

THE UK GREENHOUSE GAS EMISSIONS TRADING SCHEME 2002

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PART A

INTRODUCTION

Citation and purposes of scheme

A1.—(1) This scheme may be cited as the UK Greenhouse Gas Emissions Trading Scheme 2002.

(2) The scheme is made by the Secretary of State for the purposes of—

- (a) achieving reductions in emissions of greenhouse gases in a cost-effective manner;
- (b) facilitating compliance with the UK's obligations under the UN Framework Convention on Climate Change and the Kyoto Protocol; and
- (c) implementing the UK's climate change programme.

Interpretation

A2. Schedule 1 (Interpretation) shall have effect.

Participation in the scheme

A3. A person may participate in the scheme as—

- (a) a direct participant by entering into a direct participant agreement with the Secretary of State and taking on an emissions reduction target in accordance with Part C of this scheme;
- (b) a group participant by entering into a group participant agreement with the Secretary of State and taking on an emissions reduction target in accordance with Part F of this scheme;
- (c) a trading participant by entering into a trading participant agreement and opening a trading account in the Registry in accordance with Part B of this scheme; and
- (d) a CCA participant by submitting a registration form to the Secretary of State in accordance with Part D of this scheme.

PART B

EMISSIONS TRADING REGISTRY

Emissions Trading Registry

B1.—(1) The Secretary of State will establish and maintain an Emissions Trading Registry (“the Registry”).

(2) The Registry will contain a number of accounts which will be used to record the allocation, holding, transfer, cancellation and retirement of allowances.

(3) An allowance for the purpose of the scheme is a unit of account, representing one tonne of carbon dioxide equivalent, which is used for determining compliance with emissions limitation commitments.

The Registry website

B2.—(1) The Registry will be in electronic form and will be accessible through the Registry website.

(2) The Secretary of State will take all reasonable steps to ensure that the Registry website will be available for access 24 hours a day 7 days a week.

(3) The Secretary of State will publish a user manual which may be updated from time to time setting out the detailed procedures for access to and use of the Registry website.

(4) The Secretary of State may suspend access to the Registry website if—

(a) the Secretary of State considers that it is necessary to close or suspend provision of any of the services on the Registry website for the purposes of repair, maintenance, development or any other reason; or

(b) access to the Registry website or operation of the any of the services is interrupted for reasons beyond the control of the Secretary of State.

(5) If the Secretary of State becomes aware that it is necessary to close or suspend access to the Registry for a prolonged period, she will put in place alternative arrangements for dealing with accounts and transactions.

(6) The Secretary of State will not be liable for any loss suffered as a result of the interruption of the Registry website.

Registry accounts

B3.—(1) An allowance will only be allocated or transferred to a person who holds an account in the Registry.

(2) There are the following types of account—

(a) compliance accounts;

(b) trading accounts;

(c) the national cancellation account (see rule B15); and

(d) the national retirement account (see rule B16).

(3) All compliance and trading accounts will be located in either the absolute sector or the relative sector.

Trading accounts

B4.—(1) A direct participant, a CCA participant or a trading participant may open a number of trading accounts in accordance with the procedure set out in the user manual.

(2) A participant opening a trading account may choose whether it is to be located in either the absolute sector or the relative sector but, once an account is opened, the sector in which it is located cannot be changed.

Trading participants

B5. —(1) Any person wishing to open a trading account who is not a direct participant or a CCA participant must apply to enter the scheme as a trading participant.

(2) An application to become a trading participant must be submitted to the Secretary of State in such manner as she may specify together with such information as she may require.

(3) Upon receipt of a complete application under paragraph (2), the Secretary of State will decide whether to enter into a trading participant agreement with that person and the Secretary of State shall inform the applicant of that decision.

Account users

B6.—(1) Once an account has been opened, all transactions and communications in relation to the account will be undertaken by or through either principal account users or secondary account users, appointed in accordance with the user manual.

(2) A participant may change the principal account user or secondary account user for any of his accounts in accordance with the user manual.

Secure area of the Registry website

B7.—(1) Access by account users to the Registry will be provided via the secure area of the Registry website which can only be accessed by users satisfying security checks in accordance with the user manual.

(2) Account users may only access the Registry website using the technology specified in the user manual and are responsible for making sure that their computers and other equipment can be used with the software in operation on the Registry website.

(3) Account users will be provided with security information (user names, passwords etc.) in accordance with the user manual in order to enable them to access the secure area of the Registry website and to undertake transactions in relation to the accounts to which they have access.

(4) Account users must keep all security information provided in relation to their appointed accounts secret and prevent anyone who is not authorised to access the accounts from doing so.

(5) An account user must notify the Secretary of State as soon as possible if he suspects that—

- (a) an unauthorised person knows any of his security information;
- (b) an unauthorised person has tried or intends to access the secure area of the Registry website;
- (c) he has forgotten or lost his security information; or
- (d) any security information has been kept in a form that may be accessible to an unauthorised person.

(6) Until she receives a notification under paragraph (5), the Secretary of State will be entitled to assume that all actions taken in relation to an account via the secure area of the Registry website have been taken by an authorised account user.

(7) The Secretary of State will take all reasonable steps to ensure that unauthorised access to the secure area of the Registry website does not occur.

(8) The Secretary of State may suspend an account user's access to any of the accounts to which he would otherwise have access if the Secretary of State has reason to believe that the account user has—

- (a) failed to comply with paragraph (4) or (5);
- (b) attempted to access accounts which he is not authorised to access;
- (c) attempted to introduce a virus or other harmful programme into the Registry software system or any other files, programmes or records held in the Registry;
- (d) repeatedly attempted to access an account using the wrong security information; or
- (e) otherwise failed to comply with the user manual.

(9) The procedure for lifting a suspension under paragraph (8) will be set out in the user manual.

Account identification and information

B8.(1) The Secretary of State will assign a unique account name and identifying number to each account opened in the Registry.

(2) The account number will include the following information—

- (a) the account type (compliance or trading);
- (b) whether the account is located in the absolute sector or the relative sector; and
- (c) such other information as the Secretary of State determines.

Serial numbers for allocated allowances

B9. Upon the allocation of allowances to a compliance account, the Secretary of State will assign to each allowance a unique serial number that will comprise the following information—

- (a) country of origin (GB for all allowances issued under this scheme);
- (b) Kyoto commitment period (0 for all pre-Kyoto commitment period allowances issued under this scheme);
- (c) unit (a number unique to the allowance for each year in which allowances are allocated under this scheme);
- (d) signifier of the unit type (allowance or credit);
- (e) vintage.

Account balance

B10. The holdings from time to time of allowances in a compliance account or trading account is known as the account balance and will reflect—

- (a) all allowances allocated under rules B12, C5 and D4;
- (b) all changes in allowance holdings as a result of allowance transfers under rule B13;
- (c) all allowances cancelled under rule B15; and
- (d) all allowances retired under rule C7 and D5.

Transaction log

B11. The Secretary of State will publish a transaction log containing the following information in relation to all allowance allocations, transfers, cancellations and retirements—

- (a) date of the transaction;
- (b) the accounts involved in the transaction; and
- (c) serial numbers of the allocated, transferred, cancelled or retired allowances.

Conversion of renewables obligation certificates

B12.—(1) If the registered holder of renewable obligations certificates wishes to convert certificates held by him into allowances, he may do so by following the procedure set out below.

(2) The registered holder must notify the Secretary of State of the request by providing her with the following details—

- (a) the identification number of the certificates in question;
- (b) the number of allowances to which the certificates are equivalent; and
- (c) the details of the account at the Registry into which he would like the equivalent allowances allocated.

(3) The registered holder must submit a request to the Gas and Electricity Markets Authority asking it to substitute the Secretary of State as the registered holder for the certificates in accordance with the relevant order under sections 32 to 32C of the Electricity Act 1989^(a) and, within 5 business days of receiving a notice under paragraph (2), the Secretary of State will submit the relevant request in accordance with the order.

(4) Within 5 business days of receiving notification from the Gas and Electricity Markets Authority that the substitution has taken place, the Secretary of State will request that the certificates be deleted from the relevant register established by the Gas and Electricity Markets Authority.

^(a) 1989 c.29. Section 32 of the Electricity Act 1989 was substituted for the section 32 originally enacted by section 62 of the Utilities Act 2000 (c.27). Sections 32A to 32C of the Electricity Act 1989 were inserted by sections 63 to 65 respectively of the Utilities Act 2000.

(5) Within 5 business days of receiving notification from the Gas and Electricity Markets Authority that the certificates have been deleted, the Secretary of State will allocate allowances into the account specified at the rate of 0.43 allowances for each certificate deleted, rounding down to the nearest whole number.

(6) The Secretary of State will notify the principal account user of the account in accordance with the user manual that the conversion has been completed and of the amount of allowances allocated to the account.

Transfers

B13.—(1) All requests for transfers of allowances must be submitted in accordance with the user manual.

(2) Subject to paragraph (3), a transfer request will be accepted if—

- (a) the information required by the user manual is accurate and complete;
- (b) the transferor account includes sufficient allowances to proceed with the transfer request; and
- (c) neither the transferor account nor the transferee account are for the time being suspended under rule B20, C4 or D7.

(3) In the case of a transfer of allowances from a relative sector account to an absolute sector account, the transfer request will only be accepted if under rule B14(4) the relative sector gateway is open but, if the relative sector gateway is shut for the time being, the transfer request will be rejected unless the person submitting the transfer request has made an election in accordance with the user manual for the transfer request to enter the queuing mechanism under rule B14(8).

(4) Where a transfer request is not accepted because it does not satisfy any of the requirements of paragraphs (2) and (3), the person submitting the request will be notified in accordance with the user manual.

(5) Once a transfer request has been accepted by the Registry, the transfer will be completed automatically in accordance with the user manual by the deletion of each transferred allowance from the transferor account and the allocation of that allowance to the transferee account in accordance with the details in the transfer request.

(6) When completing a transfer under paragraph (5), allowances will be deleted and allocated in the following order (unless otherwise specified in the transfer request)—

- (a) allowances from the earliest vintage first; and
- (b) within vintages, in the order in which the allowances were allocated or transferred into the transferor account beginning with the latest allocated or transferred.

(7) Completion of the transfer takes place when the relevant entries appear in the accounts of both the transferor and the transferee.

(8) Each party to a transfer will be notified of the completion of the transfer in accordance with the user manual.

Relative sector gateway

B14.—(1) The relative sector gateway (“the gateway”) will operate on the principle that there will be no net transfer of allowances out of the relative sector into the absolute sector.

(2) Transfers of allowances from relative sector accounts into absolute sector accounts will only be completed when the gateway is open.

(3) The Registry software will monitor all transfers into and out of the relative sector and cumulative figures will be maintained for (A) the total quantity of allowances transferred from absolute sector accounts to relative sector accounts and (B) the total quantity of allowances transferred from relative sector accounts to absolute sector accounts.

(4) The gateway will be open when the total quantity of allowances transferred from absolute sector accounts to relative sector accounts is greater than the total quantity of allowances transferred from relative sector accounts to absolute sector accounts (i.e. when A exceeds B).

(5) The gateway will close when the total quantity of allowances transferred from absolute sector accounts to relative sector accounts is equal to the total quantity of allowances transferred from relative sector accounts to absolute sector accounts (i.e. when A equals B).

(6) The following information about the status of the gateway will appear on the Registry website—

- (a) whether the gateway is open or closed;
- (b) if open, the maximum number of allowances which can be transferred through it before it closes;
- (c) if closed, the total number of allowances in the transfer requests in the queuing mechanism.

(7) While the gateway is closed—

- (a) no further transfers from relative sector accounts to absolute sector accounts will be completed;
- (b) requests to transfer will enter the queuing mechanism under paragraph (8) if the transferor made the appropriate election when submitting the transfer request; and
- (c) if no such election was made, the transfer request will be rejected and the transferor notified.

(8) The queuing mechanism will operate in the following way—

- (a) subject to the queuing process set out in the user manual, all pending transfer requests will be processed in the order in which they were submitted;
- (b) the principal or secondary account user of the transferor account will be notified of—
 - (i) the transfer request's place in the queue;
 - (ii) the total number of allowances involved in the transfer requests which are to be processed ahead of it in the queue; and
 - (iii) the time and date at which the gateway was closed.

(9) Subject to paragraph (11), transfer requests which are in the queue but have not been processed may be withdrawn at any time in accordance with the user manual.

(10) If the gateway is open and a transfer request from a relative sector account to an absolute sector account (including a transfer request in the queuing mechanism) would if completed trigger the closure of the gateway in accordance with paragraph (5), a partial transfer of exactly the number of allowances which triggers closure under that paragraph will be accepted, provided the transferor made the appropriate election when submitting the transfer request but not otherwise.

(11) Once a transfer has been split under paragraph (10), the remainder of the transfer request may not be withdrawn (other than in exceptional circumstances in accordance with the user manual with the agreement of the Secretary of State).

National cancellation account

B15.—(1) The Secretary of State will establish a national cancellation account which will hold all allowances cancelled by participants under this rule.

(2) All cancellation requests must be submitted in accordance with the user manual.

(3) Subject to rule B18, an allowance which has been transferred into the national cancellation account cannot be subject to any further transaction.

National retirement account

B16.—(1) The Secretary of State will establish a national retirement account which will hold all allowances retired under rule C7 and D5.

(2) Only the Secretary of State may transfer allowances into the national retirement account.

(3) Subject to rule B18, an allowance which has been transferred into the national retirement account cannot be subject to any further transaction.

Banking

B17.—(1) All allowances (other than those which have been retired or cancelled) will be carried over from one commitment year to the next and, at the end of the commitment period, will be carried over until the process set out in paragraph (2) is carried out.

(2) After 31st March 2007, but no later than 31st December 2007—

(a) any allowances held by a direct participant in—

(i) his compliance account after the final reconciliation process is completed; and

(ii) any trading account of his at the final reconciliation deadline

will be dealt with in accordance with paragraph (3);

(b) any allowances held by a trading participant at the final reconciliation deadline will be dealt with in accordance with paragraph (5); and

(c) any allowances held by a CCA participant will be dealt with in accordance with rule D7.

(3) Allowances falling within paragraph (2)(a) will—

(a) up to the unrestricted banking limit (calculated in accordance with paragraph (4)), be carried over into the first Kyoto Protocol compliance period^(a) in an account in the national registry ^(b); and

(b) in excess of the limit, be carried over as described in sub-paragraph (a) subject to a banking restriction imposed by the Secretary of State.^(c)

(4) The unrestricted banking limit under paragraph (3) equals the net amount by which the participant has reduced his emissions beyond his annual targets over the commitment period calculated as follows:

$$tA - tC - tVE$$

where—

tA is the total number of allowances allocated to the participant over the commitment period;

tC is the net adjustment under Schedule 3 in allowances resulting from any changes; and

tVE is the total of the direct participant's verified emissions over the commitment period.

(5) Allowances falling within paragraph (2)(b) will be carried over into the first Kyoto Protocol compliance period in an account in the national registry subject to a banking restriction imposed by the Secretary of State^(d).

(6) Any allowances carried over under paragraphs (1), (3) and (5) will either maintain their original serial numbers or will be exchanged for first Kyoto Protocol Commitment Period serial numbers on a like for like basis.

Correction of account errors

B18.—(1) The Secretary of State may correct any error or omission in any account in relation to the allocation, transfer, retirement or cancellation of allowances.

(2) Participants must notify the Secretary of State as soon as possible if they find any error, omission, failure or delay in relation to the allocation, transfer, retirement or cancellation of allowances.

^(a) A five year period starting on 1st January 2008.

^(b) The Secretary of State will issue guidance on the future form of the national registry no later than 31st December 2005.

^(c) The restriction will operate by cancelling a percentage of the allowances eligible to be carried over. The exact percentage will be announced by the Secretary of State no later than 31st December 2005.

^(d) See footnote (c).

(3) If the Secretary of State makes a correction under paragraph (1), she will notify the concerned participants and account users of the correction, giving her reasons.

(4) If a participant or account user who is aggrieved by a correction makes representations within 5 days of receipt of a notice under paragraph (3) to the Secretary of State, she will reconsider the correction and will notify the concerned participants and account users of the result of her reconsideration, giving her reasons.

Closure of trading accounts

B19.—(1) A principal account user or secondary account user may instruct the Secretary of State to close a trading account in accordance with the user manual if there are no allowances held in the account at that time.

(2) If a trading account—

- (a) has not held any allowances since it was opened and shows no activity for a period of 12 months or more; or
- (b) does not hold any allowances and shows no activity for a period of 30 months or more,

the Secretary of State will notify the relevant participant and the principal account user of her intention to close the account and will close the account unless a valid transfer request is made to transfer allowances into the account or the participant or principal account user demonstrates to the Secretary of State's satisfaction a good reason why the inactive account should not be closed.

(3) Where under the terms of a trading participant agreement or direct participant agreement, the Secretary of State may terminate such agreement for reasons of insolvency or for any other reason, the Secretary of State may and without further notice to the participant—

- (a) access any trading account held in his name in order to transfer allowances to another account (including the national cancellation account); and
- (b) close or suspend or suspend in part any trading account held in his name,

in accordance with the terms of such agreement.

Suspension of trading accounts

B20.—(1) The Secretary of State may suspend any trading account if—

- (a) the participant (or any of his directors, partners or controllers) is subject to an ongoing investigation relating to finance and markets or the formation and activities of a body corporate or other business or professional entity by any authority which may lead to conviction, or a legal or regulatory sanction, for an offence or other act involving fraud, dishonesty or professional misconduct;
- (b) the Secretary of State has reason to believe that the participant or one of the account users with access to the account in question has failed to comply with any of the rules in this Part (including in particular rule B7(4) or (5)); or
- (c) the Secretary of State has reason to believe that an unauthorised person may attempt to access the account (for example where notified under rule B7(5)).

(2) A suspension imposed under paragraph (1) will continue until the Secretary of State is satisfied that—

- (a) in a case falling within paragraph (1)(a), there is no continuing risk to the integrity of the scheme (for example if the person under investigation were to be acquitted);
- (b) in a case falling within paragraph (1)(b), the failure to comply has been remedied and is not likely to recur; or
- (c) in a case falling within paragraph (1)(c), there is no further risk of unauthorised access to the account (for example when the security information relating to the account user and, if necessary, all account users with access to the account has been changed and all relevant parties notified).

(3) Subject to paragraph (4), the effect of suspending a trading account under paragraph (1) is that no transfers may be made into or out of the account until the suspension is lifted.

(4) The Secretary of State may upon receipt of an application made in accordance with the user manual allow transfers from any suspended trading account of a direct participant or a CCA participant to be made to his compliance account.

PART C

DIRECT PARTICIPANTS

Benefits

C1.—(1) Subject to rules C3 and G1, the Secretary of State will in respect of each commitment year—

- (a) make an incentive payment to each direct participant calculated in accordance with rule C2; and
- (b) allocate allowances to his compliance account in accordance with rule C5;

if the conditions specified in paragraph (2) are fulfilled in relation to that year.

(2) The conditions are that on the reconciliation deadline for the relevant year the direct participant—

- (a) complies with his annual emissions limitation commitment under rule C6(1);
- (b) complies with his obligations under rule C8; and
- (c) is a party to a valid and continuing direct participant agreement.

Incentive payments

C2.—(1) The amount of a direct participant's incentive payment for any commitment year will be equal to the clearing price multiplied by his annual target for that year.

(2) The payment will be made within 28 days of the direct participant submitting a verification opinion to the Secretary of State but not before the first banking day after the reconciliation deadline.

Repayment of incentive payments

C3.—(1) Any direct participant whose total verified emissions during the commitment period exceed the total of—

- (a) the number of allowances retired from his compliance account prior to the final reconciliation deadline; plus
- (b) the allowances held in his compliance account on that deadline,

shall forthwith repay with interest any incentive payments which he has received from the Secretary of State and any such payment will be recoverable as a civil debt.

(2) Compliance with paragraph (1) will be assessed by the Secretary of State on the final reconciliation deadline.

(3) Subject to paragraph (4), any direct participant withdrawing from the scheme or ceasing for whatever reason to be a direct participant before the termination date shall be liable to repay with interest any incentive payments which he has received from the Secretary of State and any such payment will be recoverable as a civil debt.

(4) Where a direct participant's targets are reduced in accordance with Schedule 3 as a result of a joint-venture partner withdrawing consent for the inclusion of a source in the scheme, the direct participant shall be liable to repay with interest the corresponding proportion of any incentive

payments which he has received from the Secretary of State, calculated in accordance with paragraph (5) and any such payment shall be recoverable as a civil debt.

(5) The amount to be repaid (A) under paragraph (4) is the result of the following calculation—

$$A = \frac{B_S \times I_P}{B_O}$$

Where—

B_S is the figure for the baseline emissions of the source for which consent has been withdrawn;

I_P is the total amount of incentive payments received by the participant prior to the withdrawal;

B_O is the participant's baseline prior to the withdrawal;

(5A) Where a direct participant's source list is amended in accordance with Schedule 3 as a result of the removal of an incorrectly included source, the direct participant shall be liable to repay with interest the corresponding proportion of any incentive payments which he has received from the Secretary of State, calculated in accordance with paragraph (5B) and any such payment shall be recoverable as a civil debt.

(5B) The amount to be repaid (A) under paragraph (5A) is the result of the following calculation—

$$A = \frac{B_S \times I_P}{B_O}$$

Where—

B_S is the figure for the baseline emissions of the source for which was incorrectly included;

I_P is the total amount of incentive payments received by the participant prior to the withdrawal;

B_O is the participant's baseline prior to the incorrect inclusion;

(5C) Paragraph 7(5)(a) of Schedule 2 shall apply to determine whether a source has been incorrectly included for the purposes of paragraphs (5A) and (5B).

(6) Interest is payable on any incentive payment to be repaid under this rule—

- (a) from the date on which the incentive payment was made by the Secretary of State until payment;
- (b) at an annual interest rate equal to the daily rate of 1 per cent above the BBA Sterling one month LIBOR rate, as published in the Financial Times on the first business day of the month; and
- (c) computed on the basis of the actual number of days elapsed.

Compliance accounts

C4.—(1) The Secretary of State will open a compliance account for each direct participant on the basis of information provided by the direct participant and such other information as the Secretary of State may reasonably require.

(2) Only one compliance account will be opened for each direct participant.

(3) Only allowances held in a direct participant's compliance account will be used to assess compliance with his annual emissions limitation commitments under rule C6(1).

(4) The compliance accounts of direct participants will be located in the absolute sector.

- (5) The Secretary of State may suspend the compliance account of a direct participant if—
- (a) the participant (or any of his directors, partners or controllers) is subject to an ongoing investigation by any authority which may lead to conviction, or a legal or regulatory sanction, for an offence or other act involving fraud, dishonesty or professional misconduct relating to finance and markets or the formation and activities of a body corporate or other business or professional entity;
 - (b) the Secretary of State has reason to believe that the participant or one of the account users with access to the account in question has failed to comply with any of the rules in this Part, including in particular rule B7(4) or (5); or
 - (c) the Secretary of State has reason to believe that an unauthorised person may attempt to access the account (for example where notified under rule B7(5)).
- (6) A suspension imposed under paragraph (5) will continue until the Secretary of State is satisfied that—
- (a) in a case falling within paragraph (1)(a), there is no continuing risk to the integrity of the scheme (for example if the person under investigation were to be acquitted);
 - (b) in a case falling within paragraph (1)(b), the failure to comply has been remedied and is not likely to recur; or
 - (c) in a case falling within paragraph (1)(c), there is no further risk of unauthorised access to the account (for example when the security information relating to the account user and, if necessary, all account users with access to the account has been changed and all relevant parties notified).
- (7) The effect of suspending an account under paragraph (5) will be that—
- (a) subject to paragraph (8), no allowances can be transferred into or out of the account in question until the suspension is lifted; and
 - (b) allowances may be retired from the account as part of the reconciliation process described in rule C6.
- (8) The Secretary of State may upon receipt of an application made in accordance with the user manual allow transfers to be made into a suspended compliance account.
- (9) Where under the terms of a direct participant agreement, the Secretary of State may terminate the agreement for reasons of an insolvency event or for any other reason, the Secretary of State may without notice to the participant—
- (a) access any compliance account held in his name in order to transfer allowances to another account (including the national cancellation account); and
 - (b) close or suspend or suspend in part any compliance account held in his name,
- in accordance with the terms of such agreement.

Allowances

C5.—(1) Allowances will be allocated to a direct participant on or before the following date—

- (a) in the first commitment year, the later of—
 - (i) 1st April 2002 or
 - (ii) 15 days after the direct participant submits a verification opinion in respect of his original baseline in accordance with Part 3 of Schedule 2; and
- (b) in subsequent commitment years, 15 days after he submits a verification opinion in respect of his annual emissions in accordance with Part 3 of Schedule 2.

(2) Subject to paragraph 2A and rule C6(4) and (5), the number of allowances allocated to the participant will be equal to his verified baseline minus (his annual target multiplied by the appropriate multiplier for the relevant commitment year shown in the following Table), rounded to the nearest whole number.

TABLE

| <i>Commitment Year</i> | <i>Multiplier</i> |
|------------------------|-------------------|
| 2002 | 1 |
| 2003 | 2 |
| 2004 | 3 |
| 2005 | 4 |
| 2006 | 5 |

(2A) Where, in 2005 or 2006—

(a) a direct participant's source list contains a source in respect of which a certificate of temporary exclusion has been served under regulation 11 of the Greenhouse Gas Emissions Trading Scheme Regulations 2005^(a) or an equivalent provision in any superseding legislation, and the certificate is in force; and

(b) the Secretary of State has made her decision under sub-paragraph (1)(b) of regulation 19 of the Greenhouse Gas Emissions Trading Scheme Regulations 2003^(b),

the number of allowances to be allocated to the participant in respect of that source shall be calculated in accordance with the methodology set out in the document, "UK application to provide for temporary exclusion from the EU Emissions Trading Scheme for Direct Participants in the UK Emissions Trading Scheme" as revised in May 2004, as read with paragraph (2) of this rule.

(2B) Where, in 2005 or 2006—

(a) a direct participant's source list contains a source in respect of which a certificate of temporary exclusion has been served under regulation 11 of the Greenhouse Gas Emissions Trading Scheme Regulations 2005 or an equivalent provision in any superseding legislation; and

(b) the Secretary of State has made her decision under sub-paragraph (1)(b) of regulation 19 of the Greenhouse Gas Emissions Trading Scheme Regulations 2003 after allowances have been allocated in accordance with paragraph (2),

the Secretary of State shall cancel allowances from the compliance account of the participant in question equivalent to the difference between the number of allowances allocated and the number of allowances that would have been allocated in accordance with paragraph (2A) had paragraph (2A) applied at the time of allocation.

(2C) If, in relation to any direct participant, the Secretary of State is unable to comply with paragraph (2B) due to there not being sufficient allowances in the participant's compliance account, she shall notify the participant of—

(a) the number of allowances that she was required to cancel under paragraph (2B);

(b) the number of allowances that she has cancelled under paragraph (2B); and

(c) the number of outstanding allowances.

(2D) A direct participant shall cancel the number of outstanding allowances within 21 days of the Secretary of State sending a notice to him under paragraph (2C).

(2E) If a direct participant fails to comply with paragraph (2D), the direct participant shall be deemed to have failed to comply with his emissions limitation commitment as set out in rule C6(1) for that commitment year, and his excess emissions for the purpose of rule C6 shall be increased by the number of outstanding allowances.

(2F) For the purposes of this rule, "outstanding allowances" means the number of allowances that the Secretary of State is obliged to cancel under paragraph (2B) in relation to a direct

^(a) S.I. 2005/925.

^(b) S.I. 2003/3311. These Regulations have been revoked, save that regulation 19(1) shall continue to apply until the obligations under that regulations are fulfilled in respect of the period 2005-2007 – see regulation 47 of the Greenhouse Gas Emissions Trading Scheme Regulations 2005 (S.I. 2003/3311).

participant minus the number of allowances cancelled under both paragraphs (2B) and (2D) in relation to that participant.

(3) Allowances may also be allocated to a direct participant following acquisition of a source (including a substitute source in accordance with Part 1 of Schedule 3).

(4) Any allowance allocated to the participant under this rule will be allocated to his compliance account.

Annual emissions limitation commitment

C6.—(1) A direct participant shall ensure that for any commitment year his reconciliation balance for that year is equal to or greater than his verified emissions during that year.

(2) The reconciliation process set out in rule C7 will be carried out in order to assess whether a direct participant has complied with his emissions limitation commitment under paragraph (1).

(3) If a direct participant fails to comply with paragraph (1)—

- (a) for a commitment year beginning prior to the coming into force of legislation which provides a statutory basis for financial penalties for non-compliance with the scheme, paragraph (4) shall apply; and
- (b) for a commitment year beginning after the coming into force of legislation which provides a statutory basis for financial penalties for non-compliance with the scheme, paragraph (5) shall apply.

(4) In any case falling within paragraph (3)(a)—

- (a) the Secretary of State will not make any incentive payment to the participant for the commitment year in question; and
- (b) the number of allowances which will be allocated to the participant's compliance account under rule C5 for the following commitment year will be reduced by 1.3 allowances for each tonne of excess emissions as defined in paragraph (6), rounding to the nearest whole number any calculation which does not result in a whole number.

(5) In any case falling within paragraph (3)(b)—

- (a) the Secretary of State will not make any incentive payment to the participant for the commitment year in question;
- (b) the participant will pay the Secretary of State a financial penalty of £30 for each tonne of excess emissions as defined in paragraph (6); and
- (c) the number of allowances which will be allocated to the participant's compliance account under rule C5 for the following commitment year will be reduced by one allowance for each tonne of excess emissions as defined in paragraph (6).

(6) For the purpose of paragraphs (5) and (6), a direct participant's excess emissions will be the amount in tonnes of carbon dioxide equivalent of verified emissions, during the year for which compliance with paragraph (1) is being assessed, for which allowances were not retired under rule C7.

(7) Any financial penalty incurred under paragraph (5)(b) will be payable to the Secretary of State from the date on which the reconciliation process is completed for the commitment year in question, together with interest running from that date.

(8) Interest is payable on any financial penalty under paragraph (7)—

- (a) from the date on which the reconciliation process was completed;
- (b) at an annual interest rate equal to the daily rate of 1 per cent above the BBA Sterling one month LIBOR rate, as published in the Financial Times on the first business day of the month; and
- (c) computed on the basis of the actual number of days elapsed.

Reconciliation process

C7.—(1) An allowance will only be valid for the purpose of assessing compliance with rule C6(1) under this rule if it has a vintage which is either earlier than or the same year as the commitment year for which compliance is being assessed.

(2) The total quantity of valid allowances held in the compliance account of each direct participant at the reconciliation deadline (“the reconciliation balance”) will be calculated as soon as practicable after the earlier of the date of delivery of the participant’s verification opinion under Part 3 of Schedule 2 or the reconciliation deadline.

(3) If in any year access to the Registry is suspended under rule B2(4) for more than 8 consecutive hours during the 30 day period prior to the reconciliation deadline, the reconciliation deadline will be delayed by twice the duration of the suspension.

(4) The Secretary of State will notify each direct participant of his reconciliation balance once it has been calculated.

(5) As soon as practicable after he has both calculated a direct participant’s reconciliation balance and received a verification opinion from that direct participant, the Secretary of State will reconcile the holdings of valid allowances in the participant’s compliance account against his verified emissions by retiring allowances in accordance with paragraphs (6) to (8).

(6) The Secretary of State will retire allowances in the following order—

- (a) allowances from the earliest vintage first; and
- (b) within vintages, in the order in which they were allocated or transferred into the compliance account beginning with the earliest allocated or transferred.

(7) The Secretary of State will transfer all allowances which she retires to the national retirement account.

(8) The Secretary of State will retire allowances until either the number of allowances retired is equal to the total verified emissions for the relevant compliance period or until no more valid allowances remain in the compliance account.

(9) If the reconciliation balance of a direct participant is equal to or exceeds his total verified emissions, the Secretary of State will notify the direct participant that he is in compliance with his emissions limitation commitment under rule C6(1).

(10) If the total verified emissions of a direct participant exceed the final compliance account balance, the Secretary of State will notify the direct participant that he is not in compliance with his emissions limitation commitment under rule C6(1) and rule C6(3) will apply.

Monitoring, reporting and verification

C8. For each commitment year, a direct participant must—

- (a) submit a duly completed verification opinion for his annual emissions in accordance with Part 3 of Schedule 2 on or before the reconciliation deadline;
- (b) comply with the other requirements of Schedule 2 (monitoring, reporting and verification); and
- (c) comply with the requirements of Schedule 3 (changes of operation and source list errors).

Failure to submit a verification opinion

C9.—(1) Where a direct participant has not complied with the requirements of rule C8 but—

- (a) the only failure consists of a delay in submitting a verification opinion for that commitment year;
- (b) the direct participant has by the reconciliation deadline notified the Secretary of State that the reason for the delay is the occurrence of a force majeure event or there is some other good explanation for the delay and provided her with satisfactory evidence in support; and

(c) the direct participant has since submitted the verification opinion, then he will be treated as if he had complied with those requirements.

(2) In any case falling within paragraph (1)—

(a) allowances will be allocated under rule C5(1) within 15 days; and

(b) any incentive payment will be paid under rule C2(2) within 28 days, after receipt by the Secretary of State of the participant's verification opinion.

(3) If a participant fails to comply with rule C8(a) and it is not a case falling within paragraph (1) of this rule,

(a) no allowances will be allocated to the participant for the next commitment year under rule C5(2);

(b) the reconciliation process in rule C7 will be carried out, and rule C6(3) to C6(7) shall apply, as if the participant's verified emissions for the commitment year in question were equal to his baseline, except that any reduction under rule C6(4)(b) or C6(5)(c) will be applied to the current balance of the participant's compliance account.

(4) Where a direct participant is only able to submit a qualified verification opinion in relation to its baseline or annual emissions, due to inadequate or incomplete emissions data for any of his sources in the case of a force majeure event or for any other reason, the Secretary of State may—

(a) treat the participant as having complied with rule C8(a);

(b) reduce the allocation of allowances to the participant by an amount not exceeding the baseline emissions of the relevant source; and

(c) reduce the incentive payments to the participant by a fraction not exceeding (the baseline emissions of the relevant source divided by the participant's baseline).

Other failures to comply with monitoring, reporting and verification requirements

C10.—(1) If in any commitment year a direct participant fails to comply with rule C8(b) or (c), the Secretary of State may take any of the following steps—

(a) declare that the participant's statement of emissions or verification opinion for that commitment year is invalid in whole or in part;

(b) withhold or delay in whole or in part any incentive payment to the participant;

(c) withhold or delay in whole or in part the allocation of any allowance to the participant;

(d) require the participant to amend his source list, baseline and targets, and make any associated transfer or cancellation of allowances, in accordance with Schedule 3.

(2) In deciding how to exercise her powers under paragraph (1), the Secretary of State will have regard to the nature and seriousness of the failure to comply, taking into account the purposes of the scheme.

(3) Where the Secretary of State considers that a participant has failed to comply with rule C8(b) or (c), she will serve a notice on the participant—

(a) identifying the obligation which she considers has not been complied with;

(b) setting out her reasons; and

(c) setting out the action she is minded to take under paragraph (1).

(4) Where a participant is aggrieved with a notice from the Secretary of State under paragraph (3), the participant may invoke the dispute resolution procedure in Schedule 4.

PART D

CCA PARTICIPANTS

Introduction

D1.—(1) This part of the scheme sets out the way in which operators and sector associations may participate in emissions trading for the purposes of their umbrella and underlying agreements.

(2) In particular—

- (a) rule D2 sets out the registration procedure to be followed by an operator or a sector association wishing to become CCA participants;
- (b) rule D3 explains how compliance accounts will be opened for CCA participants;
- (ba) rule D3A sets out the requirements in cases of an EU ETS overlap
- (c) rule D4 sets out the circumstances in which allowances will be allocated to a CCA participant and the procedures for making the appropriate adjustment to the relevant CCA target;
- (d) rule D5 sets out the circumstances in which allowances will be retired from the compliance account of a CCA participant and the procedures for making the appropriate adjustment to the relevant CCA target;
- (e) rule D6 sets out the circumstances in which allowances held in the accounts of a CCA participant will be carried over into the first Kyoto Protocol commitment period;
- (f) rule D7 sets out the rules for suspending compliance accounts of a CCA participant;
- (g) rule D8 sets out the circumstances in which a CCA participant may cease to be a participant in the scheme; and
- (h) rule D9 explains how the scheme applies to agreements falling within paragraph 47 of Schedule 6 to the Finance Act 2000.(a)

(3) An operator may participate in this scheme in relation to any target unit listed in an underlying agreement to which it is a party, other than target units which form part of a trading group.

(4) A sector association may participate in this scheme in relation to any target unit which forms part of a trading group whose identity is provided for in an umbrella agreement to which it is a party.(b)

(5) For the purposes of this scheme, a “CCA participant” means—

- (a) an operator which has submitted a duly completed registration form under rule D2(1); or
- (b) a sector association which has submitted a duly completed registration form under rule D2(3).

Registration

Operators

D2.—(1) An operator who wishes to become a CCA participant must submit a registration form to the Secretary of State in such manner as she may specify together with—

- (a) the target unit identifiers for all target units listed in the underlying agreement in relation to which the operator wishes to participate in the scheme; and
- (b) the operator’s consent to the publication of the information set out in rule G2(2) and (3A);
- (c) such other information as the Secretary of State may reasonably require.

(a) The remainder of this part has been drafted on the basis that the majority of CCA participants will be participating in respect of combinations of umbrella and underlying agreements falling within paragraph 48 of Schedule 6 to the Finance Act 2000.
(b) An umbrella agreement may not provide for the identification of more than one trading group.

(2) If an operator is a party to underlying agreements which apply to facilities identified in more than one umbrella agreement, paragraph (1) must be complied with in respect of each umbrella agreement.

Sector associations

(3) A sector association who wishes to become a CCA participant must submit a registration form to the Secretary of State in such manner as she may specify together with—

- (a) the target unit identifiers for the facilities in the trading group;
- (b) the consents necessary to vary the relevant umbrella agreement to provide for trading by the trading group;
- (c) the sector association's consent to the publication of the information set out in rule G2(2) and (3A); and
- (d) such other information as the Secretary of State may reasonably require.

(4) A sector association may only participate in relation to more than one trading group if it is party to more than one umbrella agreement and each agreement provides for the identification of a trading group. In such a case, paragraph (3) must be complied with in respect of each trading group.

Compliance accounts

Operators

D3.—(1) Compliance accounts for operators will be opened in accordance with this rule on the basis of information provided in the registration form under rule D2(1) and any other information which the Secretary of State may reasonably require.

(2) A separate compliance account will be opened for each target unit identified under paragraph D2(1) and the account will be linked to the target unit for the purposes of this part of the scheme.

(3) A compliance account linked to a target unit with an absolute CCA target will be located in the absolute sector.

(4) The compliance account linked to a target unit with an relative CCA target will be located in the relative sector.

(5) Where an operator applies to vary the CCA target of a target unit linked to a compliance account under the terms of the relevant underlying agreement from an absolute to a relative CCA target or vice versa, the operator must provide the Secretary of State with details of the compliance account at the time of its application and must transfer any allowances from that account into another account in the Registry.

(6) The Secretary of State will not approve any application referred to in paragraph (5) until all allowances have been transferred out of the compliance account linked to the target unit whose target is the subject of the application.

(7) Where an application referred to in paragraph (5) is approved, the existing compliance account will be closed and a new compliance account linked to the target unit will be opened in the same sector as the new target.

Sector associations

(8) Compliance accounts for sector associations will be opened in accordance with this rule on the basis of the information provided in the registration form under rule D2(3) and any other information which the Secretary of State may reasonably require.

(9) A single compliance account will be opened for each trading group on whose behalf the sector association is participating.

(10) The compliance account of a sector association will be located in the relative sector.

EU-ETS overlap

D3A.—(1) This rule applies in the case of any facility where (and to the extent that)—

- (a) any Schedule 1 activity takes place within that facility; or
- (b) that facility imports—
 - (i) heat or electricity from a separate combined heat and power plant; or
 - (ii) steam from a separate boiler,where that plant or boiler undertakes a Schedule 1 activity,

(these cases, or any combination of them at the same facility, being an “EU ETS overlap”).

Notification of EU ETS overlap

(2) For each facility falling within this rule—

- (a) in a case falling within rule D1(3), the operator; or
- (b) in a case falling within rule D1(4), the sector association,

shall, in respect of each scheme year specified in the table below, provide the Secretary of State with the notification required by paragraph (3) on or by the notification deadline—

| <i>Scheme year</i> | <i>Notification deadline</i> |
|--------------------|------------------------------|
| 2007 | 7 February 2009 |
| 2009 | 7 February 2011 |

(3) The notification consists of confirmation of—

- (a) the EU ETS overlap; and
- (b) any—
 - (i) EU ETS overachievement; or
 - (ii) EU ETS underachievement,

in accordance with Schedule 5A.

(4) For the purpose of paragraph (3)(b)—

- (a) an EU ETS overachievement occurs where reportable emissions from the Schedule 1 activity are less than the number of attributable EU ETS allowances; and
- (b) an EU ETS underachievement occurs where reportable emissions from the Schedule 1 activity are greater than the number of attributable EU ETS allowances,

where the attributable EU ETS allowances are those EU ETS allowances allocated to the relevant EU ETS installation for the scheme year in question and which are attributable to the Schedule 1 activity taking place within the facility concerned or, in a case falling under paragraph (1)(b), to the relevant import.

Reserve powers of Secretary of State

(5) The Secretary of State may require the operator or sector association to—

- (a) obtain a verification opinion in respect of its notification; or
- (b) review or amend its notification.

Effect of notification

(6) Paragraphs (7) to (9) apply for the purpose of adjusting the CCA target or trading group target applying to the facility in question so that the target takes account of any EU ETS overachievement or EU ETS underachievement notified.

(7) In the case of an EU ETS overachievement, except where the operator or the sector association has already retired a number of EU ETS allowances at least equal to the overachievement, the notification shall, for the purpose of the emissions trading provisions of—

- (a) the underlying agreement which applies to the facilities making up the relevant target unit at the time of the adjustment; or
- (b) the umbrella agreement which provides for the identification of the relevant trading group at the time of the adjustment,

be deemed to be the transfer from that target unit or trading group target of an equivalent number of carbon emission allowances, in accordance with a trading scheme established by the Secretary of State which applies to the relevant agreement, and the number of allowances deemed to have been transferred shall constitute a negative balance in relation to that target unit or trading group.

(8) In cases of an EU ETS underachievement, the notification shall, for the purposes set out in paragraphs (7)(a) and (b), be deemed to be the transfer to that target unit or trading group target of an equivalent number of carbon emission allowances, in accordance with a trading scheme established by the Secretary of State which applies to the relevant agreement, and the number of allowances deemed to have been transferred shall constitute a positive balance in relation to that target unit or trading group.

(9) Where a notification is amended, that amendment shall be deemed to be the transfer of the commensurate number of carbon emission allowances to reflect the amendment, in accordance with the principles of paragraphs (7) and (8).

Guidance

(10) The operator or sector association shall have regard to any guidance issued by the Secretary of State in respect of the application of this rule.

Interpretation

(11) For the purposes of this rule and Schedule 5A—

- (a) “EU ETS installation” is an “installation” within the meaning of regulation 2(1) of the Greenhouse Gas Emissions Trading Scheme Regulations 2005(a); and
- (b) “reportable emissions” and “scheme year”, have the meaning set out in that regulation..

Allocation of allowances for over-achievement of CCA targets

D4.—(1) A CCA over-achievement which occurs in relation to an operator or a trading group may be converted into allowances in accordance with this rule.

(2) For the purpose of this rule, “a CCA over-achievement” occurs when—

- (a) in relation to an operator, the carbon emitted or energy used by a target unit during a target period is less than the CCA target (as adjusted in accordance with rule D3A(7) to (9))for that target unit; and
- (b) in relation to a trading group, the carbon emitted or energy used by the facilities which comprise that trading group during a target period is less than the trading group target. (as adjusted in accordance with rule D3A(7) to (9))

Operators

(3) If—

- (a) a CCA over-achievement occurs in relation to a target unit;
- (b) the operator of the target unit was a CCA participant in respect of the target period in which the over-achievement occurred;
- (c) a compliance account has been opened and linked to that target unit under rule D3; and
- (d) the operator has complied with the notification requirements in paragraph (5);

(a) S.I. 2005/925.

the notification of the over-achievement will, for the purpose of the emissions trading provisions of the underlying agreement which applies to the facilities making up that target unit, be deemed to be the transfer of carbon emission allowances from that target unit in accordance with a trading scheme established by the Secretary of State which applies to that agreement and the number of allowances so reported shall be deemed to be a negative balance in relation to that target unit.

(4) Where—

- (a) the conditions specified in paragraph (3)(a), (b), (c) and (d) are satisfied; and
- (b) the operator has complied with the application procedure under paragraph (7) and, where it is relevant, the notification procedure under rule D3A(2) and (3)

the Secretary of State will within 15 days of receiving the application either allocate the appropriate number of allowances to the compliance account linked to the target unit to which the over-achievement related or, if she reasonably considers that the CCA over-achievement has not been adequately demonstrated, require the operator to provide such further information in support of his claim as she may specify.

(5) An operator wishing to convert a CCA over-achievement into allowances or to preserve the over-achievement for possible future conversion under this rule (“ring-fencing”) must notify the relevant sector association and the Secretary of State of the over-achievement by the reporting deadline set by his sector association, by providing the information specified in paragraph (6).

(6) The information required by paragraph (5) is as follows—

- (a) facility numbers of the facility or facilities making up the target unit in respect of which the over-achievement has occurred;
- (b) the amount in the currency of the CCA target by which it has been over-achieved and the number of allowances to which the over-achievement is equivalent; and
- (c) any other information needed to calculate the adjustment to be made to the CCA target under the emissions trading provisions of the underlying agreement which applies to the target unit.

(7) An application to convert a CCA over-achievement into allowances must be submitted by the operator to the Secretary of State and copied to the relevant sector association prior to 31 December 2012 and must be accompanied by—

- (a) a statement of over-achievement prepared in accordance with paragraph 3 of Schedule 6; and
- (b) an unqualified verification opinion from a verifier prepared in accordance with paragraph 4 of Schedule 6.

(8) For the purpose of paragraphs (5) and (7), the relevant sector association is the sector association specified in the umbrella agreement which applies to the facilities comprising the target unit to which the over-achievement relates.

Sector associations

(9) If—

- (a) a CCA over-achievement occurs in relation to a trading group;
- (b) the sector association whose umbrella agreement provides for the identification of the trading group was a CCA participant in respect of the target period in which the over-achievement occurred;
- (c) a compliance account has been opened for that trading group under rule D3; and
- (d) the sector association has complied with the notification requirements in paragraph (11);

the notification of the over-achievement will, for the purpose of the emissions trading provisions of the umbrella agreement which provides for the identification of the trading group, be deemed to

be the transfer of carbon emission allowances from that trading group in accordance with a trading scheme established by the Secretary of State which applies to that agreement and the number of allowances so notified shall be deemed to be a negative balance in relation to that trading group.

(10) Where—

- (a) the conditions specified in paragraph (9)(a), (b)(c) and (d) are satisfied; and
- (b) the sector association has complied with the application procedure under paragraph (13) and, where it is relevant, the notification procedure under rule D3A(2) and (3)

the Secretary of State will within 15 days of receiving the application either allocate the appropriate number of allowances to the compliance account linked to the trading group or, if she reasonably considers that the CCA over-achievement has not been adequately demonstrated, require the sector association to provide such further information in support of his claim as she may specify.

(11) A sector association wishing to convert a CCA over-achievement into allowances or to preserve that over-achievement for possible future conversion under this rule (“ring-fencing”) must notify the Secretary of State of the over-achievement by the CCA reconciliation deadline by providing the information specified in paragraph (12).

(12) The information required by paragraph (11) is as follows-

- (a) the trading group target in respect of which the over-achievement has occurred;
- (b) the amount in the currency of the trading group target by which it has been over-achieved and the number of allowances to which that is equivalent;
- (c) any other information needed to calculate the adjustment to be made to the trading group target under the emissions trading provisions of the umbrella agreement identifying the trading group.

(13) An application to convert CCA over-achievement into allowances must be submitted by the sector association to the Secretary of State prior to 31 December 2012 and must be accompanied by—

- (a) a statement of over-achievement prepared in accordance with paragraph 3 of Schedule 6; and
- (b) an unqualified verification opinion prepared in accordance with paragraph 4 of Schedule 6.

General

(14) The vintage of any allowance allocated under this rule will be the year in which the allowance is allocated, except that—

- (a) the vintage of any allowance allocated between 1 January and 31 March will be the previous year; and
- (b) the vintage of any allowance allocated after 31 December 2012 will be “2012”.

(15) Any over-achievement relating to a target unit with a relative target which has been ring-fenced in accordance with paragraph (5) or (11) but for which an application for conversion into allowances is not received prior to 1st January 2008 will be discounted prior to conversion by a percentage factor to be announced by the Secretary of State no later than 31 December 2005.

(16) Where—

- (a) a CCA over-achievement has been ring-fenced in accordance with paragraph (5) or (11); and
- (b) prior to submitting an application under paragraph (7) or (13), either—

- (i) the CCA target to which the over-achievement related has been varied from an absolute to a relative CCA target or vice versa; or
- (ii) the operator or sector association has ceased to be a CCA participant under rule D8(4);

the Secretary of State will allocate allowances which relate to the over-achievement of the original CCA target not into a compliance account as provided for in paragraph (4) or (10) but instead into a trading account in the same sector as the original CCA target, the details of which are to be provided in the application submitted under paragraph (7) or (13).

Increasing CCA targets by retiring allowances from compliance accounts

D5.—(1) An operator may increase the CCA target (as adjusted in accordance with rule D3A(7) to (9)) for a target unit and a sector association may increase a trading group target (as adjusted in accordance with rule D3A(7) to (9)) by retiring allowances in accordance with this rule.

Operators

(2) If—

- (a) the operator of a target unit is a CCA participant in relation to a target period for which the CCA target of a target unit is to be adjusted;
- (b) a compliance account has been opened and linked to that target unit under rule D3;
- (c) the operator has supplied the Secretary of State with the information specified in paragraph (3); and
- (d) allowances have been retired from the compliance account under paragraph (7);

the retirement of those allowances will, for the purpose of the emissions trading provisions of the underlying agreement which applies to the facilities making up that target unit, be deemed to be the transfer of carbon emission allowances to that target unit in accordance with a trading scheme established by the Secretary of State which applies to that agreement and the amount of allowances retired shall be deemed to be a positive balance in relation to that target unit.

(3) An operator seeking to increase the CCA target of a target unit must provide the Secretary of State with the following information on or before the CCA reconciliation deadline—

- (a) the target unit identifier;
- (b) the amount by which the target is to be increased and the number of allowances to which that amount is equivalent (i.e. the number to be retired);
- (c) the details of the compliance accounts to which the target unit is linked; and
- (d) the earliest date on which any retirement may take place (which may not be later than the CCA reconciliation deadline).

(4) To the extent to which any of the information required under paragraph (3) has been supplied to the Secretary of State by the relevant sector association, there is no requirement for the operator to supply that information separately.

(5) Subject to paragraph (17) and (17A), the “CCA reconciliation balance” for each target unit specified in a CCA retirement request will be the total quantity of allowances held in the compliance account linked to that target unit on the CCA reconciliation deadline or an earlier date agreed between the relevant sector association and the Secretary of State (which shall not be earlier than the date specified by the operator under paragraph (3)(d)).

(6) If the CCA reconciliation balance for a target unit is less than the number of allowances specified in the information supplied to the Secretary of State under paragraph (3) or (4), no allowances will be retired and there will be no increase to the CCA target of that target unit.

(7) If the CCA reconciliation balance for a target unit is equal to or greater than the number of allowances specified in the information supplied to the Secretary of State under paragraph (3) or (4), allowances will be retired from the compliance account linked to the target unit in the following order—

- (a) allowances with the earliest vintage first; and
- (a) within vintages, in the order in which they were allocated or transferred into the compliance account beginning with the earliest allocated or transferred.

Sector associations

(8) If—

- (a) a sector association is a CCA participant in relation to a target period for which a trading group target is to be adjusted;
- (b) a compliance account has been opened for a trading group under rule D3;
- (c) the sector association has supplied the Secretary of State with the information specified in paragraph (9); and
- (d) allowances have been retired from the compliance account under paragraph (13);

the retirement of those allowances will, for the purpose of the emissions trading provisions of the umbrella agreement which provides for the identification of that trading group, be deemed to be the transfer of carbon emission allowances to that trading group in accordance with a trading scheme established by the Secretary of State which applies to that agreement and the amount of allowances retired shall be deemed to be a positive balance in relation to that trading group.

(9) A sector association seeking to increase the CCA target of a trading group must provide the Secretary of State with the following information on or before the CCA reconciliation deadline—

- (a) the amount by which the target is to be increased and the number of allowances to which that amount is equivalent (i.e. the number to be retired);
- (b) the details of the compliance accounts for the trading group; and
- (c) the earliest date on which any retirement may take place (which may not be later than the CCA reconciliation deadline).

(10) To the extent to which any of the information required under paragraph (9) has already been supplied to the Secretary of State by the sector association, there is no requirement for the sector association to supply that information again.

(11) Subject to paragraph (17) and (17A), the “CCA reconciliation balance” for a trading group for which a CCA retirement request has been submitted will be the total quantity of allowances held in the trading group’s compliance account on the CCA reconciliation deadline or an earlier date agreed between the sector association and the Secretary of State.

(12) If the CCA reconciliation balance for a trading group is less than the number of allowances specified in the information supplied to the Secretary of State under paragraph (9) or (10), no allowances will be retired and there will be no increase to the trading group target.

(13) If the CCA reconciliation balance for a trading group is equal to or greater than the number of allowances specified in the information supplied to the Secretary of State under paragraph (9) or (10), allowances will be retired from the compliance account of the trading group in the following order—

- (b) allowances with the earliest vintage first; and
- (b) within vintages, in the order in which they were allocated or transferred into the compliance account beginning with the earliest allocated or transferred.

General

(14) All allowances retired under this rule will be transferred to the national retirement account.

(15) Subject to paragraph (16), the “CCA reconciliation deadline” means, in respect of any target period, 12.00 noon on the next business day after 6 February following the end of the target period.

(16) If in any year access to the Registry is suspended under rule B2(4) for more than 8 consecutive hours during the 30 day period ending on the CCA reconciliation deadline, the CCA reconciliation deadline will be delayed by twice the duration of the suspension and, if the extended deadline is later than 5.00pm, to 12.00 noon on the next business day.

(17) The Secretary of State may allow allowances, which were transferred into a relevant compliance account after the CCA reconciliation deadline but prior to 31st March following the deadline, to be included in a CCA reconciliation balance for the purposes of this rule, where a CCA participant submits an application in writing setting out the reasons why the Secretary of State should allow the allowances to be retired, supported by such further information as the Secretary of State may require.

(17A) Notwithstanding paragraph (17), where on or after 31st March following the CCA reconciliation deadline-

(a) an error has been identified in information supplied by a CCA participant or a sector association to the Secretary of State, and

(b) the CCA participant or the sector association, as the case may be, has satisfied the Secretary of State that the error was innocently made,

the Secretary of State may allow allowances which have been transferred to a relevant compliance account, to be included in a CCA reconciliation balance for the purposes of this rule.

(17B) For the purposes of paragraph (17A), a CCA participant shall be deemed to have complied with paragraph (3) or (9) even if

(a) the information required under paragraph (3) or (9) is provided after the reconciliation deadline; or

(b) the date specified as the earliest date under paragraph (3) or (9) on which any retirement may take is place is later than the reconciliation deadline.

(18) For the purpose of paragraphs (4) and (5), the relevant sector association is, subject to rule D9(2), the sector association specified in the umbrella agreement which applies to the facilities comprising the target unit whose target is to be adjusted.

Banking

D6.—(1) After 31st March 2007 but no later than 31st December 2007, the following rules shall apply to the carrying over of allowances into the first Kyoto Protocol compliance period in accounts in the national registry (a)—

(a) any allowances held by an operator participating in relation to a target unit with an absolute CCA target will be dealt with in accordance with paragraphs (2) to (5); and

(b) any allowances held by an operator participating in relation to a target unit with a relative CCA target or by a sector association will be dealt with in accordance with paragraphs (6) and (7).

(2) Subject to paragraph (3), allowances held by the operator in the compliance account linked to that target unit or in any trading account will be carried over into the first Kyoto Protocol compliance period.

(a) The Secretary of State will issue guidance on the future form of the national registry no later than 31st December 2005.

(3) Subject to paragraph (4), the maximum number of allowances which may be carried over under paragraph (2) is equal to the total number of allowances allocated under rule D4 since 1st January 2002 in respect of the performance of that target unit.

(4) In the case of a target unit which previously had a relative CCA target, only those allowances which relate to the over-achievement of an absolute CCA target will be taken into account in calculating the figures referred to in paragraph (3).

(5) Any allowances in excess of the limit in paragraph (3) will be subject to a banking restriction imposed by the Secretary of State^(a) before being carried over into the first Kyoto Protocol compliance period.

(6) Subject to paragraph (7), allowances in any account will be subject to a banking restriction imposed by the Secretary of State^(b) before being carried over into the first Kyoto Protocol compliance period.

(7) In the case of the operator of a target unit which previously had an absolute CCA target, allowances equal in number to those which were allocated under rule D4 in respect of the over-achievement of that absolute target may be carried over into the first Kyoto Protocol compliance period without restriction.

Suspension of compliance accounts

D7.—(1) The Secretary of State may suspend any or all of the compliance accounts of a CCA participant if—

- (a) the participant (or any of his directors, partners or controllers) is subject to an ongoing investigation by any authority which may lead to conviction, or a legal or regulatory sanction, for an offence or other act involving fraud, dishonesty or professional misconduct relating to finance and markets or the formation and activities of a body corporate or other business or professional entity;
- (b) the Secretary of State has reason to believe that the participant or one of the account users with access to the account in question has failed to comply with any of the rules in Part B, including in particular rule B7(4) or (5);
- (c) the Secretary of State has reason to believe that an unauthorised person may attempt to access the account (for example where notified under rule B7(5)), or
- (d) an operator or sector association fails to notify the Secretary of State as required by rule D3A(2) and (3).

(2) A suspension imposed under paragraph (1) will continue until the Secretary of State is satisfied that—

- (a) in a case falling within paragraph (1)(a), there is no continuing risk to the integrity of the scheme (for example if the person under investigation were to be acquitted);
- (b) in a case falling within paragraph (1)(b), the failure to comply has been remedied and is not likely to recur; or
- (c) in a case falling within paragraph (1)(c), there is no further risk of unauthorised access to the account (for example when the security information relating to the account user and, if necessary, all account users with access to the account has been changed and all relevant parties notified).

(3) The effect of suspending an account under paragraph (1) is that—

- (a) subject to paragraph (4), no allowances can be transferred into or out of the account in question until the suspension is lifted; and
- (b) allowances may be retired from the account under rule D5.

^(a) The restriction will operate by cancelling a percentage of the allowances eligible to be carried over. The exact percentage will be announced by the Secretary of State no later than 31st December 2005.

^(b) See previous footnote.

(4) The Secretary of State may upon receipt of an application made in accordance with the user manual allow transfers to be made into a suspended compliance account.

Ceasing to be a CCA participant

D8.—(1) A CCA participant may cease to be a participant in the scheme in the circumstances set out in this rule.

(2) The Secretary of State may (but is not obliged to) serve a termination notice on a CCA participant if—

- (a) the CCA participant is in the reasonable opinion of the Secretary of State guilty of any unlawful conduct or wilful conduct amounting to an abuse of the scheme or the Registry or in relation to any Registry account; or
- (b) the CCA participant or any of its directors, partners or controllers is, in relation to finance and markets or the formation and activities of a body corporate or other business or professional entity, convicted of any criminal offence, or subject to legal or regulatory sanction, for fraud, dishonesty or professional misconduct.

(3) Where a termination notice is served on a CCA participant under paragraph (2)—

- (a) all compliance accounts and trading accounts held by the participant will be suspended;
- (b) if there are allowances remaining in any compliance or trading account held in the participant's name, the Secretary of State will transfer the remaining allowances into an account held in the name of a third party, provided that—
 - (i) the Secretary of State reasonably considers that the allowances were not acquired as a result of the event giving rise to the termination; and
 - (ii) the CCA participant notifies the Secretary of State of the account to which any remainder is to be transferred within two months of the service of the termination notice;
- (c) if the conditions set out in sub-paragraph (b) are not satisfied, the Secretary of State may cancel any allowances remaining in the account; and
- (d) following the transfer or cancellation of the remaining allowances, the Secretary of State will close all compliance accounts or trading accounts held in the participant's name.

(4) Where a climate change agreement to which a CCA participant is a party is terminated and a termination notice under paragraph (2) has not been served, paragraphs (3)(a) to (d) will apply to compliance and trading accounts held in the participant's name save that—

- (a) if the participant has successfully applied to become a trading participant under rule B5, paragraphs (3)(a) to (d) shall not apply to its trading accounts; and
- (b) if the participant is party to another climate change agreement and that agreement has not been terminated, paragraphs (3)(a) to (d) shall only apply to those compliance accounts which relate to the climate change agreement which has been terminated.

(5) A CCA participant may serve a withdrawal notice on the Secretary of State if there are no allowances held in any of its compliance accounts and—

- (a) all of its trading accounts have been closed in accordance with rule B19(1); or
- (b) it has successfully applied to become a trading participant under rule B5.

(6) Where a withdrawal notice under paragraph (5) is served, the participant will cease to be a CCA participant and the Secretary of State will close its compliance accounts.

(7) Any notice under this rule should be served in accordance with the terms of the climate change agreement to which the CCA participant concerned is a party.

Agreements falling within Finance Act 2000, Schedule 6, paragraph 47

D9.—(1) A person who is a party to an agreement falling within paragraph 47 of Schedule 6 to the Finance Act 2000 (a “paragraph 47 agreement”) may participate in this scheme as a CCA participant as if it were an operator.

(2) Where a party to a paragraph 47 agreement wishes to participate as a CCA, the scheme shall be interpreted, unless the context otherwise requires, as follows—

- (a) references to an operator mean the person who is the party to the paragraph 47 agreement other than the Secretary of State;
- (b) references to an underlying agreement mean the paragraph 47 agreement;
- (c) the requirements under rule D4(5) and (7) to notify the relevant sector association do not apply;
- (d) the references to the relevant sector association in rule D5(4) and (5) mean the person who is the party to the paragraph 47 agreement;
- (e) the references to an umbrella agreement in the definitions of certification period and facility in Schedule 1 are deemed to be to the paragraph 47 agreement; and
- (e) the references to an umbrella agreement in Schedule 6 shall not apply.

PART E

PROJECT PARTICIPANTS

E1. [This Part has been left intentionally blank]

PART F

GROUP PARTICIPANTS

F1. —(1) The purpose of this part is to provide a mechanism whereby two or more persons may participate in the scheme as members of a group represented in the scheme by a single group participant.

(2) A group participant means a person who has entered into a group participant agreement under this rule.

(3) A group participant agreement means an agreement in the form specified by the Secretary of State entered into between a group participant and the Secretary of State by virtue of which the group participant participates in the scheme.

(4) A group participant agreement will contain appropriate provisions to provide that the scheme will apply to a group participant substantially as if he were a direct participant with a direct participant agreement, subject to any additional provisions necessary to ensure that the purposes of the scheme are fulfilled and to give effect to the following principles:

Restriction on use of compliance account

- (a) the compliance account of the group participant will be suspended immediately after opening and no allowances may be transferred into or out of the account except by the Secretary of State on application from the group participant or an account user nominated by him;
- (b) transfers of allowances into the group participant’s compliance account will be allowed without restriction on application to the Secretary of State;

- (c) transfers of allowances out of the group participant's compliance account will be allowed on application to the Secretary of State only after the reconciliation process described in rule C6 has been completed and then only if and to the extent that the group participant's reconciliation balance exceeded the total verified emissions of the group for the relevant commitment year;

Accountability for group members

- (d) the group participant will be liable for any act or omission of any group member which amounts to non-compliance with any requirements of the scheme and in particular of Schedule 2 as if that act or omission were his own;
- (e) a failure by a group member to comply with the requirements of Schedule 2 will not in itself be regarded as a good explanation for a delay in submitting a verification opinion under rule C9(1)(b);
- (f) the group participant must demonstrate to the satisfaction of the Secretary of State that the Secretary of State will be able to pursue the group members directly if the group participant is unable to discharge his liabilities under the scheme;

Management control

- (g) for the purposes of the scheme in general, in particular Part 1 of Schedule 2, the group participant will be deemed to have management control of the sources over which the group members have management control, save that the source list of a group participant will be required to indicate which group members control which sources;
- (h) any change in management control over a source in a group participant's source list which falls under Part 1 of Schedule 3 will be dealt with as if that change were a change for which the group participant was responsible;

Withdrawal

- (i) the withdrawal of a group member from a group will be treated as the closure of the sources controlled by that group member in accordance with Part 1 of Schedule 3; and
- (j) if the group participant withdraws from the scheme, the group participant will be required to repay to the Secretary of State any incentive payments made to it except if the group members become members of another group under this part or become direct participants by entering into direct participant agreements in their own right.

PART G

MISCELLANEOUS

Power to amend or revoke the scheme

G1.—(1) This scheme may be amended or revoked by the Secretary of State at any time by another scheme made by the Secretary of State.

(2) Without prejudice to the generality of paragraph (1), the powers under that paragraph may be exercised—

- (a) for the purposes of correcting errors in the scheme;
- (b) for improving the functioning of the scheme in the light of experience;
- (c) for extending the scheme—
 - (i) to additional direct participants as a result of any auction held after the first auction;
 - (ii) to parties to climate change agreements,
 - (iii) to projects;
 - (iv) to provide for international trading;
- (d) for transferring responsibilities of the Secretary of State to an emissions trading authority or other body;

- (e) for the purpose of complying with any decision taken by the Commission in relation to State Aids approval in relation to the scheme;
- (f) in connection with any future legislation dealing with greenhouse gases, including legislation authorising the imposition of penalties; and
- (g) for making any incidental, supplemental or transitional provisions.

(3) Subject to paragraph (4), the Secretary of State will consult such participants as she considers may be affected by the exercise of her powers under paragraph (1) before exercising those powers.

- (4) Paragraph (3) does not apply in relation to any exercise of powers under paragraph (1)—
 - (a) in relation to the provisions related to auctions;
 - (b) for the purpose of complying with any decision taken by the Commission in relation to State Aids approval in relation to the scheme; or
 - (c) in any case where the Secretary of State considers that the matter is so urgent that it is inappropriate to consult.

Access to information

G2.—(1) By participating in the scheme, participants consent to the publication by the Secretary of State of the following information.

(2) All participants consent to the publication of the following details in relation to all accounts at the Registry—

- (a) the name of the participant;
- (b) the account name;
- (c) the account number; and
- (c) the name and contact details of the principal account users; and
- (d) the transaction log described in rule B11.

(3) A direct participant consents to the publication of—

- (a) his overall and annual targets;
- (b) the number of allowances allocated to him in each commitment year under rule C5;
- (c) his verified baseline in aggregate form;
- (d) his aggregate emissions in tCO₂e for each commitment year; and
- (e) whether he has complied with his annual emissions limitation commitment under rule C6(1) or to what extent he has failed to do so.

(3A) A CCA participant consents to the publication of—

- (a) the number of allowances allocated to compliance accounts held in his name under rule D4; and
- (b) the number of allowances retired from compliance accounts held in his name under rule D5.

(4) The information in paragraphs (2)(e), (3)(d) and (e) and (3A)(a) and (b) will be published annually.

(5) The Secretary of State will be entitled to disclose, without the participant's consent, any other information relating to the participant's participation in the scheme in the following circumstances—

- (a) where the disclosure is made under and in accordance with the terms of any legislation;
- (b) where the disclosure is made to a relevant authority for the purposes of the authority's functions; or
- (c) where the disclosure is required to be made in the course of legal proceedings.

(6) The Secretary of State will consult the participant before making any disclosure under paragraph (5) where she considers it appropriate in the circumstances to do so.

(7) Once the Secretary of State has disclosed information in accordance with paragraph (5) if the information is already in the public domain, she may publish the information without the consent of the participant.

(8) Any participant who objects to the release of any information (other than that falling within the scope of paragraph (2), (3) or (3A)) supplied to the Secretary of State for the purposes of the scheme must notify the Secretary of State at the time the information is supplied, setting out reasons for objecting to its release.

(9) Save as provided for by paragraphs (2), (3), (5) and (7), the Secretary of State will only disclose information relating to the participant's participation in the scheme with the consent of the participant.

(10) A relevant authority for the purpose of paragraph (5) is—

- (a) either House of Parliament (including any committee);
- (b) the European Commission;
- (c) the relevant environmental regulator under Part I of the Environmental Protection Act 1990 or regulations made under section 2 of the Pollution Prevention and Control Act 1999 or corresponding legislation for Northern Ireland;
- (d) an auditor appointed under Part 4 of Schedule 2;
- (e) an adjudicator appointed under Schedule 4.

(11) The Secretary of State will take steps to prevent any person whom she appoints under Part 4 of Schedule 2 from disclosing information relating to the participation of any person in this scheme and obtained in carrying out the audit to any one other than the Secretary of State, except to the extent needed to carry out the audit.

Dispute resolution

G3. Schedule 4 (Dispute Resolution) shall have effect.

Notices

G4.—(1) Save as otherwise provided in the scheme, all notices or other communications shall be in writing and in English and shall be given by letter delivered by hand against receipt, sent by prepaid registered or recorded delivery post, or sent by facsimile or email, and will be deemed to have been received—

- (a) in the case of delivery by hand, when delivered against receipt;
- (b) in the case of recorded delivery prepaid post, on the day following the recorded date of delivery; or
- (c) in the case of facsimile or email, on the day following acknowledgement of receipt by the addressee's facsimile receiving equipment or email system.

(2) In proving the giving of a notice it shall be sufficient to prove that the notice was left, or that the envelope containing the notice was correctly addressed and was posted, or that the facsimile was correctly addressed and was despatched and despatch of the transmission was confirmed and confirmed as having been sent to the number referred to in paragraph (3), or that the email was correctly addressed and delivery to the addressee's email address referred to in paragraph (3) was confirmed.

(3) Save as otherwise provided in the scheme, all notices or other communications shall be sent to the address, facsimile number or email address and marked for the attention of the addressee's representative as set out in the direct participant agreement or trading participant agreement.

Guidance

G5.—(1) The Secretary of State may from time to time give guidance in connection with the practical operation of the scheme.

(2) Guidance under paragraph (1) may be given from time to time in order to assist in the interpretation of the scheme.

(3) Participants, verifiers and all other persons acting under or by virtue of this scheme shall act in accordance with any guidance issued under this rule which is for the time being in force.

Transitional provisions

G6. Any action taken by the Secretary of State or any other person in anticipation of this scheme in any period before it came into force shall have the same effect as if the scheme had been in force throughout that period.

MADE ON BEHALF OF THE SECRETARY OF STATE FOR ENERGY AND CLIMATE CHANGE

A handwritten signature in black ink, appearing to read 'Niall Mackenzie', is positioned below the text 'MADE ON BEHALF OF THE SECRETARY OF STATE FOR ENERGY AND CLIMATE CHANGE'.

Niall Mackenzie
Head of National Carbon Markets
Department of Energy and Climate Change

Date: January 2010

SCHEDULE 1

INTERPRETATION

1. The Interpretation Act 1978 shall apply for the interpretation of this scheme as it applies to the interpretation of subordinate legislation.

2. Where guidance about the interpretation of this scheme has been issued under rule G5(2), the scheme shall be interpreted in accordance with that guidance.

3. In this scheme, unless the context otherwise requires, expressions used have the meaning given to them below —

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| ‘absolute sector’ | means one of the two parts into which the Registry is divided (the other being the relative sector) and in which trading and compliance accounts are located in accordance with rule B4(2), C4(4) or D3; |
| ‘absolute CCA target’ | means a CCA target which is expressed in either carbon emitted or energy used without reference to throughput; |
| ‘account’ | means an account in the Registry; |
| ‘account balance’ | has the meaning given to it in rule B10; |
| ‘allowance’ | has the meaning given to it in rule B1(3); |
| ‘annual emissions’ | means, in relation to a direct participant, the total emissions from all the sources in the participant’s source list in any commitment year; |
| ‘annual emissions limitation commitment’ | means the obligation set out in rule C6(1); |
| ‘annual target’ | means, in relation to a direct participant, the participant’s original annual target (being the amount by which the participant must reduce his annual emissions in each commitment year), determined in accordance with Part 1 of Schedule 2, as amended from time to time in accordance with Schedule 3; |
| ‘auction’ | means an auction conducted in accordance with Schedule 5; |
| ‘auction guidance’ | means the UK Emissions Trading Scheme Auction Guidance dated 25 January 2002 (ETS (02)02); |
| ‘baseline’ | means, in relation to a direct participant, the participant’s original baseline calculated in accordance with Part 1 of Schedule 2, as amended from time to time in accordance with Schedule 3; |
| ‘baseline emissions’ | means, in relation to a source, the average annual emissions over the baseline period of that source; |
| ‘baseline period’ | means the three year period 1998-2000 (inclusive), or 1999-2000 (inclusive), or 2000 where a direct participant satisfies his verifier that verifiable emissions data is not available for a source for the earlier years; |
| ‘bidder’s manual’ | means the manual distributed by the Secretary of State under paragraph 3 of Schedule 5 setting out detailed instructions on how to use the auction software system and the procedures for the electronic entry of bids in the auction; |

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| ‘business day’ | means a day other than— (a) a Saturday or Sunday; (b) a Bank Holiday within the meaning of the Banking and Financial Dealings Act 1971 (other than a day which is a bank holiday only in Scotland or Northern Ireland); |
| ‘cancel’ | means, in relation to an allowance, the transfer of an allowance into the national cancellation account in accordance with rule B15; |
| ‘carbon dioxide equivalent’ or ‘CO ₂ e’ | means (a) in relation to carbon dioxide the actual quantity of those emissions; and; (b) in relation to any other greenhouse gas the quantity of carbon dioxide which has the same global warming potential as those emissions (as specified by the Intergovernmental Panel on Climate Change in their Second Assessment Report "1995 IPCC GWP values"); |
| ‘CCA over-achievement’ | has the meaning given to it in rule D4(2); |
| ‘CCA participant’ | has the meaning given to it in rule D1(5); |
| ‘CCA reconciliation balance’ | has the meaning given to it, in relation to a target unit, in rule D5(5) and, in relation to a trading group, in rule D5(11); |
| ‘CCA reconciliation deadline’ | has the meaning given to it in rule D5(15); |
| ‘CCA target’ | means, in relation to an operator, the target set for a target unit in the relevant underlying agreement and, in relation to a sector association, the trading group target provided for in the relevant umbrella agreement; |
| ‘certification period’ | means, in relation to a target unit or a trading group, the certification period set out or provided for in the relevant umbrella agreement; |
| ‘change of operation’ | has the meaning given to it in Part 1 of Schedule 2; |
| ‘clearing price’ | means the price per tonne of carbon dioxide equivalent to be paid to direct participants in respect of emissions reductions set in an auction held in accordance with Schedule 5; |
| ‘climate change agreement’ | means an umbrella agreement or an underlying agreement; |
| ‘commitment period’ | means 1st January 2002 to 31st December 2006; |
| ‘commitment year’ | means any calendar year in the commitment period; |
| ‘compliance account’ | means an account at the Registry held by a direct participant or CCA participant into which allowances are allocated and from which allowances are retired by the Secretary of State through the reconciliation process and which may also be used for holding and transferring allowances; |
| ‘direct emissions’ | means emissions released from a source; |
| ‘direct participant’ | means a party to a direct participant agreement who has taken on a target in accordance with Part C of the scheme; |
| ‘direct participant agreement’ | means the agreement entered into between a direct participant and the Secretary of State by virtue of which the direct participant participates in the scheme; |
| ‘emissions’ | means emissions, measured in tonnes of carbon dioxide equivalent, of one or more greenhouse gases, including both direct and indirect emissions; |

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| ‘Emissions Trading Directive’ | 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; |
| ‘emissions trading provisions’ | means those paragraphs of the relevant climate change agreement which set out how CCA targets are to be adjusted to take account of emissions trading ^(a) ; |
| ‘excluded emissions’ | emissions from sources in the source list which, in relation to any Schedule 1 activity, are emissions specified in that Schedule in relation to that activity, and in respect of which a certificate of temporary exclusion has been served under regulation 11 of the Greenhouse Gas Emissions Trading Scheme Regulations 2003 (S.I 2003/3311) or an equivalent provision in any superseding legislation; |
| ‘facility’ | means, subject to rule D9(2), a facility to which an underlying agreement applies; |
| ‘force majeure event’ | means, in relation to a direct participant, trading participant or the Secretary of State, any event or circumstance beyond the reasonable control of that person and which results in or causes the failure of that person to perform any of its obligations under the scheme, including strike, lockout or other industrial disturbance, war, threat of war, terrorist act, blockade, revolution, riot, insurrection, sabotage, act of vandalism, lightning, fire, storm, flood, earthquake or drought; |
| ‘Framework Document’ | means the “Framework Document for the UK Emissions Trading Scheme” published by DEFRA in August 2001; |
| ‘greenhouse gases’ | means carbon dioxide(CO ₂), methane (CH ₄), nitrous oxide (N ₂ O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulphur hexafluoride (SF ₆) and any other gas added to the list in Annex A to the Kyoto Protocol from time to time; |
| ‘incentive payment’ | means a payment made or to be made to a direct participant in accordance with rule C2; |
| ‘indirect emissions’ | means, in relation to a source, emissions attributable to the consumption of electricity which is not generated on the same site as that source; |
| ‘insolvency event’ | has the meaning given to it in the relevant direct participant agreement or trading participant agreement; |
| ‘Kyoto Protocol’ | means the Protocol to the United Nations Framework Convention on Climate Change, adopted at a Conference of the parties in Kyoto, Japan, 10 December 1997, as amended or implemented by subsequent Conferences of the Parties to the Protocol or otherwise and ‘first Kyoto Protocol commitment period’ means 1st January 2008 to 31st December 2012; |
| ‘legislation’ | means primary or secondary national legislation and includes directives and other legislation of the European Community; |
| ‘Monitoring and Reporting Decision’ | Commission Decision 2004/156/EC 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; |
| ‘national cancellation account’ | means the account established under rule B15 into which allowances are transferred for the purpose of cancellation; |

^a In an underlying agreement, these are typically but not in every case paragraphs 1.3 to 1.5 of Schedule 2.

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| ‘national registry’ | means the registry established by the UK in accordance with its obligations under the Kyoto Protocol; |
| ‘national retirement account’ | means the account established under rule B16 into which allowances are transferred for the purpose of retirement; |
| ‘operator’ | means, subject to rule D9(2), a person who is a party to an underlying agreement other than the Secretary of State; |
| ‘original baseline’ | means, in respect of a direct participant, the total baseline emissions of all sources in a direct participant’s approved source list; |
| ‘overall target’ | means in relation to a direct participant, the participant’s original overall target, determined in accordance with paragraph 8 of Part 1 of Schedule 2, as amended from time to time in accordance with Schedule 3; |
| ‘principal account user’ | means the person appointed in accordance with the user manual to act as a principal account user on behalf of a participant; |
| ‘queuing mechanism’ | means the mechanism operated under rule B14(8); |
| ‘reconciliation balance’ | has the meaning given to it in rule C7(2); |
| ‘reconciliation deadline’ | means, in respect of each commitment year, subject to rule C7(3), 31st March following the end of that commitment year and ‘final reconciliation deadline’ means 31st March 2007; |
| ‘reconciliation process’ | means the process of retiring allowances for the purpose of compliance described in rule C7 and ‘final reconciliation process’ means the reconciliation process which takes place after the end of the commitment period; |
| ‘Registry’ | means the Emissions Trading Registry established by the Secretary of State under rule B1(1); |
| ‘relative CCA target’ | means a CCA target which is expressed in either carbon emitted per unit of throughput or energy used per unit of throughput; |
| ‘relative sector’ | means one of the two parts into which the Registry is divided (the other being the absolute sector) and in which trading and compliance accounts are located in accordance with rules B4(2) and D3; |
| ‘relative sector gateway’ | means the restriction on transfer of allowances from the relative sector to the absolute sector which operates in accordance with rule B14; |
| ‘renewable obligation certificate’ | means a renewable obligation certificate issued by the Gas and Electricity Markets Authority in accordance with the relevant order under the sections 32 to 32C of the Electricity Act 1989; |
| ‘Reporting Guidelines’ | means the “Guidelines for the Measurement and Reporting of Emissions in the UK Emissions Trading Scheme” published by DEFRA in August 2001, as revised from time to time; |
| ‘reporting protocol’ | means the method approved by the Secretary of State by which a direct participant must measure and calculate his emissions; |
| ‘retire’ | means, in relation to an allowance, the transfer of an allowance by the Secretary of State into the national retirement account for the purpose of compliance under rules C7 and D5; |
| ‘ring-fencing’ | has the meaning given to it, in relation to a target unit, in rule D4(5) and, in relation to a trading group, in rule D4(11); |
| ‘Schedule 1 activity’ | An activity falling within the description in Schedule 1 to the Emissions Trading Directive; |
| ‘scheme’ | means this scheme as amended from time to time; |

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| ‘secondary account user’ | means the person appointed in accordance with the user manual to act as a secondary account user on behalf of a participant; |
| ‘sector association’ | means a person who is a party to an umbrella agreement other than the Secretary of State; |
| ‘site’ | has the meaning given to it in Part 1 of Schedule 2; |
| ‘source’ | has the meaning given to it in Part 1 of Schedule 2; |
| ‘source list’ | means, in relation to a direct participant, the list of sources in his approved source list, prepared in accordance with Part 1 of Schedule 2, and included in his direct participant agreement, as amended from time to time in accordance with Schedule 3; |
| ‘source list error’ | has the meaning given to it in Part 1 of Schedule 2; |
| ‘targets’ | means, in relation to a direct participant, the participant’s overall target and his annual target; |
| ‘target period’ | means, in relation to a target unit, the target period specified in the relevant underlying agreement and, in relation to a trading group, the target period specified in the relevant umbrella agreement; |
| ‘target unit’ | means a facility or group of facilities with a CCA target in an underlying agreement which only applies to that facility or that group and ‘target unit identifier’ means the unique identifying number allocated to a target unit by the Secretary of State; |
| ‘throughput’ | means input or output depending on how it is calculated under the terms of the relevant climate change agreement; |
| ‘trading account’ | means an account in the Registry held by a trading participant or any other participant for the purposes of allocating, holding and transferring allowances; |
| ‘trading group’ | means a trading group whose identity is provided for in an umbrella agreement; |
| ‘trading group target’ | means the trading group target defined in the umbrella agreement which provides for the identity of the trading group; |
| ‘trading participant’ | means a person who has opened a trading account in accordance with rule B5 but is not a direct participant; |
| ‘trading participant agreement’ | means an agreement entered into between a trading participant and the Secretary of State by virtue of which the trading participant may hold an account at the Registry; |
| ‘transaction log’ | means the record of allocations, transfers, cancellations and retirements of allowances described in rule B11; |
| ‘umbrella agreement’ | means an umbrella agreement within the meaning of paragraph 48 of Schedule 6 of the Finance Act 2000; |
| ‘underlying agreement’ | means, subject to rule D9(2), an underlying agreement within the meaning of paragraph 48 of Schedule 6 of the Finance Act 2000; |
| ‘user manual’ | means the manual published by the Secretary of State setting out the detailed procedures for access to and use of the Registry website, as updated from time to time; |
| ‘verification opinion’ | means a signed opinion provided by a verifier under, in relation to a direct participant, Part 3 of Schedule 2 or, in relation to a CCA participant, paragraph 4 of Schedule 6; and a verification opinion is ‘qualified’ if it is submitted with qualifications about the emissions or energy use to which it refers; |
| ‘verified baseline’ | means a baseline verified by a verifier in accordance with Part 3 of Schedule 2 as amended in accordance with Schedule 3; |

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| 'verified emissions' | means, in relation to a direct participant, emissions from the sources on his source list which are measured, verified and reported in accordance with Part 1 to 3 of Schedule 3; |
| 'verifier' | means a person accredited by the UK Accreditation Service (UKAS) to assess the accuracy of emissions and energy use in accordance with Part 3 of Schedule 2 and paragraph 4 of Schedule 6; and |
| 'vintage' | means, subject to rule D4(14) and the exception below, the year in which the allowance is issued, and the vintage of an allowance represents the first commitment year for which an allowance may be used for the purposes of complying with a direct participant's emissions limitation commitment. The exception is that all allowances allocated to direct participants under rule C5(1)(a) will have a vintage of "2002". |

SCHEDULE 2
MONITORING, REPORTING AND VERIFICATION (DIRECT PARTICIPANTS)

PART 1
SOURCE LISTS, BASELINES, TARGETS

Preparation and approval of source lists

1. A direct participant's source list must be prepared in accordance with—
 - (a) the methodology set out in the Framework Document and the Reporting Guidelines;
 - (b) Schedule 3, in relation to any change of operation during the baseline period; and
 - (c) any guidance provided by the Secretary of State from time to time.
- 2.—(1) A direct participant must submit his source list to the Secretary of State for approval.
(2) The participant must keep a written record of—
 - (a) the methodology used in preparing his source list; and
 - (b) the decisions taken when preparing his source list, including the reasons for excluding particular sources from the list.

(3) The record must be submitted to the Secretary of State at the same time as the participant's source list.

(4) A direct participant must provide the Secretary of State with such additional information as she requires in relation to the approval of the source list.
- 3.—(1) For the purposes of this Schedule—
 - (a) 'point source' means any separately identifiable point from which greenhouse gases are emitted;
 - (b) 'site' means (subject to sub-paragraphs (2) and (3) below)—
 - (i) a building or other substantial structure; or
 - (ii) a stationary technical unit; and
 - (c) 'source' means a point source or a collection of point sources of the same type on the same site.

(2) A participant may determine to include within a site any additional building, structure or plant in which a directly associated activity is carried out which has a technical or functional connection with the activities carried out in the building, structure or unit forming the site.

(3) A record of any determination under sub-paragraph (2) must be kept and submitted to the Secretary of State under paragraph 2(2) and (3).

(4) The Secretary of State may in approving any source list under paragraph 4 of this Schedule modify or depart from the definition of "site" in sub-paragraphs (1)(b) and (2) if she considers that—
 - (a) there would be practical difficulty in applying the definition in the circumstances of that case; or
 - (b) it is appropriate to do so to protect the environmental integrity or viability of the scheme or to prevent potential abuse of the scheme.
- 4.—(1) Where the Secretary of State approves a direct participant's source list, she will confirm her approval in writing to the participant.

(2) The Secretary of State's approval of the participant's source list may be subject to instructions to the direct participant about how the baseline must be calculated and may include additional comments, information or explanation needed to identify and describe the relevant sources (including any determination made by the participant under paragraph 3(2) or any modification or departure from the definition of site under paragraph 3(4)).

(3) Once approved by the Secretary of State, a source list may not be amended otherwise than in accordance with Schedule 3.

Calculation of original baseline

5.—(1) A direct participant must calculate his original baseline on the basis of the aggregate baseline emissions from all sources in his approved source list and in accordance with—

- (a) the methodology set out in the Framework Document and in the Reporting Guidelines and associated protocols;
- (b) any instructions or comments made in the source list approval; and
- (c) Schedule 3 in relation to—
 - (i) any change of operation during the baseline period or since the date of the participant's source list approval; or
 - (ii) the discovery of any source list error since the date of the participant's source list approval; and
- (d) any guidance given by the Secretary of State from time to time.

(2) In complying with sub-paragraph (1), a direct participant must—

- (a) identify the appropriate protocol for calculating all emissions relevant to his source list;
- (b) use in his calculations the appropriate emissions factors (default, activity-specific, etc.) where more than one factor is set out in the relevant protocol; and
- (c) use the activity data (fuel used, production input or output etc.) appropriate to enable him to undertake the calculations envisaged in the relevant protocol.

(3) A direct participant's baseline may not be amended otherwise than in accordance with Schedule 3.

Targets

6.—(1) A direct participant's overall target will be determined through an auction held by the Secretary of State in accordance with Schedule 5.

(2) The participant's annual target will be calculated by dividing his overall target by the number of commitment years to which it refers (i.e. five years for all direct participants entering the scheme in the first commitment year).

(3) A direct participant's targets may not be amended otherwise than in accordance with Schedule 3.

Amendment of source lists, baselines and targets

7.—(1) Where a change of operation occurs, or a direct participant becomes aware of a source list error, during any commitment year, he must in the circumstances specified in Schedule 3—

- (a) amend his source list, baseline and targets; and
- (b) make any associated requests to transfer or cancel allowances,

in accordance with that Schedule, before the end of that commitment year, except for where the change of operation occurred in 2004, in which case, on or before 20th January 2005.

(3) A 'change of operation' means any of the circumstances described in Part 1 of Schedule 3.

(4) A 'source list error' occurs where a source which has been included in or omitted from a source list incorrectly.

(5) A source has been—

- (a) incorrectly included where it would have been omitted had the source list been properly prepared in accordance with paragraph 1; and
- (b) incorrectly omitted where it would have been included had the source list been properly prepared in accordance with paragraph 1.

(6) Except where paragraph (7) applies, for the purpose of calculating a direct participant's annual emissions under paragraph 8 of this Schedule, any amendments made to a direct participant's source list, baseline and targets pursuant to Schedule 3 shall take effect from 1st January of the commitment year in which the change of operation took place or the source list error was discovered.

(7) Where a change of operation takes place after 30th June in any commitment year, for the purpose of calculating a direct participant's annual emissions under paragraph 8 of this Schedule, any amendments made to a direct participant's source list, baseline and targets pursuant to Schedule 3 shall take effect from 1st July of that commitment year.

PART 2

ANNUAL EMISSIONS

Calculation of annual emissions

8.—(1) A direct participant must calculate his annual emissions for each commitment year, in accordance with—

- (a) the methodology set out in the Framework Document and the Reporting Guidelines and associated protocols;
- (b) Schedule 3, in relation to any change of operation or discovery of any source list error during that commitment year; and
- (c) any guidance given by the Secretary of State from time to time.

(2) In complying with sub-paragraph (1), a direct participant must—

- (a) identify the appropriate protocol for calculating all emissions relevant to his participation in the scheme;
- (b) use in his calculations the appropriate emissions factors (default, activity-specific, etc.) where more than one factor is set out in the relevant protocol; and
- (c) record and check the activity data (fuel used, production input or output etc.) necessary to enable him to undertake the calculations envisaged in the relevant protocol.

PART 3

VERIFICATION AND REPORTING

Verification of original baseline

9.—(1) A direct participant must have his original baseline verified by a verifier in accordance with the following provisions of this paragraph.

(2) A direct participant must provide the verifier with the following information—

- (a) his approved source list, a copy of his source list approval and any supporting information provided to the Secretary of State;
- (b) his baseline emissions data, together with details of the procedures, decisions, measurements and calculations relevant to the calculation of the baseline under paragraph 5;
- (c) details of—

- (i) any change of operation which has taken place during the baseline period or since the date of his source list approval;
- (ii) any source list error which has been discovered since the date of his source list approval;
- (iii) any consequential amendments made to his source list, baseline and targets in accordance with Schedule 3;
- (d) any other information the participant is required to provide to his verifier under Schedule 3; and
- (e) such other information as the verifier requires.

(3) The direct participant must make a written declaration to the verifier confirming that the baseline emissions data and other information submitted is, to the best of the participant's knowledge, accurate and complete.

(4) The declaration must be signed by the direct participant or a director or manager or other designated representative of the direct participant.

10.—(1) The verifier must assess the direct participant's original baseline on the basis of the source list approval (including any aggregation of point sources approved by the Secretary of State in the source list approval) and in accordance with—

- (a) the Framework Document and the Reporting Guidelines and associated protocols;
- (b) guidance to verifiers issued by UKAS;
- (c) Schedule 3; and
- (d) any other guidance given by the Secretary of State from time to time.

(2) The verifier must take account of all relevant information (whether or not provided by the participant).

(3) The direct participant must make any corrections to his baseline required by the verifier to correct any material error found by the verifier.

(4) The direct participant must require his verifier to complete a verification opinion in relation to his original baseline in accordance with the UKAS guidance to verifiers.

Reporting of original baseline

11.—(1) A direct participant must submit to the Secretary of State a statement of baseline emissions together with a signed verification opinion in relation to his original baseline, before he will be allocated allowances under rule C5 for the first commitment year.

(2) The statement of baseline emissions must set out the following information—

- (a) the direct participant's verified original baseline;
- (b) details of—
 - (i) any change of operation during the baseline period or since the date of the participant's source list approval letter;
 - (ii) any source list error which has been discovered since the date of the participant's source list approval letter; and
 - (iii) any consequential amendments to the participant's source list, baseline and targets made in accordance with Schedule 3;
- (c) any other information which the participant is required to provide to the Secretary of State under Schedule 3; and
- (d) any other information reasonably requested by the Secretary of State.

Verification of annual emissions

12. A direct participant must have the annual emissions , and any amendments to his baseline and targets, for each commitment year, verified by a verifier in accordance with the paragraphs 13 to 16.

13.—(1) The participant must provide the verifier with the following information—

- (a) his approved source list, a copy of his source list approval and any supporting information from the Secretary of State, and his verified baseline;
- (b) the total annual emissions from the sources on his source list, together with details of the data, procedures, decisions, measurements and calculations on which this figure is based;
- (c) details of—
 - (i) any change of operation which took place during the relevant commitment year;
 - (ii) any source list error which has been discovered during the relevant commitment year; and
 - (iii) any consequential amendments made to his source list, baseline and targets in accordance with Schedule 3;
- (d) any other information which the participant is required to provide to the verifier under Schedule 3; and
- (e) such other information as the verifier requires.

(2) The direct participant must make a written declaration to the verifier confirming that the annual emissions data and other information submitted is, to the best of the participant's knowledge, accurate and complete.

(3) The declaration must be signed by the direct participant or a director or manager or other designated representative of the direct participant.

14.—(1) The verifier must assess the direct participant's emissions data for the relevant commitment year on the basis of his current source list and in accordance with—

- (a) the Framework Document and the relevant Reporting Guidelines and associated protocols;
- (b) guidance to verifiers issued by UKAS;
- (c) Schedule 3; and
- (d) any other guidance given by the Secretary of State from time to time.

(2) The verifier must take account of all relevant information (whether or not provided by the participant) when he is verifying the participant's annual emissions and any amendments to the participant's baseline or targets.

Reporting of annual emissions

15.—(1) A direct participant must submit to the Secretary of State a statement of his annual emissions together with a signed verification opinion in relation to his annual emissions, by the reconciliation deadline for each commitment year.

(2) The statement of annual emissions must set out the following information—

- (a) total emissions for the relevant commitment year;
- (b) details of—
 - (i) any change of operation which took place during the relevant commitment year;
 - (ii) any source list error which was discovered during the relevant commitment year;
 - (iii) any consequential amendments to the participant's source list, baseline and targets made in accordance with Schedule 3;
 - (iv) any associated transfer, cancellation or allocation of allowances;

- (c) any other information which the participant is required to provide to the Secretary of State under Schedule 3; and
 - (d) any other information reasonably requested by the Secretary of State.
- (3) In addition to the foregoing obligations, a direct participant shall separately monitor his excluded emissions in accordance with the Monitoring and Reporting Decision.

Refusal to issue a verification opinion

16. A direct participant must notify the Secretary of State if any verifier employed by him has at any time refused to issue a verification opinion in any commitment year and must provide the Secretary of State with any reasons given by the verifier for the refusal.

PART 4

RETENTION OF AND ACCESS TO INFORMATION

Retention of information

17.—(1) A direct participant must retain proper records relating to his participation in the scheme sufficient to demonstrate his compliance with the requirements of this Schedule.

(2) These records must be sufficient to allow a third party to audit the participant's baseline and annual emissions at any time during the operation of the scheme.

(3) In particular, a direct participant must retain—

- (a) evidence of the decisions taken in relation to the compilation of his source list and the calculation of his baseline;
- (b) the activity data and other information on which any calculation of the emissions from the sources in his source list was based, including documents justifying the selection of protocols and emissions factors used in such calculations;
- (c) any information relevant to adjustments to his baseline, source list and target which take place in accordance with Schedule 3, including information used to decide whether or not such adjustments need to be made; and
- (d) information and data not required under sub-paragraphs (a) to (c) but which is required by the verifier to verify the data submitted by the participant to the Secretary of State.

(4) All such records must be retained for the purposes of compliance with this Schedule for at least two years after the end of the final commitment year.

(5) Where the volume of activity data makes such retention impractical, a participant may retain the information in an aggregated form following satisfactory verification of the data, provided that this satisfies the condition in sub-paragraph (2).

(6) A direct participant must record and manage the information retained under this rule in a systematic manner and must employ an effective data management system as provided for in section 6 of the Reporting Guidelines.

Investigation and audit

18. A direct participant must comply with any request from the Secretary of State for information in connection with his compliance with the requirements of this Schedule (including information provided to verifiers in connection with the verification of his baseline or annual emissions) within such period as may be specified by the Secretary of State (not being less than 10 working days).

19. The Secretary of State may appoint an auditor to undertake an independent audit of the information provided by the direct participant, and the participant must cooperate with the auditor

(including keeping proper records and making them available for inspection when required by the auditor).

20.— (1) Without prejudice to the foregoing provisions, a direct participant shall provide to the Secretary of State any data which—

(a) relates to emissions from any source which is or has at any time been included in the direct participant's source list; and

(b) has been requested in writing by the Secretary of State,

within 20 working days of the Secretary of State making the request.

(2) If a direct participant fails to comply with the paragraph (1) but within 20 days of the request notifies the Secretary of State that there is good reason for his failure to comply, and provides her with satisfactory evidence in support, the Secretary of State shall take this into account in deciding how to exercise her powers under rule C10.

SCHEDULE 3
CHANGE OF OPERATION AND SOURCE LIST ERRORS

PART 1

Change of Operation

Transfer of management control over sources between direct participants

1.—(1) Where a direct participant divests management control over a source in his source list to another direct participant, paragraph 2 shall apply.

(2) “Management control”, in relation to a source, has the meaning given in Annex A to the Framework Document.

(3) A direct participant divests management control over a source in his source list where, due to a sale, lease or restructuring of his operations, or the out-sourcing of an activity, or any similar transaction, he no longer exercises management control over that source.

(4) A direct participant acquires management control over a source where, due to a purchase, lease or restructuring of his operations, or the in-sourcing of an activity, or any similar transaction, he starts to exercise management control over that source.

(5) The divestment or acquisition of management control over a source shall be deemed to have occurred on—

- (a) the contractual date of completion;
- (aa) where management control of the source is divested by virtue of paragraph 3(1)(d), 1st January 2005 or, if later, the date upon which the Schedule 1 activity commenced.
- (b) where paragraphs (a) and (aa) does not apply, the date on which the divestment or acquisition took legal effect;
- (c) where paragraphs (a),(aa) and (b) do not apply, the date on which the divestment or acquisition took practical effect, or
- (d) a source, whose emissions are not excluded emissions, is an installation, or part of an installation, carrying out Schedule 1 activity,

2.—(1) If the change threshold is triggered in relation to the participant who divested the source, the participant’s source list, baseline and targets shall be amended in accordance with paragraph 17.

(2) If the change threshold is triggered in relation to the participant who acquired the source, that participant’s source list, baseline and targets shall be amended in accordance with paragraph 18.

(3) Where the change threshold is triggered in relation to either or both participants, and allowances have been allocated for the commitment year in which the source was divested, then—

- (a) if the change threshold is triggered in relation to both participants, the divesting participant must transfer to the acquiring participant the number of allowances calculated in accordance with paragraph 19;
- (b) if the change threshold is triggered only in relation to the divesting participant, then the participant must notify the Secretary of State of the fact, and on receipt of such notification, the Secretary of State shall cancel the number of allowances calculated in accordance with paragraph 19;
- (c) if the change threshold is triggered only in relation to the acquiring participant—

- (i) that participant must notify both his verifier and the Secretary of State, as part of his verification and reporting obligations under Part 3 of Schedule 2; and
 - (ii) the Secretary of State will allocate to the participant allowances equivalent to the number calculated under paragraph (a) above.
- (4) If the change threshold is not triggered in relation to a participant, then—
- (a) the participant’s source list, baseline and targets shall not be amended on that occasion; but
 - (b) if the change threshold is triggered by a subsequent divestment or acquisition, the amendments that would have been made if the change threshold had been triggered on the first occasion shall then be made (along with any other amendments required by this Schedule).
- (5) The “change threshold”, in this paragraph and in paragraphs 4, 11 and 12, has the meaning given in paragraph 16, and the change threshold is triggered in the circumstances set out in that paragraph.

Divestment of management control over sources other than to a direct participant

3.—(1) Where—

- (a) a direct participant divests management control over a source in his source list to a person who is not a direct participant;
- (b) a direct participant closes a source in his source list;
- (c) a direct participant’s joint-venture partner withdraws consent to the inclusion in the scheme of a source in his source list, or
- (d) a source, whose emissions are not excluded emissions, is an installation, or part of an installation, carrying out a Schedule 1 activity,

(2) For the purposes of this Schedule, each of the circumstances described in sub-paragraph (1)(b), (c) and (d) shall be treated as a “divestment” of the source.

(3) Paragraph 1(2), (3) and (5) shall apply in relation to sub-paragraph (1).

(4) A direct participant “closes” a source where the operation of that source ceases, and the source shall be deemed to be closed on that date.

4.—(1) If the change threshold is triggered in relation to the direct participant—

- (a) the participant’s source list, baseline and targets shall be amended in accordance with paragraph 17; and
- (b) if allowances have been allocated for the commitment year in which the source was divested, the participant shall notify the Secretary of State of the fact, and on receipt of such notification, the Secretary of State shall cancel the number of allowances calculated in accordance with paragraph 19.

(2) If the change threshold is not triggered in relation to the direct participant, then—

- (a) the participant’s source list, baseline and targets shall not be amended on that occasion; but
- (b) if the change threshold is triggered by a subsequent divestment or acquisition, the amendments that would have been made if the change threshold had been triggered on the first occasion shall then be made (along with any other amendments required by this Schedule).

5.—(1) Where paragraph 3(1)(a) applies, the person who acquired the source may apply to enter the scheme as a direct participant in relation to that source.

(2) Before he may participate as a direct participant in the scheme, the person must—

- (a) submit a direct participant application to the Secretary of State stating that he wishes to take over the direct participant's source list, baseline and targets in relation to that source; and
- (b) if the application is successful, enter into a direct participant agreement with the Secretary of State.

(3) The source list, baseline and targets of a successful applicant under this paragraph shall be determined as follows—

- (a) his source list shall comprise the acquired source;
- (b) his baseline shall be the baseline emissions of the acquired source; and
- (c) his targets shall be the reduction in the targets of the divesting participant.

6.—(1) Where paragraph 3(1)(c) applies, the direct participant must notify both his verifier and the Secretary of State as part of his verification and reporting obligations under Part 3 of Schedule 2 for the commitment year in which the divestment occurred.

(2) The notice must—

- (a) identify the relevant source;
- (b) state that the joint-venture partner has withdrawn consent to the inclusion of the source in the Scheme; and
- (c) be signed by the joint-venture partner.

Substantial closure or divestment of a source

7.—(1) Where a direct participant—

- (a) divests a substantial part of a source in his source list to a person who is not a direct participant; or
- (b) closes a substantial part of a source in his source list (including as a result of a force majeure event),

the Secretary of State may require the participant to treat the divestment or closure in the same way as the divestment or closure of a source under paragraph 3(1)(a) or (b), where she considers it appropriate having regard to the purposes of the scheme set out in rule A1.

(2) In such cases, the part of the source that has been closed or divested shall be treated as a “source” for the purposes of this Schedule.

(3) The Secretary of State may issue guidance from time to time on the application of this paragraph.

(4) A direct participant may seek an opinion from the Secretary of State regarding the application of this paragraph in any particular case.

(5) Where this paragraph applies, the direct participant must notify and provide details to both his verifier and the Secretary of State as part of his verification and reporting obligations under Part 3 of Schedule 2 for the commitment year in which the closure or divestment occurred.

(6) The notice must—

- (a) identify the relevant source;
- (b) describe the activity performed by the source;
- (c) where applicable, describe the effect of the force majeure event on the source; and
- (d) attach a copy of any opinion received from the Secretary of State pursuant to sub-paragraph (4) above.

Substantial increase in emissions from a source

8.—(1) Where the quantity of emissions from a source in a direct participant's source list substantially increases as a result of a force majeure event, the Secretary of State may allow the participant to treat the affected source in the same way as the closure of a source under paragraph

3(1)(b), where it would be unreasonable to require the participant to retain that source in his source list.

(2) The Secretary of State may issue guidance from time to time on the application of this paragraph.

(3) A direct participant may seek an opinion from the Secretary of State regarding the application of this paragraph in any particular case.

(4) Where this paragraph applies, the direct participant must notify and provide details to both his verifier and the Secretary of State as part of his verification and reporting obligations under Part 3 of Schedule 2 for the commitment year in which the force majeure event occurred.

(5) The notice must—

- (a) identify the relevant source;
- (b) describe the activity performed by the source;
- (c) describe the effect of the force majeure event on the source; and
- (d) attach a copy of any opinion received from the Secretary of State pursuant to sub-paragraph (3) above.

Acquisition of management control over sources other than from a direct participant

9.—(1) Where a direct participant—

- (a) acquires management control over a source from a person who is not a direct participant; or
- (b) opens a new source,

the participant's source list, baseline and targets shall not be amended.

(2) For the purposes of this Schedule, the opening of a new source shall be treated as an "acquisition" of the source.

(3) A "new source" means a source that did not exist until after 1st January 2000, and a direct participant shall be deemed to have opened a new source on the date the source becomes operational.

Acquisition by a direct participant of substitute sources

10.—(1) Where a direct participant divests management control over a source in his source list in the circumstances described in paragraphs 1 or 3, but continues the activity performed by the divested source by acquiring a substitute source, then paragraphs 11 to 13 shall apply.

(2) Subject to sub-paragraph (3), for the purposes of sub-paragraph (1) above, a direct participant acquires a substitute source by—

- (a) acquiring management control over a source in the circumstances described in paragraph 1 or 9;
- (b) re-opening a closed source;
- (c) resuming the normal operation of a source affected by a force majeure event and falling under paragraph 8(1); or
- (d) any similar transaction or restructuring of operations.

(3) For the purposes of this paragraph, if a direct participant opens or re-opens a source, then insofar as the source emits, in relation to any Schedule 1 activity, any of the greenhouse gas emissions specified in that Schedule in relation to that activity, then the direct participant shall not be taken as acquiring a substitute source.

11.—(1) If the divestment under paragraph 10(1) triggers the change threshold in relation to the direct participant, then (whether the substitute source was acquired in the same commitment year or a subsequent commitment year) sub-paragraphs (2) and (3) shall apply.

(2) In respect of the divested source—

- (a) the participant's source list, baseline and targets shall be amended in accordance with paragraph 17;
 - (b) if allowances have been allocated for the commitment year in which the source was divested—
 - (i) if the source was divested to another direct participant, then paragraph 2(3)(a) and (b) applies.
 - (ii) if the source was divested other than to a direct participant, then paragraph 4(1)(b) applies.
- (3) In respect of the substitute source, if the acquisition of the source triggers the change threshold in relation to the direct participant—
- (a) the participant's source list, baseline and targets, shall be amended as follows—
 - (i) add the substitute source to the participant's source list;
 - (ii) add back into the participant's baseline the amount subtracted under sub-paragraph (2)(a);
 - (iii) add back into the participant's targets the amounts subtracted under sub-paragraph (2)(a).
 - (b) if allowances have been allocated for the commitment year in which the substitute source was acquired—
 - (i) if the substitute source was acquired from another direct participant and the change threshold is triggered in relation to that other (divesting) participant—
 - (aa) the divesting participant shall transfer to the participant the number of allowances calculated in accordance with paragraph 19; and
 - (bb) where necessary, the participant shall notify the Secretary of State of the number of excess allowances, and on receipt of such notification, the Secretary of State shall cancel those allowances, or additional allowances will be allocated to the participant by the Secretary of State, so that his total allowance allocation for that commitment year under rule C5(2) reflects the acquisition of the substitute source;
 - (ii) if the substitute source is acquired from another direct participant but the change threshold is not triggered in relation to that other (divesting) participant, the Secretary of State will allocate allowances to the participant so that his total allowance allocation for that commitment year under rule C5(2) reflects the acquisition of the substitute source;
 - (iii) if the substitute source is acquired other than from a direct participant, then the Secretary of State will allocate allowances to the participant so that his total allowance allocation for that commitment year under rule C5(2) reflects the acquisition of the substitute source.

12.—(1) If the divestment under paragraph 10(1) does not trigger the change threshold in relation to the direct participant, then (whether the substitute source was acquired during the same commitment year or a subsequent commitment year)—

- (a) the participant's source list, baseline and targets shall not be amended on that occasion; but
- (b) if the change threshold is triggered by a subsequent divestment or acquisition, the amendments that would have been made if the change threshold had been triggered on the first occasion shall then be made (along with any other amendments required by this Schedule).

(2) If the acquisition under paragraph 10(2) does not trigger the change threshold in relation to the direct participant, then—

- (a) the participant's source list, baseline and targets shall not be amended on that occasion; but

- (b) if the change threshold is triggered by a subsequent divestment or acquisition, the amendments that would have been made if the change threshold had been triggered on the first occasion shall then be made (along with any other amendments required by this Schedule).

13.—(1) Where paragraph 10 applies, the direct participant must notify both his verifier and the Secretary of State, as part of his verification and reporting obligations under Part 3 of Schedule 2 for the commitment year in which the substitute source was acquired.

(2) The notice must—

- (a) identify the divested source;
- (b) describe the activity performed by that source;
- (c) state that the activity has been continued by a substitute source; and
- (d) identify the substitute source acquired.

13A. — (1) If, in relation to any direct participant, the Secretary of State is unable to comply with her obligations to cancel allowances under this Schedule due to there not being sufficient allowances in the participant’s compliance account she shall notify the participant of—

- (a) the number of allowances that she was required to cancel under this Schedule;
- (b) the number of allowances that she has cancelled under this Schedule; and
- (c) the number of outstanding allowances.

(2) A direct participant shall cancel the number of outstanding allowances within 21 days of the Secretary of State sending a notice to him under sub-paragraph (1).

(3) If a direct participant fails to comply with paragraph (2), the direct participant shall be deemed to have failed to comply with his emissions limitation commitment as set out in rule C6(1) for that commitment year, and his excess emissions for the purpose of rule C6 shall be increased by the number of outstanding allowances.

(4) For the purposes of this paragraph, “outstanding allowances” means the number of allowances that the Secretary of State is obliged to cancel under this Schedule in relation to a direct participant minus the number of allowances cancelled by the Secretary of State pursuant to that obligation, and the number of allowances cancelled in accordance with sub-paragraph (2).

PART 2

Source List Errors

Incorrectly included sources

14.—(1) If, at any time after the approval of his source list, a direct participant becomes aware that a source has been incorrectly included in his approved source list—

- (a) the participant’s source list, baseline and targets shall be amended in accordance with paragraph 17; and
- (b) if allowances have been allocated for the commitment year in which the amendments are made, the direct participant must cancel the number of allowances calculated in accordance with paragraph 19,

as if the incorrectly included source were a divestment of a source.

(2) The definition of an “incorrectly included” source in paragraph 7(5)(a) of Schedule 2 applies in respect of sub-paragraph (1).

Incorrectly omitted sources

15.—(1) If, at any time after the approval of his source list, a direct participant becomes aware that a source has been incorrectly omitted from his approved source list—

- (a) subject to sub-paragraph (2), the participant’s source list and baseline shall be amended in accordance with paragraph 18(2) and (3), as if the incorrectly omitted source were an acquisition of a source; but
- (b) the participant’s targets shall not be amended.

(2) The participant’s baseline shall not be amended if the baseline emissions from the omitted source are less than the size threshold (being the lesser of 10,000 tCO₂e or 1% of the participant’s approved source list).

(3) The definition of an “incorrectly omitted” source in paragraph 7(5)(b) of Schedule 2 applies in respect of sub-paragraph (1).

PART 3

Calculating Amendments to Source List, Baseline and Targets

Change Threshold

16.—(1) The change threshold referred to in Part 1 of this Schedule is the lesser of 25,000 tCO₂e or 2.5% of the direct participant’s verified original baseline.

(2) The change threshold is triggered in relation to a direct participant where the baseline emissions of a source divested or acquired by the participant, combined with the aggregate baseline emissions of any other sources previously divested or acquired by the participant, equals or exceeds the change threshold, expressed as follows:

$$\left| \sum_{i=1}^n (A_i + D_i) \right| \geq CT$$

where—

$| |$ means the absolute value of the quantity;

\sum means the sum of;

$\sum_{i=1}^n A_i$ is the sum of the baseline emissions from all acquired sources (a positive figure);

$\sum_{i=1}^n D_i$ is the sum of the baseline emissions from all divested sources (a negative figure).

Amendments to source list, baseline and targets upon divestment of a source

17.—(1) Where a direct participant divests a source, his source list, baseline and targets shall be amended where required by this Schedule as follows.

(2) Remove the divested source from the participant’s source list.

(3) Calculate the participant’s amended baseline (B_1) using the following formula—

$$B_1 = B_0 - B_s$$

where—

B_0 is the participant's baseline;

B_S is the baseline emissions of the divested source.

(4) Calculate the participant's amended overall target (OT_1) using the following formula—

$$OT_1 = OT_0 - OT_S$$

where—

OT_0 is the participant's overall target;

OT_S is the portion of OT_0 associated with the divested source, calculated as follows—

$$OT_S = \frac{OT_0 \times B_S}{B_0}$$

(5) Calculate the participant's amended annual target (AT_1) using the following formula—

$$AT_1 = \frac{OT_1}{Y}$$

where—

Y is the number of commitment years to which the overall target refers (i.e. five for direct participants who entered the scheme in the first commitment year).

(6) Where a direct participant divests management control of a source after 30th June in a commitment year the calculations in sub-paragraphs (3) to (5) shall be performed in two stages—

- (a) the calculations to determine the amended baseline and targets for the commitment year in which the source was divested shall be performed as set out in sub-paragraphs (3) to (5) but using " $\frac{1}{2}BS$ " instead of " BS ", and
- (b) the calculations to determine the baseline and targets for subsequent years shall be performed as set out in sub-paragraphs (3) to (5).

Amendments to source list, baseline and targets upon acquisition of a source

18.—(1) Where a direct participant acquires a source from another direct participant, his source list, baseline and targets shall be amended where required by this Schedule as follows.

(2) Add the acquired source to the participant's source list.

(3) Calculate the participant's amended baseline (B_1) using the following formula—

$$B_1 = B_0 + B_S$$

where—

B_0 is the participant's baseline;

B_S is the baseline emissions of the acquired source.

(4) Calculate the participant's amended overall target (OT_1) using the following formula—

$$OT_1 = OT_0 + OT_S$$

where—

OT_0 is the acquiring participant's overall target;

OT_S is the portion of the divesting participant's OT_0 associated with the acquired source (calculated under paragraph 17(4)).

(5) Calculate the participant's amended annual target (AT_1) as follows—

$$AT_1 = \frac{OT_1}{Y}$$

where—

Y is the number of commitment years to which the overall target refers (i.e. five for direct participants who entered the scheme in the first commitment year).

(6) Where a direct participant acquires a source after 30th June in a commitment year the calculations in sub-paragraphs (3) to (5) shall be performed in two stages—

- (a) the calculations to determine the amended baseline and targets for the commitment year in which the source was acquired shall be performed as set out in sub-paragraphs (3) to (5) but using " $\frac{1}{2}B_S$ " instead of " B_S ", and
- (b) the calculations to determine the baseline and targets for subsequent years shall be performed as set out in sub-paragraphs (3) to (5).

Transfer or cancellation of allowances

19. (1) The number of allowances to be transferred or cancelled by a direct participant under paragraphs 2(3), 4, 11 and 14 shall be calculated as follows—

$$N = A \times \frac{B_S}{B_0}$$

where—

N is the number of allowances (which shall be rounded to the nearest whole number);

A is the participant's total allowance allocation, prior to the divestment, for the commitment year in which the source was divested;

B_S is the baseline emissions of the divested source;

B_0 is the participant's baseline.

(2) Where a direct participant divests a source after 30th June in a commitment year, the calculation in sub-paragraph (1) shall be performed using " $\frac{1}{2}B_S$ " instead of " B_S ".

SCHEDULE 4

Dispute Resolution Procedure

Scope

1.—(1) This Schedule sets out the procedure to be adopted in the event of any dispute that may arise out of or relate to the scheme, a direct participant agreement or a trading participant agreement (other than a dispute relating to Schedule 5 (Auction)).

(3) For the purposes of this schedule, ‘parties’ means the Secretary of State and the participant or participants who are aggrieved by or seeking to challenge an act, omission or decision of the Secretary of State.

Mediation

2. The parties will use their best efforts to discuss in good faith and to settle any dispute subject to this Schedule prior to referring the matter to an adjudicator under paragraph 3.

Adjudication

3.—(1) If any dispute cannot be resolved through discussion and agreement under paragraph 2, either party may refer it to an appointed adjudicator who is appropriately qualified to consider the dispute in question.

(2) In default of agreement between the parties as to the appointment of an adjudicator, the Secretary of State will nominate an adjudicator who in her opinion is appropriately qualified.

(3) The liability to pay the costs of the appointment of an adjudicator and of the adjudication proceedings shall be determined by the adjudicator whose decision in that regard shall be binding on the parties, but not the legal and professional costs of either party, which shall be paid by the party incurring them.

4. Each party will have 20 working days from the date that it receives such notice to make representations to the adjudicator, and must copy any representations made to the other party.

5. The nominated adjudicator will determine the procedure which is to be followed in relation to the adjudication, but in doing so—

- (a) he must take account of the wishes of the parties and the scheme timetable;
- (b) he may take expert advice, after consulting the parties, to assist him with the adjudication;
- (c) he must ensure that each party has an adequate opportunity to respond to any representations made by the other party, and any evidence that he proposes to take into account;
- (d) he may request further information from either party to the dispute, in which case the information provided must be copied to the other party;
- (e) he may hold an oral hearing into the matter and decide on the procedure for such a hearing; and
- (f) he may impose or extend any time limit for any action to be taken by either party and may proceed with the adjudication in such manner as he considers appropriate in the circumstances if a time limit is not complied with.

6.—(1) The adjudicator will as a condition of his appointment undertake, on the basis of the representations provided to him and any additional information he considers to be relevant, to make a report, giving his findings of fact, his reasons and his recommendation.

(2) The adjudicator will send a copy of his report to each party.

Confidentiality

7.—(1) Unless otherwise agreed any adjudication will be conducted and any adjudication report issued on an open basis.

(2) If all parties consent—

- (a) the discussions and (with the consent of the adjudicator) the adjudication or any part of them will be conducted; and
- (b) the adjudication report will be issued

in private and upon such terms as may be agreed as to the non-disclosure of any matter.

Consequences

8.—(1) To the extent that any dispute involves a challenge to any decision, act or omission of the Secretary of State, she will reconsider such decision, act or omission in the light of the adjudicator's report.

(2) The Secretary of State will notify any participant affected of the action she proposes to take upon reconsideration and of her reasons.

9. Subject to paragraphs 3(3) and 8 above, the adjudicator's report and recommendation will not be binding on either party, and each party will be free to accept or reject the adjudicator's report or recommendation and to commence any legal proceeding in respect of the matters in dispute.

10. If the parties accept the adjudicator's recommendation or otherwise settle the dispute between them, such agreement shall be recorded in writing and once signed on their behalf shall be final and binding on the parties.

11. Subject to paragraph 7(2), either party may refer to and produce the adjudicator's report in evidence in any subsequent legal proceedings relating to the dispute.

12. Nothing in this Schedule shall restrict either party's freedom to commence legal proceedings if necessary to preserve confidentiality or any proprietary right or remedy.

SCHEDULE 5

Auction

Purpose

1. The purpose of the auction is to provide a procedure to determine—
 - (a) which of the direct participants are to continue in the scheme;
 - (b) the overall target of each of the direct participants; and
 - (c) the clearing price (used to calculate the amount of incentive payments under rule C2(1)).

Timing

2.—(1) The auction will start on the auction date and continue until the Secretary of State announces that the clearing price has been reached in accordance with paragraph 12(2).

(2) Direct participants will be notified of the auction date and the schedule of auction rounds in accordance with paragraph 3.

(3) The Secretary of State may change the auction schedule without the need for any consultation and will notify direct participants of any changes by announcing it on the auction software system or by any other means she considers appropriate.

Preparation for the auction

3. By the later of 4 days before the auction date or 2 business days after a direct participant enters into a direct participant agreement, the Secretary of State will notify the direct participant of—

- (a) the auction date;
- (b) the auction schedule setting out the dates and times at which the first round and any subsequent rounds will start and finish;
- (c) the internet address of the auction software system;
- (d) the unique auction logins and auction passwords which the direct participant will use to access the auction software system and participate in the auction;
- (e) a bidder's manual setting out detailed instructions on how to use the auction software system and the procedures for the electronic entry of bids;
- (f) the Secretary of State's telephone and fax numbers for the purpose of alternative bidding arrangements under paragraph 10; and
- (g) the telephone number of a dedicated auction help line.

Structure of the auction

4.—(1) Subject to paragraph 10, the auction will be conducted electronically on the auction software system in accordance with this Schedule and the auction guidance^(a).

(2) The auction will consist of a series of rounds and shall start with the first round on the date and at the time stated in the auction schedule notified to the direct participant under paragraph 3.

(3) Each round will consist of the period of time announced in the auction schedule during which all direct participants must enter a valid bid in accordance with the auction guidance and the bidder's manual or retire from the auction.

^(a) UK Emissions Trading Scheme Auction Guidance dated 25 January 2002 (ETS (02)02).

(4) The budget for the auction (as defined in the auction guidance) will be determined by the Secretary of State after the first round of the auction and will be announced on the auction software system.

Access to the auction software system

5.—(1) Direct participants may only access the auction software system using the technology specified in the bidder's manual and are responsible for making sure that their computers and other equipment can be used with the auction software system.

(2) Direct participants will be provided with user names and passwords in accordance with paragraph 3(d) in order to enable them to access and submit bids using the auction software system and to submit bids using the alternative arrangements set out in paragraph 10.

(3) Direct participants and their authorised representatives must keep all user names and passwords secret to prevent anyone who is not authorised from submitting bids.

(4) A direct participant must notify the Secretary of State as soon as possible if he suspects that—

- (a) an unauthorised person knows any of his user names or passwords;
- (b) an unauthorised person has tried or intends to access the auction software system;
- (c) he has forgotten or lost any of his user names or passwords; or
- (d) any user names or passwords have been kept in a form that may be accessible to an unauthorised person.

(5) Until she receives a notification under sub-paragraph (4), the Secretary of State will be entitled to consider that all bids submitted in relation to a direct participant have been made by an authorised person.

(6) The Secretary of State will take all reasonable steps to ensure that unauthorised access to the auction software system does not occur.

Bids

6.—(1) Bids shall be submitted in accordance with the auction guidance and the bidder's manual.

(2) The validity of any bid shall be assessed automatically by the auction software system and, in the event of an invalid bid, an error message will be displayed.

Withdrawing bids

7.—(1) A bid may be withdrawn at any time before the end of a round in accordance with the auction guidance and the procedure set out in the bidder's manual.

(2) Withdrawal of a bid shall not prevent the bidder from submitting another bid in that round.

Retirement

8.—(1) Any bidder may, during any round, notify his retirement from the auction by submitting a zero bid in accordance with the auction guidance and the bidder's manual.

(2) A bidder who has retired from the auction will not be entitled to bid in any later bidding round.

Failure to enter a bid

9.—(1) If a direct participant fails to enter a valid bid before the end of a round, the Secretary of State may attempt to contact the direct participant by telephone, using the number specified in the direct participant agreement.

(2) If contacted under sub-paragraph (1), a direct participant may—

- (a) indicate that he wishes to participate in the auction in which case the Secretary of State may extend the time for submission of the bid and may accept bids using the alternative arrangements set out in paragraph 10; or
- (b) confirm that he wishes to retire from the auction, in which case the Secretary of State will retire the direct participant from the auction and he will not be allowed to enter any further bids in subsequent rounds.

(3) If no contact is made under sub-paragraph (1), the Secretary of State will automatically retire the direct participant from the auction, in which case he will not be allowed to enter any further bids in subsequent rounds.

Alternative arrangements for bidding

10.—(1) Where at any time during the auction a direct participant is unable to participate in the auction by using the auction software system, he must notify the Secretary of State by telephone using the number notified under paragraph 3(f).

(2) If contacted under sub-paragraph (1), the Secretary of State may allow the participant to participate in the auction by telephone, in which case any communication must be accompanied by one of the auction usernames and passwords notified to the participant under paragraph 3(d).

(3) If any direct participant participates in the auction by telephone, the Secretary of State may make a tape recording of any conversation with that direct participant.

(4) If a participant who has contacted the Secretary of State under sub-paragraph (1) cannot provide one of the auction usernames and passwords, he may participate in the auction by fax using the number notified under paragraph 3(f), in which case any communication must be accompanied by the specified signature of one of the persons authorised under the direct participant agreement.

(5) The Secretary of State may communicate additional information about the auction (including notification of invalid bids) to a direct participant participating in the auction under sub-paragraph (2) or (4) by whatever means she considers appropriate.

(6) In the event of the auction software system failing to operate, the Secretary of State will notify direct participants of an alternate internet address by whatever means she considers appropriate.

Cancellation

11.—(1) The Secretary of State may at any time decide to cancel the auction or postpone it.

(2) The Secretary of State will notify direct participants of any decision under sub-paragraph (1) by announcing it on the auction software system or by any other means she considers appropriate.

Final round

12.—(1) After each round the Secretary of State will consider the bids received in accordance with the auction guidance in order to determine whether the clearing price has been reached.

(2) If the Secretary of State decides that the clearing price has been reached, she will announce the clearing price on the auction software system.

(3) The overall targets for all direct participants submitting valid bids in the round of the auction in which the clearing price is reached will be calculated in accordance with the auction guidance.

Exclusion

13.—(1) If a direct participant breaches one of more of the rules set out in sub-paragraphs (2) to (4), the Secretary of State may, at her discretion, notify that direct participant of his exclusion from the auction.

(2) A direct participant must not submit to the Secretary of State any information affecting her decision to enter into a direct participant agreement which the direct participant knows to be false or misleading.

(3) A direct participant must not compromise or attempt to compromise the security of the auction software system and in particular must comply with paragraphs 5(3) and (4).

(4) A direct participant must not convey or incite another person to convey any confidential information directly or indirectly relating to any proposed bid which might have an effect on the way in which any other direct participant proposes to participate in the auction.

Dispute resolution

14. Any question arising in the course of the auction about the application of this Schedule or the auction guidelines shall be decided by the Secretary of State and her decision shall be final and conclusive on that question.

SCHEDULE 5A

Notification of an EU ETS overlap

Introduction

1.—(1) This Schedule prescribes the information an operator or sector association is required to submit to the Secretary of State for the purpose of rule D3A(3).

(2) In this Schedule, references to an “operator” are to be taken as a reference to a sector association in cases falling within rule D3A(2)(b).

The EU ETS overlap

2. In respect of the CCA facility and target, the operator shall—

- (a) identify the facility, including the facility number; and
- (b) specify the target unit applying to the facility, including in particular—
 - (i) where the target is a relative target, details of throughput;
 - (ii) where the target unit has an energy target, details of the fuel split from the facility and the relevant carbon emission factors used.

3. In respect of the relevant EU ETS installation, the operator shall—

- (a) identify the installation, and its National Allocation Plan ID; and
- (b) confirm—
 - (i) the number of EU ETS allowances issued to that installation; and
 - (ii) the level of emissions emitted from that installation, in respect of the scheme year notified.

4. The operator shall, in accordance with the methodology set out in any guidance issued by the Secretary of State under rule D3A(10), specify the extent to which the Schedule 1 activities of that EU ETS installation—

- (a) take place within the facility; or
- (b) are attributable to an import referred to under rule D3A(1)(b),

providing the Secretary of State (and, where relevant, any verifier) with the necessary data and calculations in support.

EU ETS overachievement or underachievement

5. The operator shall, in accordance with the methodology set out in any guidance issued by the Secretary of State under rule D3A(10), specify—

- (a) the amount of any EU ETS overachievement; or
- (b) the amount of any EU ETS underachievement,

expressed, in either case, in terms of the number of EU ETS allowances to which that overachievement or underachievement is equal and providing the Secretary of State (and, where relevant, any verifier) with the necessary data and calculations to justify its notification in respect of this paragraph.

Retirement of EU ETS allowances

6. The operator shall confirm if it has already retired a number of EU ETS allowances at least equal to its EU ETS overachievement.

Other information

7. In addition to supplying the information required by this Schedule, the operator shall provide any other information—

- (a) which is requested by the Secretary of State; or
- (b) which it considers would be relevant to the application of rule D3A..

SCHEDULE 6

MONITORING, REPORTING AND VERIFICATION OF CCA OVER-ACHIEVEMENTS

Introduction

1. A CCA participant which wishes to convert a CCA over-achievement into allowances under rule D4 must comply with this Schedule.

Monitoring

2.—(1) For the target period in which the CCA over-achievement occurred, the CCA participant must calculate in accordance with the documents and other materials listed in sub-paragraph (2)—

- (a) for an operator converting the CCA over-achievement of a target unit,
 - (i) the throughput of the target unit; and
 - (ii) either the energy used by or the emissions from the target unit in tonnes of carbon dioxide equivalent;
- (b) for a sector association converting the CCA over-achievement of a trading group—
 - (i) the throughput of all facilities in the trading group; and
 - (ii) either the energy used by or the emissions from all facilities in the trading group in tonnes of carbon dioxide equivalent.

(2) The documents and other materials referred to in sub-paragraph (1) are—

- (a) the umbrella agreement and the underlying agreement which apply to the target unit or the facilities in the trading group to which the CCA over-achievement relates;
- (b) CCA guidance documents which relate to emissions trading, including in particular CCA3 and CCA10; and
- (c) any further guidance given by the Secretary of State from time to time.

(3) In making the calculation referred to in sub-paragraph (1), no account may be taken of—

- (a) any tolerance bands specified in an underlying agreement;
- (b) any adjustments made to a CCA target in accordance with the terms of an underlying agreement to account for product mix or throughput; or
- (c) any increase in energy use or emissions which was disregarded in accordance with the terms of an underlying agreement because it was the result of unexpected energy supply disruptions.

Reporting

3.—(1) An application to convert a CCA over-achievement into allowances under rule D4(7) or (13) must be accompanied by a statement of over-achievement prepared in accordance with this paragraph.

(2) For an operator, a statement of over-achievement must—

- (a) set out the total amount by which the CCA target for the target unit to which the application relates has been exceeded during the target period, denominated in tonnes of carbon dioxide equivalent;
- (b) certify that the operator has not submitted a previous claim in respect of the same target unit over the same target period;

- (c) certify that the target unit is not part of a trading group and that the over-achievement has and will not be used as part of the over-achievement of a trading group; and
- (d) certify that the operator has complied with the notification requirements of rule D4(5) in respect of the over-achievement.

(3) For a sector association, a statement of over-achievement must—

- (a) set out the total amount by which the trading group target to which the application relates has been exceeded during the target period, denominated in tonnes of carbon dioxide equivalent;
- (b) certify that the sector association has not submitted a previous claim in respect of the same trading group over the same target period;
- (c) certify that no operator has submitted a claim in respect of any part of the CCA over-achievement which is the subject of the application; and
- (d) certify that the sector association has complied with the notification requirements of rule D4(11) in respect of the over-achievement.

(4) If an application under rule D4(7) or (13) relates to CCA over-achievements occurring in more than one target period, the statement of over-achievement must include a breakdown of the total over-achievement showing the individual over-achievement in each target period and, in a situation falling within rule D4(16)(b)(i), how the over-achievement related to the absolute and relative CCA targets concerned.

Verification

4.—(1) A CCA participant wishing to convert a CCA over-achievement into allowances must have its compliance with the requirements of rule D4 and paragraphs 2 and 3 of this Schedule verified by a verifier in accordance with this paragraph.

(2) The participant must provide the verifier with the following information—

- (a) for an operator—
 - (i) the total energy use or emissions from the target unit during the target period to which the over-achievement relates and, for target units with relative targets, the relevant output data;
 - (ii) details of the data, procedures, decisions, measurements and calculations on which the figures referred to in sub-paragraph (a) are based;
 - (iii) the facility number of each facility in the target unit;
 - (iv) the CCA target for the target unit for the relevant target period; and
 - (v) such other information as the verifier requires;
- (b) for a sector association—
 - (i) the total energy use or emissions from the facilities in the trading group during the target period to which the over-achievement relates and, for target units with relative targets, the relevant output data;
 - (ii) details of the data, procedures, decisions, measurements and calculations on which the figures referred to in sub-paragraph (a) are based;
 - (iii) the facility numbers of the facilities in the trading group;
 - (iv) the trading group target for the relevant target period; and
 - (v) such other information as the verifier requires.

(3) The participant must provide the verifier with a written declaration signed by a director manager or other designated representative of the participant confirming that the information which it has provided is, to the best of the participant's knowledge, accurate and complete.

(4) The verifier must assess the information provided by the participant in accordance with—

- (a) the provisions of the relevant umbrella and underlying agreements;
- (b) CCA guidance documents which relate to emissions trading, including in particular CCA3 and CCA10;
- (c) guidance to verifiers issued by UKAS; and
- (d) any other guidance given by the Secretary of State from time to time;

and must take account of all relevant information (whether or not provided by the participant).

(5) A verifier shall only provide the participant with an unqualified verification opinion, where a verifier is satisfied that the statement of over-achievement prepared by the participant under paragraph 3 accurately reflects the extent of the over-achievement and that the requirements of rule D5 and this Schedule have been complied with.

(6) Where a verifier cannot provide the participant with an unqualified verification opinion, it may nonetheless provide a qualified verification opinion but such an opinion will not satisfy the requirements of rule D4(7)(b) or (13)(b).

(7) A CCA participant must inform both the Secretary of State and any verifier which it subsequently instructs of any previous refusal by a verifier to provide an unqualified verification opinion or of any qualifications in a verification opinion in respect of any CCA over-achievement, together with any reasons given by the verifier for the refusal or qualifications.

Retention of information

5.—(1) Compliance with this paragraph will be treated by the Secretary of State as satisfying the obligation of a CCA participant under the underlying or umbrella agreement to which it is a party to keep proper records in respect of an application to convert a CCA over-achievement into allowances.

(2) The participant must keep sufficient records to allow any person appointed by the Secretary of State under an umbrella or underlying agreement to undertake an independent audit of any application under rule D4.

(3) In particular, the participant must retain—

- (a) the activity data and other information on which any calculation of his emissions in a target period was based; and
- (b) information and data not required under sub-paragraph (a) but which is required by the verifier to verify the data submitted by the participant to the Secretary of State.

(4) All such records must be retained for the purposes of compliance with this Schedule for at least six years from the date on which they are created.

(5) A CCA participant must record and manage the information retained under this rule in a systematic manner and must employ an effective data management system.