
STATUTORY INSTRUMENTS

2013 No. 3135

The Greenhouse Gas Emissions Trading Scheme and National Emissions Inventory (Amendment) Regulations 2013

PART 2

Amendment of the Greenhouse Gas Emissions Trading Scheme Regulations 2012

Interpretation

2. A reference in this Part to a numbered regulation or Schedule is to that regulation of, or Schedule to, the Greenhouse Gas Emissions Trading Scheme Regulations 2012(1).

Penalty for carrying out an unauthorised activity

3.—(1) Regulation 52 (carrying out a regulated activity contrary to regulation 9) is amended as follows.

(2) In paragraph (2), for “For each” substitute “Subject to paragraph (3), for each”.

(3) For paragraph (3), substitute—

“(3) In imposing the penalty under paragraph (2), the regulator may increase the amount determined under that paragraph by a percentage designed to ensure that the penalty exceeds the amount of any economic benefit that P has obtained as result of the failure to comply with regulation 9.”.

(4) In paragraph (4)(b), for “in accordance with” substitute “under”.

Transitional provisions: penalties

4.—(1) In regulation 3 (interpretation), in the definition of “allowance”, for “subject to regulations 54(7) and 82(1)” substitute “subject to regulations 54(7), 82(1) and 87B(5)”.

(2) In regulation 86 (savings and transitional provisions: the 2005 Regulations)—

(a) in paragraph (15), after “the following civil penalties apply” insert “(subject to the regulator’s discretion under regulation 51 above)”; and

(b) in paragraph (18), for “Regulations” substitute “Subject to regulation 87B below, regulations”.

(3) In paragraph (8) of regulation 87 (savings and transitional provisions: the 2010 Regulations)(2), for “Subject to regulation 87A below” substitute “Subject to paragraph (8A) and to regulations 87A and 87B below”.

(4) After regulation 87(8) insert—

(1) [S.I. 2012/3038](#), amended by paragraphs 418 to 427 of Schedule 4 to [W.S.I. 2013/755 \(W. 90\)](#) and by [S.I. 2013/1037](#).
(2) Regulation 87(8) was amended, and regulation 87A inserted, by [S.I. 2013/1037](#).

“(8A) Regulation 51 above applies in relation to the penalty under regulation 35 of the 2010 Regulations as it applies in relation to the penalty under regulation 64 above.”.

(5) After regulation 87A insert—

“Unreported emissions arising before 2013

87B.—(1) Where paragraph (2) applies, a person (“P”) is not liable to an excess emissions penalty for a failure to surrender allowances in respect of those reportable emissions in a relevant year (“Y”) that—

- (a) were not reported in the verified emissions report submitted for Y; but
- (b) have been determined by the regulator.

(2) This paragraph applies where P, before the regulator serves on P a penalty notice imposing an excess emissions penalty in respect of emissions in Y (or a notice of the regulator’s intention to do so)—

- (a) notifies the regulator that there are reportable emissions not included in the report that has been submitted for Y; and
- (b) has surrendered allowances equal to the reportable emissions for Y as determined by the regulator.

(3) Where paragraph (2) applies, P is liable to the civil penalty of the sterling equivalent of 20 Euros for each allowance that P failed to surrender by 30th April in the year following Y in respect of the unreported emissions.

(4) Regulation 51(1) above applies to a penalty under paragraph (3) as it applies to a penalty under Part 7.

(5) In this regulation—

- (a) “allowance” includes—
 - (i) where the excess emission penalty would arise under the 2010 Regulations, an aviation allowance; and
 - (ii) within the limits allowed by regulation 27A of the 2005 Regulations or regulation 26 of the 2010 Regulations, a project credit as defined by regulation 27 of the 2010 Regulations;
- (b) “determined” means determined under regulation 30 of the 2005 Regulations or regulation 22 of the 2010 Regulations;
- (c) “excess emissions penalty” means the penalty under regulation 39 of the 2005 Regulations or regulation 38(1)(a) of the 2010 Regulations;
- (d) “penalty notice” means a notice under regulation 41(2) of the 2005 Regulations or regulation 30(1) of the 2010 Regulations;
- (e) “relevant year” means a calendar year prior to 2013;
- (f) “unreported emissions” means the emissions mentioned in paragraph (1);
- (g) “sterling equivalent” has the meaning given in regulation 54(7) above.”.

Registries

5.—(1) In regulation 3 (interpretation)—

- (a) omit the definition of “the Registries Regulation 2011”, and at the appropriate place insert—

““the Registries Regulation 2013” means Commission Regulation (EU) No 389/2013 of 2 May 2013 establishing a Union Registry pursuant to [Directive 2003/87/EC](#) of the European Parliament and of the Council, Decisions No [280/2004/EC](#) and No [406/2009/EC](#) of the European Parliament and of the Council and repealing Commission Regulations (EU) No 920/2010 and No 1193/2011(3), as amended from time to time;”;

(b) in the definition of “registry account”—

(i) for “or “excluded”” substitute “, “excluded” or “closed””; and

(ii) for “Article 9 of the Registries Regulation 2011” substitute “Article 10 of the Registries Regulation 2013”; and

(c) in the definition of “the Union Registry” for “2011” substitute “2013”.

(2) In regulation 8 (Commission Regulations: designations)—

(a) in paragraph (1), for “2011” substitute “2013”;

(b) for paragraphs (2) and (3) substitute—

“(2) Subject to paragraph (3), the regulator is the competent authority designated by the United Kingdom for the purposes of the Registries Regulation 2013 (other than Articles 25(3) and 34(6)).

(3) The Secretary of State is the competent authority so designated for the purposes of—

(a) Article 19;

(b) Article 32(2);

(c) Article 33(1);

(d) Article 34(7); and

(e) Article 97(1).”; and

(c) omit paragraphs (4) and (5).

(3) In paragraph (5) of regulation 44 (power to determine reportable emissions), for “Article 32(6) of the Registries Regulation 2011” substitute “Article 35(6) of the Registries Regulation 2013”.

(4) In paragraph (6)(e) of regulation 45 (provision of information), for “2011” substitute “2013”.

(5) In regulation 74 (rights of appeal: registries)—

(a) in paragraph (1)—

(i) after “registry administrator” insert “or KP registry administrator”; and

(ii) for “2011” substitute “2013”;

(b) for paragraph (2) substitute—

“(2) Those provisions are—

(a) Article 22(3);

(b) Article 24(6);

(c) Article 25(3);

(d) Article 33(5);

(e) Article 34(6).”; and

(c) omit paragraphs (3) and (4).

(6) In regulation 77 (determination of an appeal)—

- (a) for paragraph (2) substitute—
 - “(2) In determining an appeal under regulation 74, the appeal body may give directions to the registry administrator or the KP registry administrator as to the exercise of their functions under the Registries Regulation 2013.”; and
- (b) in paragraph (3), for “2010 or 2011” substitute “2013”.
- (7) In regulation 79 (interpretation)—
 - (a) for paragraph (1) substitute—
 - “(1) In this Part, a reference to a numbered Article is to that Article of the Registries Regulation 2013.”; and
 - (b) in paragraph (2), for “Article 49” substitute “Article 51(1)” and for “Article 53(1)” substitute “Article 54(1)”.
- (8) In regulation 80 (the Union Registry)—
 - (a) omit paragraph (1);
 - (b) in paragraph (2), for “Article 32(2)” substitute “Article 35(2)”;
 - (c) in paragraph (3), for “Articles 32(4) and (5)” substitute “Article 35(4) and (5)”;
 - (d) in paragraph (4), for “Article 14(1) or 15(1)” substitute “Article 16(1) or 17(1)”;
 - (e) in paragraph (6), for “Article 34” substitute “Article 37”;
 - (f) in paragraph (11), for “Article 50(1) or 54(1)” substitute “Article 52(1) or 55(1)”;
 - (g) in paragraph (12), for “Article 50(2) or 54(2)” substitute “Article 52(2) or 55(2)”;
 - (h) in paragraph (16), for “Article 36(3)” substitute “Article 39(3)”.
- (9) In paragraph (1) of regulation 81 (the UK Registry), for “Article 3(1) of the Registries Regulation 2010” substitute “Article 5(1) of the Registries Regulation 2013”.
- (10) Omit paragraph 81(2).
- (11) In paragraph 2 of regulation 84 (guidance), for “the Registries Regulations 2011 or the Registries Regulations 2010” substitute “the Registries Regulations 2013”.
- (12) In paragraph 3(12) of Schedule 4 (permits), for “Article 50(1)(d) or (e) of the Registries Regulation 2011” substitute “Article 52(1)(c) or (d) of the Registries Regulation 2013”.
- (13) In paragraph 8(9) and (10) of Schedule 5 (excluded installations), for “2011” substitute “2013”.

Minor amendments

- 6.—(1) In paragraph (1) of regulation 69 (failure to comply with an information notice), for “notice” substitute “a notice”.
- (2) In paragraph 1(5)(b) of Schedule 3 (applications etc.), for “report” substitute “report or notice”.
- (3) In paragraph 3(3) of Schedule 5 (excluded installations), for “mention” substitute “mentioned”.
- (4) In Schedule 6 (allocation and adjustment of allowances)—
 - (a) in paragraph 7(7)(b), for “paragraph 11(1)” substitute “paragraph 11(1)(c) and (2)”;
 - (b) in paragraph 7(9)(c), for “12(1)” substitute “13(1)”;
 - (c) in paragraph 11(3), for “sub-paragraph (1)” substitute “sub-paragraph (2)”.
- (5) In paragraph 1(2) of Schedule 7 (allocation of aviation allowances), insert at the end “or under the 2009 Regulations”.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.
