

## STATUTORY INSTRUMENTS

# 2020 No. 1265

## The Greenhouse Gas Emissions Trading Scheme Order 2020

### PART 6

#### Monitoring compliance

##### Authorised persons

**38.**—(1) The regulator may authorise a person to exercise, on behalf of the regulator and in accordance with the terms of the authorisation, the regulator's powers set out in this Part.

(2) In this Part, “authorised person” means a person authorised under—

- (a) paragraph (1); or
- (b) section 108(1) of the Environment Act 1995 <sup>M1</sup>.

##### Commencement Information

**I1** Art. 38 in force at 12.11.2020, see [art. 2\(1\)](#)

##### Marginal Citations

**M1** 1995 c. 25; section 108(1) was relevantly amended by section 46(2)(a) of the [Regulatory Reform \(Scotland\) Act 2014](#) (asp 3).

##### Inspections

**39.**—(1) The regulator [<sup>F1</sup>or an authorised person] may, at a reasonable time, inspect any premises and any thing in or on those premises in order to monitor compliance with this Order [<sup>F2</sup>, the Monitoring and Reporting Regulation 2018, the Verification Regulation 2018, the Free Allocation Regulation or the Activity Level Changes Regulation].

(2) Reasonable prior notice must be given before exercising the powers in this article.

(3) A person in control of the premises to which the regulator or authorised person reasonably requires access must allow the regulator or authorised person to have such access.

(4) The regulator or authorised person may, when inspecting premises—

- (a) make any such examination and investigation as may be necessary;
- (b) install or maintain monitoring equipment or other apparatus;
- (c) request the production of any record;
- (d) take measurements, photographs, recordings or copies of any thing;
- (e) take samples of any articles or substances found in, or on, the premises and of the air, water or land in, on, or in the vicinity of, those premises;

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- (f) request any person at the premises to provide facilities or assistance to the extent that is within that person's control.
- (5) Except to the extent agreed by the person in control of a place or premises, the power referred to in paragraph (1) does not apply to—
- (a) a prohibited place [<sup>F3</sup>within the meaning of Part 1 of the National Security Act 2023]; or
  - (b) any other premises to which the Crown restricts access on the ground of national security.

#### Textual Amendments

- F1** Words in art. 39(1) inserted (14.4.2022) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2022 \(S.I. 2022/454\)](#), arts. 2, **5(2)**
- F2** Words in art. 39(1) inserted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), arts. 2(1), **22(2)**
- F3** Words in art. 39(5)(a) substituted (20.12.2023) by [The National Security Act 2023 \(Consequential Amendments of Subordinate Legislation\) Regulations 2023 \(S.I. 2023/1267\)](#), reg. 1(2), **Sch. para. 59**

#### Commencement Information

- I2** Art. 39 in force at 12.11.2020, see [art. 2\(1\)](#)

#### Powers of entry, etc.

- 40.**—(1) The regulator or an authorised person may—
- (a) enter any premises with a warrant issued in accordance with article 41, together with any equipment or material as may be required;
  - (b) when entering premises by virtue of sub-paragraph (a)—
    - (i) be accompanied by an authorised person and, if considered appropriate, a constable;
    - (ii) direct that any part of the premises be left undisturbed for so long as may be necessary;
  - (c) require any person believed to be able to give information relevant to an examination or investigation—
    - (i) to attend at a place and time specified by the regulator or authorised person;
    - (ii) to answer questions (in the absence of any person other than those whom the regulator or authorised person allows to be present and a person nominated by the person being asked questions);
    - (iii) to sign a declaration of truth of the answers given by that person;
  - (d) require the production of—
    - (i) records required to be kept under this Order [<sup>F4</sup>the Monitoring and Reporting Regulation 2018, the Verification Regulation 2018, the Free Allocation Regulation or the Activity Level Changes Regulation];
    - (ii) other records which the regulator or authorised person considers it necessary to see for the purpose of an examination or investigation;
    - (iii) entries in a record referred to in this sub-paragraph;
  - (e) inspect and take copies of the records and entries referred to in sub-paragraph (d).
- (2) The powers in paragraph (1) may only be exercised where the regulator or an authorised person reasonably believes there has been a failure to comply with the requirements of this Order

[<sup>F5</sup>, the Monitoring and Reporting Regulation 2018, the Verification Regulation 2018, the Free Allocation Regulation or the Activity Level Changes Regulation].

(3) Except to the extent agreed by the person in control of a place or premises, the powers referred to in paragraph (1) do not apply in relation to—

- (a) a prohibited place [<sup>F6</sup>within the meaning of Part 1 of the National Security Act 2023]; or
- (b) any other premises to which the Crown restricts access on the ground of national security.

(4) It is an offence for a person—

- (a) to fail to comply with a requirement imposed pursuant to this article; <sup>F7</sup>...
- (b) to prevent any other person from—
  - (i) appearing before the regulator or an authorised person; or
  - (ii) answering a question to which the regulator or authorised person requires an [<sup>F8</sup>answer; or]

[<sup>F9</sup>(c) intentionally to obstruct the regulator, or an authorised person, in the exercise of a power referred to in paragraph (1).]

(5) A person guilty of an offence under paragraph (4) is liable—

- (a) on summary conviction in England and Wales, to a fine;
- (b) on summary conviction in Scotland or in Northern Ireland, to a fine not exceeding the statutory maximum;
- (c) on conviction on indictment, to a fine.

#### Textual Amendments

- F4** Words in art. 40(1)(d)(i) inserted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), arts. 2(1), **23(2)**
- F5** Words in art. 40(2) inserted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), arts. 2(1), **23(3)**
- F6** Words in art. 40(3)(a) substituted (20.12.2023) by [The National Security Act 2023 \(Consequential Amendments of Subordinate Legislation\) Regulations 2023 \(S.I. 2023/1267\)](#), reg. 1(2), **Sch. para. 59**
- F7** Word in art. 40(4)(a) omitted (14.4.2022) by virtue of [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2022 \(S.I. 2022/454\)](#), arts. 2, **6(2)(a)**
- F8** Words in art. 40(4)(b)(ii) substituted (14.4.2022) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2022 \(S.I. 2022/454\)](#), arts. 2, **6(2)(b)**
- F9** Art. 40(4)(c) inserted (14.4.2022) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2022 \(S.I. 2022/454\)](#), arts. 2, **6(2)(c)**

#### Commencement Information

- I3** Art. 40 in force at 12.11.2020, see [art. 2\(1\)](#)

#### Warrants

**41.—**(1) A judge may issue a warrant in relation to any premises for the purpose of article 40(1) (a) where satisfied that—

- (a) there are reasonable grounds for the exercise of the power in that sub-paragraph; and
- (b) one or more of the conditions in paragraph (2) are fulfilled in relation to the premises.

(2) The conditions referred to in paragraph (1)(b) are that—

- (a) the exercise of the power by consent in relation to the premises has been refused;

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- (b) a refusal of consent to the exercise of the power is reasonably expected;
  - (c) the premises are unoccupied;
  - (d) the occupier is temporarily absent from the premises and the case is one of urgency; or
  - (e) a request for admission to the premises would defeat the purpose of the entry.
- (3) A warrant in accordance with this article continues to have effect until the purpose for which it was issued has been fulfilled.
- (4) In paragraph (1), “judge” means—
- (a) in England or Wales, a justice of the peace;
  - (b) in Northern Ireland, a lay magistrate;
  - (c) in Scotland, a justice of the peace or sheriff.

#### Commencement Information

**I4** Art. 41 in force at 12.11.2020, see [art. 2\(1\)](#)

#### Admissible evidence

**42.**—(1) An answer given by a person in compliance with article 40(1)(c)(ii) is admissible in evidence—

- (a) in England, Wales and Northern Ireland, against that person in any proceedings;
- (b) in Scotland, against that person in criminal proceedings.

(2) In criminal proceedings in which the person referred to in paragraph (1) is charged with an offence, no evidence relating to the person's answer may be adduced and no question relating to it may be asked by, or on behalf of, the prosecution unless evidence relating to it has been adduced by, or on behalf of, the person.

(3) Paragraph (2) does not apply to an offence under—

- (a) section 5 of the Perjury Act 1911 <sup>M2</sup>;
- (b) section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995 <sup>M3</sup>; or
- (c) article 10 of the Perjury (Northern Ireland) Order 1979 <sup>M4</sup>.

#### Commencement Information

**I5** Art. 42 in force at 12.11.2020, see [art. 2\(1\)](#)

#### Marginal Citations

**M2** 1911 c. 6.

**M3** 1995 c. 39; section 44(2) was amended by section 200(2)(b) of the [Criminal Justice and Licensing \(Scotland\) Act 2010](#) (asp 13).

**M4** 1979 No. 1714 (N.I. 19).

#### Legal professional privilege

**43.** Nothing in this Part requires any person to produce a document which that person would be entitled to withhold the production of on grounds of legal professional privilege.

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**Commencement Information**

**I6** Art. 43 in force at 12.11.2020, see [art. 2\(1\)](#)

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**Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:**

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- art. 4A(4)(aa) inserted by [S.I. 2024/192 art. 5\(2\)\(c\)](#)
- art. 4A(5)(g) inserted by [S.I. 2024/192 art. 5\(3\)](#)