of days remaining in that financial year. If a permit is surrendered or revoked, the regulator will refund the relevant proportion of the annual subsistence charge.

(ii) Environmental

No environmental costs are anticipated as a result of this amendment.

(iii) Social

No social costs are anticipated as a result of this amendment.

6. Equity and Fairness

The costs have been calculated on the basis of cost reflectivity i.e. the charge for each band and each year reflects the approximate effort required to administer the requirements of the EU ETS Regulations.

Developing a charging scheme other than on the basis of cost reflectivity could be considered to be inequitable, because some installations would effectively be subsidising another installation's costs. This moves from cost recovery to environmental taxation and is outside the enforcing authorities powers.

7. Consultation with small business: the Small Firms' Impact Test

There are unlikely to be many 'small' businesses with less than 50 employees in the Scheme. Therefore a full impact test has not been carried out. However, in developing the proposed charges careful consideration was given to the possible impact on Small and Medium Sized Enterprises (SME's).

The charges were derived following the application of Treasury guidelines, the polluter pays principle, and the principles of cost recovery and cost reflectivity, within the framework of Community Law. Cost reflectivity means that the regulator's charges should closely reflect the cost of the service provided.

In the case of the EU ETS, the level of regulatory effort needed against the level of emissions and the size of the installation were carefully assessed and considered in developing the charges.

Government concluded that the level of effort associated with the assessment of monitoring and reporting plans increases for installations with higher emissions because they are required to meet more accurate monitoring requirements in accordance with the Commission's M & R Decision. However, other ongoing inspection effort is generally independent of the size or level of emissions. There is generally a fixed level of effort associated with preparation for an inspection, ensuring data submissions have been received and travel time. In addition, the checks required are generally the same regardless of the size of the site or level of emissions.

However, a risk-based enforcement strategy means that larger installations are likely to be inspected more often and therefore this increases the charge for the larger installations.

Government have however taken a number of steps to help minimise the impact on SME's. These include: -

- The charges are flexed according to the regulatory effort, which helps SME's
- Spreading some costs over a three year period helps keep the initial level of charges lower and lessens the initial impact on SME's
- Regulators have proposed a risk-based approach to the compliance activities. Whilst, for example, the time taken for an inspection does not vary with the level of emissions, installations with lower emissions will be inspected less frequently.

8. Competition Assessment

Operators within the EU ETS are aware that they will be charged an annual subsistence charge for their involvement in the EU ETS, in addition to charges for varying, transferring or surrendering permits. This proposal simply establishes the legal basis for this charge and sets out what those charges are likely to be. The partial RIA for the National Allocation Plan contains the full competition assessment for the EU Emissions Trading Scheme.

9. Enforcement and Sanctions

How will the proposal be enforced?

The proposal will be enforced by regulators throughout the UK. Charges will be collected through invoices sent to operators on an annual basis.

Who will enforce this legislation?

Regulators will enforce this legislation – the Environment Agency (England and Wales), Scottish Environment Protection Agency (Scotland), Department of Trade and Industry (off shore installations) and the Chief Inspector (Northern Ireland).

Will the legislation impose criminal sanctions for non-compliance?

Operators holding a greenhouse gas emissions permit will be liable to pay the subsistence charge. If the charge is not paid, the regulator will be able to take action to recover the money as a civil debt or revoke the permit.

10. Monitoring and Review

The regulators will keep the level of charge under review to ensure that the subsistence charges are proportional to the costs of reviewing monitoring and reporting plans, and enforcement of the Scheme.

It is intended that a provision allowing operators to develop a charging scheme will be introduced when further amendments to the regulations are made later in the year.

Provision will be made for the fees in such a charging scheme to supersede those in regulation 17 of the regulations. Any shortfall or surplus in revenue collected by the regulators can be addressed when they develop and implement their own charging schemes.

11. Consultation

i) Within government

DTI, regulators and Devolved Administrations have been involved in developing these proposed subsistence charges.

ii) Public Consultation

Government has consulted on the proposed regulation amendments for 6 weeks. EU ETS participants will be alerted to the details of the charging which will be made available on Defra and the Devolved Administration websites¹¹.

Ministerial approval has been given to reduce the consultation period from the usual 12 weeks to a period of 6 weeks for the following reasons:

- regulators need to be able to start charging subsistence charges by the end of the calendar year in order to recover costs by the end of the financial year
- we have very tight timeframes for implementing the EU ETS in order for it to commence on 1 January 2005
- participants in the EU ETS have been alerted to the need for a subsistence charge and are prepared for consultation on this charge to occur during summer 2004.

12. Summary and Recommendation

Option	Total cost per annum Economic, environmental, social	Total benefit per annum Economic, environmental, social
1 . To seek public comment on the proposed subsistence charges for the EU ETS.	£3.8M	Further details on the costs and benefits of the EU ETS can be found in the Partial Regulatory Impact Assessment prepared for the National Allocation Plan. Available at: http://www.defra.gov.uk/corporate/consult/euetsnap-stagethree/index.htm

¹¹ <http://www.defra.gov.uk/environment/climatechange/trading/eu/index.htm> and www.scotland.gov.uk/climatechange

13. Declaration:

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed by the responsible Minister:

Signed: Elliott Morley

Date: 21st December 2004

Elliott Morley

Minister of State - Minister for Environment and Agri-Environment