

## STATUTORY INSTRUMENTS

# 2020 No. 1265

## The Greenhouse Gas Emissions Trading Scheme Order 2020

### PART 8

#### Appeals

##### Interpretation

69. In this Part—

“appeal body” has the meaning given in article 71;

“decision” includes a deemed refusal under this Order;

“notice” includes—

- (a) in the case of a notice determining an application for a permit or the transfer of a permit, the provisions of any permit attached to the notice; and
- (b) in the case of a notice determining an application for an emissions monitoring plan, the conditions included in the plan issued by the notice.

##### Commencement Information

**II** Art. 69 in force at 12.11.2020, see [art. 2\(1\)](#)

##### Right of appeal

70.—(1) Subject to paragraph (3), the following may appeal to the appeal body—

(a) a person who is aggrieved by a decision of the regulator [<sup>F1</sup>or the registry administrator] determining an application made by the person under this Order;

[<sup>F2</sup>(b) a person who is aggrieved by a notice given—

(i) to the person under a provision referred to in paragraph (2);

(ii) to the registry administrator—

(aa) under article 34U in respect of the transfer of allowances from the person's operator holding account or aircraft operator holding account;

(bb) under article 34W(1) in respect of the withholding of allowances that would otherwise have been allocated in respect of an installation of which the person is the operator under article 34E or to the person under article 34O.]

(2) Those provisions are—

(a) article 30(1) (refusal of application for an emissions monitoring plan);

(b) article 31(4), (5) or (6) (variation of an emissions monitoring plan);

[<sup>F3</sup>(ba) article 34H(4) (notice of regulator's estimate of value of parameter);

- (bb) article 34V (return of allowances: notice to operator, etc.);]
- (c) [<sup>F4</sup>article 44(1) or (2A)] (enforcement notices);
- (d) article 45(5) (determination of reportable emissions by regulator);
- (e) article 47(3) or (7) (penalty notices);
- (f) article 75(1) (information notices);
- (g) paragraph 1(12) of Schedule 3 (application to be treated as being withdrawn);
- [<sup>F5</sup>(ga) paragraph 11(5) of Schedule 5A (notice suspending operator holding account);
- (gb) paragraph 12(4) of Schedule 5A (notice suspending operator holding account on transfer);
- (gc) paragraph 13(4) of Schedule 5A (notice suspending aircraft operator holding account);
- (gd) paragraph 14(4)(b) of Schedule 5A (notice refusing to open trading account);
- (ge) paragraph 16(7)(b) of Schedule 5A (notice refusing to appoint authorised representative);
- (gf) paragraph 17(4)(b) of Schedule 5A (notice refusing to change account permission);
- (gg) paragraph 18(2) of Schedule 5A (notice suspending access to registry of authorised representative);
- (gh) paragraph 19(2) of Schedule 5A (notice removing authorised representative);
- (gi) paragraph 25(3) of Schedule 5A (notice suspending account);
- (gj) paragraph 29(4) of Schedule 5A (notice closing trading account);]
- (h) paragraph 6(4) or (5) of Schedule 6 (variation of permits);
- (i) paragraph 10(2) of Schedule 6 (transfer of permits: underreporting discovered after transfer);
- (j) paragraph 12(4) of Schedule 6 (revocation of permits);
- (k) paragraph 23(1) or (2) of Schedule 7 (conversion notices);
- (l) paragraph 7(2) of Schedule 8 (end of ultra-small emitter status);
- (m) paragraph 1(3)(b) or (4)(b) of Schedule 11 (permits under GGETSR 2012).
- [<sup>F6</sup>(n) Article 8(6)(b) of the Free Allocation Regulation (notice rejecting monitoring methodology plan);
- (o) Article 3(5) of the Activity Level Changes Regulation (notice of regulator's estimate of value of parameter in activity level report).]
- [<sup>F7</sup>(p) Article 12(4)(b) of the Monitoring and Reporting Regulation 2018 (notice rejecting monitoring plan).]
- (3) An appeal under paragraph (1) may not be made to the extent that the decision implements—
  - (a) a direction given under—
    - (i) section 40 of the Environment Act 1995 <sup>M1</sup>;
    - (ii) section 52 of CCA 2008;
    - (iii) article 11 of the Natural Resources Body for Wales (Establishment) Order 2012 <sup>M2</sup>;
    - (iv) regulation 40 of the Pollution Prevention and Control (Industrial Emissions) Regulations (Northern Ireland) 2013 <sup>M3</sup>;
  - (b) a direction given by an appeal body under this Order.
- [<sup>F8</sup>(4) To avoid doubt, no appeal may be brought under paragraph (1)(a) in respect of—
  - (a) a calculation of the regulator under article 34M(1)(b) or 34Q(5)(b);

- (b) a preliminary assessment of the regulator under paragraph 5(3) of Schedule 7 or paragraph 3(3) of Schedule 8.]

#### Textual Amendments

- F1** Words in art. 70(1)(a) inserted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), arts. 2(1), **27(2)(a)**
- F2** Art. 70(1)(b) substituted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), arts. 2(1), **27(2)(b)**
- F3** Art. 70(2)(ba)(bb) inserted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), arts. 2(1), **27(3)(a)**
- F4** Words in art. 70(2)(c) substituted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), arts. 2(1), **27(3)(b)**
- F5** Art. 70(2)(ga)-(gj) inserted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), arts. 2(1), **27(3)(c)**
- F6** Art. 70(2)(n)(o) inserted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), arts. 2(1), **27(3)(d)**
- F7** Art. 70(2)(p) inserted (7.2.2022) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2021 \(S.I. 2021/1455\)](#), arts. 2, **20(2)**
- F8** Art. 70(4) substituted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), arts. 2(1), **27(4)**

#### Commencement Information

- I2** Art. 70 in force at 12.11.2020, see art. 2(1)

#### Marginal Citations

- M1** Section 40 was amended by [S.I. 2011/1043](#) and 2013/755 and amended prospectively by [S.I. 2019/458](#) with effect from IP completion day.
- M2** [S.I. 2012/1903 \(W. 230\)](#).
- M3** [S.R. \(NI\) 2013 No. 160](#).

### Appeal body

- 71.**—(1) In an appeal against a decision of SEPA, the appeal body is the Scottish Land Court <sup>M4</sup>.
- (2) In an appeal against a decision of the chief inspector, the appeal body is the Planning Appeals Commission <sup>M5</sup>.
- (3) In an appeal against any other decision, the appeal body is the First-tier Tribunal <sup>M6</sup>.
- [<sup>F9</sup>(4) For the purposes of determining the appeal body to which an appeal against a decision or notice of the registry administrator must be made, the decision or notice must be treated as the decision or notice of the person (or if more than one, any one of them) exercising the functions of the registry administrator in accordance with article 8A(2) to make the decision or give the notice, as set out in the decision or notice.]

#### Textual Amendments

- F9** Art. 71(4) inserted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), arts. 2(1), **28(2)**

#### Commencement Information

- I3** Art. 71 in force at 12.11.2020, see art. 2(1)

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### Marginal Citations

- M4** The Scottish Land Court was established by section 3 of the [Small Landholders \(Scotland\) Act 1911 \(c. 49\)](#) and continued in being under section 1 of the [Scottish Land Court Act 1993 \(c. 45\)](#).
- M5** The Planning Appeals Commission was continued by section 203(1) of the [Planning Act \(Northern Ireland\) 2011 \(c. 25\)](#).
- M6** The First-tier Tribunal was established by section 3(1) of the [Tribunals, Courts and Enforcement Act 2007 \(c. 15\)](#).

### Effect of appeals

**72.**—(1) Subject to <sup>[F10]</sup>paragraphs (2) to (6), the bringing of an appeal under article 70 (right of appeal) suspends the effect of the decision or notice pending the final determination or withdrawal of the appeal.

(2) The bringing of an appeal does not suspend the effect of—

- (a) a decision refusing an application;
- (b) a deemed refusal;
- (c) a notice under—
  - (i) article 31(4), (5) or (6) (variation of an emissions monitoring plan);
  - <sup>[F11]</sup>(ia) article 34W(1) (notice to withhold allowances);
  - (ii) <sup>[F12]</sup>article 44(1) or (2A)] (enforcement notices);
  - <sup>[F13]</sup>(iia) paragraph 11(5) of Schedule 5A (notice suspending operator holding account);
  - (iib) paragraph 12(4) of Schedule 5A (notice suspending operator holding account on transfer);
  - (iic) paragraph 13(4) of Schedule 5A (notice suspending aircraft operator holding account);
  - (iid) paragraph 14(4)(b) of Schedule 5A (notice refusing to open trading account);
  - (iie) paragraph 16(7)(b) of Schedule 5A (notice refusing to appoint authorised representative);
  - (iif) paragraph 17(4)(b) of Schedule 5A (notice refusing to change account permission);
  - (iig) paragraph 18(2) of Schedule 5A (notice suspending access to registry of authorised representative);
  - (iih) paragraph 19(2) of Schedule 5A (notice removing authorised representative);
  - (iii) paragraph 25(3) of Schedule 5A (notice suspending account);
  - (iij) paragraph 29(4) of Schedule 5A (notice closing trading account);
  - (iii) paragraph 6(4) or (5) of Schedule 6 (variation of permits);
  - (iv) paragraph 23(1) or (2) of Schedule 7 (end of hospital or small emitter status);
  - (v) paragraph 7(2) of Schedule 8 (end of ultra-small emitter status).
  - <sup>[F14]</sup>(vi) Article 8(6)(b) of the Free Allocation Regulation (notice rejecting monitoring methodology plan).]
  - <sup>[F15]</sup>(vii) Article 12(4)(b) of the Monitoring and Reporting Regulation 2018 (notice rejecting monitoring plan).]

(3) Where a permit has been granted or varied (following an application for a permit or for the transfer of a permit), the bringing of an appeal against the provisions of the permit or the terms of the variation does not suspend the effect of those provisions or terms.

(4) Where an emissions monitoring plan has been issued following an application under article 28(1), the bringing of an appeal against the conditions included in the plan does not suspend the effect of those conditions.

(5) The bringing of an appeal against a determination of reportable emissions or aviation emissions under article 45(5) suspends the effect of the decision only for the purpose of assessing whether there has been compliance with article 27 or 34 (surrender of allowances).

[<sup>F16</sup>(6) The bringing of an appeal against a notice under article 34U (return of allowances: notice to registry administrator) does not affect the registry administrator's power under paragraph (3)(b) of that article (power to suspend transfers from account).]

#### Textual Amendments

- F10** Words in art. 72(1) substituted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), arts. 2(1), **29(2)**
- F11** Art. 72(2)(c)(ia) inserted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), arts. 2(1), **29(3)(a)**
- F12** Words in art. 72(2)(c)(ii) substituted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), arts. 2(1), **29(3)(b)**
- F13** Art. 72(2)(c)(ia)-(ii) inserted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), arts. 2(1), **29(3)(c)**
- F14** Art. 72(2)(c)(vi) inserted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), arts. 2(1), **29(3)(d)**
- F15** Art. 72(2)(c)(vii) inserted (7.2.2022) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2021 \(S.I. 2021/1455\)](#), arts. 2, **21(2)**
- F16** Art. 72(6) inserted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), arts. 2(1), **29(4)**

#### Commencement Information

- I4** Art. 72 in force at 12.11.2020, see [art. 2\(1\)](#)

### Determination of appeals

**73.**—(1) In determining an appeal under article 70, the appeal body may—

- (a) affirm the decision;
- (b) quash the decision or vary any of its terms;
- (c) substitute a deemed refusal with a decision of the appeal body;
- (d) give directions as to the exercise of the regulator's [<sup>F17</sup>or the registry administrator's] functions under this Order.

(2) The appeal body may not make a determination that would result in a decision which could not otherwise have been made under this Order.

#### Textual Amendments

- F17** Words in art. 73(1)(d) inserted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), arts. 2(1), **30(2)**

#### Commencement Information

- I5** Art. 73 in force at 12.11.2020, see [art. 2\(1\)](#)

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### Procedure for appeals

74.—(1) Schedule 9 (which makes provision in relation to appeals to the Scottish Land Court) has effect.

(2) Schedule 10 (which makes provision in relation to appeals to the Planning Appeals Commission) has effect.

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#### Commencement Information

**I6** Art. 74 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\(3\)](#)