

2019 No. 644

CLIMATE CHANGE

**The Greenhouse Gas Emissions Trading Scheme (Amendment)
(No. 2) Regulations 2019**

Made - - - - at 12.00 noon on 22nd March 2019

Laid before Parliament at 3.00 p.m. on 22nd March 2019

Coming into force - - - - 25th March 2019

The Secretary of State is a Minister designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to the environment.

In accordance with section 2(4) of the Pollution Prevention and Control Act 1999(c), the Secretary of State has consulted the Environment Agency, the Natural Resources Body for Wales, the Scottish Environment Protection Agency, and such bodies or persons appearing to the Secretary of State to be representative of the interests of local government, industry, agriculture and small businesses, and such other bodies and persons, as the Secretary of State considers appropriate.

Accordingly, the Secretary of State, in exercise of the powers conferred by sections 2 and 7(9) of, and Schedule 1 to, the Pollution Prevention and Control Act 1999, and by section 2(2) of the European Communities Act 1972, makes the following Regulations(d):

Citation and commencement

1. These Regulations may be cited as the Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Regulations 2019 and come into force on 25th March 2019.

Amendments to the Greenhouse Gas Emissions Trading Scheme Regulations 2012

2.—(1) The Greenhouse Gas Emissions Trading Scheme Regulations 2012(e) are amended in accordance with paragraphs (2) to (6).

(a) S.I. 2008/301.

(b) 1972 c. 68; section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51) and by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7).

(c) 1999 c. 24; section 2(4) was amended by paragraph 395 of Schedule 2 to the Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755 (W. 90)).

(d) Under section 57 of the Scotland Act 1998 (c. 46), despite the transfer to the Scottish Ministers of functions in relation to observing and implementing obligations under EU law in respect of devolved matters, any function of the Secretary of State in relation to any matter continues to be exercisable as regards Scotland for the purposes specified in section 2(2) of the European Communities Act 1972. And similarly, under paragraph 5 of Schedule 3 to the Government of Wales Act 2006 (c. 32), despite the transfer to the Welsh Ministers of functions under section 2 of the Pollution Prevention and Control Act 1999 so far as exercisable in relation to Wales (except in relation to offshore oil and gas exploration and exploitation), those functions continue to be exercisable by the Secretary of State in relation to Wales for such purposes.

(e) S.I. 2012/3038; relevant amending instruments are S.I. 2013/3135, S.I. 2014/3125, S.I. 2015/1849, S.I. 2017/1207 and S.I. 2019/528.

(2) In regulation 3(1), after the definition of “the 2010 Regulations” insert—

““the 2018 surrender deadline” means, subject to paragraphs (1A) to (1C), 10.59 pm on 29th March 2019;”.

(3) After regulation 3(1), insert—

“(1A) This paragraph applies if at any time before 10.59 pm on 29th March 2019 an enactment (“enactment 1”) has made provision, in any form, which has the effect that exit day, within the meaning of section 20(1) of the European Union (Withdrawal) Act 2018(a) (“the 2018 Act”), is to be a date after 29th March 2019.

(1B) This paragraph applies where—

(a) paragraph (1A) applies; and

(b) at any time on or after 10.59 pm on 29th March 2019 but before the 2018 surrender deadline which applies in relation to enactment 1, a subsequent enactment (“enactment 2”) has made provision, in any form, which has the effect that exit day, within the meaning of section 20(1) of the 2018 Act, is to be a date after the date provided for in enactment 1,

and in the event of an enactment subsequent to enactment 2, the references in subparagraph (b) to enactment 1 are to be read as references to enactment 2 and so on.

(1C) Where paragraph (1A) or paragraph (1B) applies—

(a) if exit day is a day falling before 1st May 2019, the 2018 surrender deadline is immediately before the UK’s exit from the European Union; and

(b) if exit day is a day falling on or after 1st May 2019, the 2018 surrender deadline is 30th April 2019.”.

(4) In regulation 42A(2)(a), for “26th March 2019” substitute “the 2018 surrender deadline”.

(5) In regulation 54(7)(b)(i), for “26th March 2019” substitute “the 2018 surrender deadline”.

(6) In paragraph 2(4)(a) of Schedule 4, for “26th March 2019” substitute “the 2018 surrender deadline”.

Claire Perry

Minister of State for Energy and Clean Growth

at 12.00 noon on 22nd March 2019

Department for Business, Energy and Industrial Strategy

EXPLANATORY NOTE

(This note is not part of the Regulations)

Directive 2003/87/EC of the European Parliament and of the Council establishing a system for greenhouse gas emissions allowances trading within the Union (OJ L 275, 25.10.2003, p.32) is implemented in the United Kingdom by the Greenhouse Gas Emissions Trading Scheme Regulations 2012 (S.I. 2012/3038) (“the 2012 Regulations”).

Regulation 2(2) and (3) amends the interpretation provisions in the 2012 Regulations.

Regulation 2(4) amends regulation 42A(2) of the 2012 Regulations, changing the deadline for aircraft operators to surrender sufficient allowances to cover their annual reportable emissions for the 2018 scheme year. The surrender deadline is changed to 10.59 pm on 29th March 2019 and is further moved, either to immediately before the UK’s exit from the EU or to 30th April 2019 if “exit day” within the meaning of the European Union (Withdrawal) Act 2018 is changed so that it falls, respectively, on a day before 1st May 2019 or on or after 1st May 2019. These deadlines also apply if, before the new surrender deadline, “exit day” is subsequently changed again.

Regulation 2(5) amends regulation 54(7)(b) of the 2012 Regulations, changing the date from which a penalty is payable for the 2018 scheme year where an aircraft operator or installation has

(a) 2018 c.16.

annual reportable emissions which are not included in the verified emissions report and where there is a failure to surrender sufficient allowances in relation to those unreported emissions. In such cases, the date is changed to reflect the changes to the surrender deadline (including any further changes made prior to the new surrender deadline).

In the case of installations, the relevant surrender requirements are set out as conditions of the permit. Regulation 2(6) amends Schedule 4 to the 2012 Regulations to change the date when operators of installations are required to surrender sufficient allowances to cover their annual reportable emissions for the 2018 scheme year to reflect the changes to the surrender deadline (including any further changes made prior to the new surrender deadline).

A full regulatory impact assessment has not been produced for this instrument as no significant impact on the private or voluntary sectors is foreseen.

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