

EXPLANATORY MEMORANDUM TO
THE GREENHOUSE GAS EMISSIONS TRADING SCHEME (AMENDMENT)
REGULATIONS 2015

2015 No. 1849

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department of Energy and Climate Change and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 These Regulations amend the Greenhouse Gas Emissions Trading Scheme Regulations 2012 (“the 2012 Regulations”), which transpose the provisions of Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community (“the EU ETS Directive”). These Regulations add further provision to the 2012 Regulations in respect of ‘small emitters’ exempted from the full requirements of the EU Emissions Trading System (“the EU ETS”). These Regulations make provision in respect of where an operator no longer falls within the scope of the small emitter exemption, and therefore moves back into the main emissions trading scheme, specifically in respect of the allocation of allowances to such operators.

3. Matters of special interest to Parliament

- 3.1 These Regulations are made in exercise of the powers conferred by both section 2(2) of the European Communities Act 1972 and section 2 of the Pollution Prevention and Control Act 1999. A combination of these powers is needed as section 2 of the 1999 Act is the appropriate domestic power, but does not extend to Northern Ireland. It is therefore necessary to exercise the powers in section 2(2) of the 1972 Act as well as those in section 2 of the 1999 Act.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 These Regulations are made under s2(2) European Communities Act 1972 (c.68), as read with paragraph 1A of Schedule 2 of that Act, and section 2 and 7(9) of, and Schedule 1 to, the Pollution Prevention and Control Act 1999 (c.24).
- 4.2 These Regulations make amendments to the Greenhouse Gas Emissions Trading Scheme Regulations 2012 (S.I. 2012/3038). The 2012 Regulations have been amended by S.I. 2013/755, 2013/1037, 2013/3135, 2014/3125, 2015/933, and 2015/1388.
- 4.3 These Regulations make provision transposing Article 10a and Article 27 of the EU ETS Directive, as amended. A transposition note is attached as an Annex to this Memorandum.

5. Extent and Territorial Application

5.1 These Regulations apply to England, Wales, Scotland and Northern Ireland.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

- 7.1 The EU ETS is a cap and trade scheme that limits emissions of carbon dioxide from the EU's power and heavy industrial sectors. The scheme covers more than 10,000 installations across the EU, mainly large emitters such as fossil fuel power stations, steel plants and refineries. Operators of installations are required to monitor and report their emissions each year and to surrender EU ETS allowances against these emissions (1 allowance = 1 tonne of CO₂).
- 7.2 Smaller emitters under the EU ETS face disproportionately higher regulatory costs per tonne of CO₂ than larger emitting installations. To reduce these costs the EU ETS Directive allowed Member States to create opt-out schemes for small emitters – those with emissions below 25,000 tonnes per annum – as well as for hospitals. The UK implemented its Small Emitter and Hospital Opt-Out Scheme (the 'opt-out scheme') from the beginning of 2013, enabling 241 UK installations to opt out of the full EU ETS. The opt-out scheme allowed these installations to take a fixed emissions target rather than operate in the full EU ETS and be required to take part in the trading and surrender of allowances, reducing the administrative burden faced while delivering the same emissions reduction.
- 7.3 Installations in the opt-out scheme must move back to the full EU ETS where a small emitter crosses the maximum 25,000 tonne emissions limit or an installation ceases to serve a hospital. They will then be required to take part in the trading and surrender of allowances, and will also be eligible to receive some of their allowances for free, in line with provisions in the full ETS. At present UK legislation does not provide the mechanism required to calculate and distribute these free allowances. To date this has not been an issue as no installations in the opt-out scheme have been required to move back to the full EU ETS. In January this year the first installation moved back to the full scheme and is therefore now eligible to receive free allowances, in time for the surrender deadline in April 2016. A second installation will be moving back to the full scheme in 2016 and receive its allowances before April 2017. These Regulations therefore make provision for the allocation of allowances to such operators.
- 7.4 The EU ETS Directive requires that free allocation be made to operators of eligible installations in a fully harmonised way across the EU. Our options are therefore limited to how rather than whether we implement these changes. We have concluded that the fairest and simplest way to do this is to replicate as closely as possible the existing UK and EU rules for determining allocation of free allowances to installations already in the full EU ETS. This ensures that installations will receive the same number of allowances for the same type and scale of activity, regardless of whether they were in the full EU ETS from the outset or have returned from the opt out scheme, minimising any distortion in the markets in which they operate.

Consolidation

- 7.5 Although a number of amendments have now been made to the 2012 Regulations, the Department has not made consolidating regulations at this time, as a post-implementation review of the 2012 Regulations will be carried out in 2017. In addition, negotiations have recently commenced on Phase IV of the EU ETS, which will lead to substantial changes to the EU, and therefore also the UK, legislation. It is therefore more appropriate for consolidated regulations to be made in respect of the next iteration of the Regulations.

8. Consultation outcome

- 8.1 The public consultation commenced on 17 July 2015 for a six week period concluding on 21 August 2015. An invitation to respond was issued to stationary operators; non-governmental organisations; wider EU ETS participants, regulators and verifiers. There were 3 responses all of which agreed with our approach and proposed amendments to the 2012 Regulations. A full consultation response will be published on gov.uk in parallel as these Regulations are laid before Parliament.

9. Guidance

- 9.1 The Department of Energy and Climate change has published guidance on the small emitter opt-out and intends to publish an updated version upon laying these Regulations before Parliament.

10. Impact

- 10.1 An Impact Assessment has not been prepared for this instrument as no significant impact on the private or voluntary sectors is foreseen.

11. Regulating small business

- 11.1 The legislation applies to activities that are undertaken by small businesses.
- 11.2 The legislation does apply to small businesses; it makes provision in respect of the 'small emitter' opt-out in the EU Emissions Trading System, which provides for a simplified procedure for small businesses.
- 11.3 These Regulations make provision in respect of where a small emitter moves back into the main scheme and ensures that small emitters receive their free allocation.

12. Monitoring & review

- 12.1 Regulation 2 of the 2012 Regulations places an obligation on the Secretary of State to carry out a review of those Regulations, and to publish a report which must in particular must in particular: (a) set out the objectives intended to be achieved by the regulatory system established by these Regulations; (b) assess the extent to which those objectives are achieved; and (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.
- 12.2 The amendments made to the 2012 Regulations by virtue of these Regulations will form part of that review. The first review must be carried out within 5 years of the 2012 Regulations coming into force.

13. Contact

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