
DRAFT STATUTORY INSTRUMENTS

2020 No.

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.

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 determining an application made by the person under this Order;
- (b) a person who is aggrieved by a notice given to the person, under a provision referred to in paragraph (2).

(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);
- (c) article 44(1) (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- (g) paragraph 1(12) of Schedule 3 (application to be treated as being withdrawn);
- (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).
- (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(1);
 - (ii) section 52 of CCA 2008;
 - (iii) article 11 of the Natural Resources Body for Wales (Establishment) Order 2012(2);
 - (iv) regulation 40 of the Pollution Prevention and Control (Industrial Emissions) Regulations (Northern Ireland) 2013(3);
 - (b) a direction given by an appeal body under this Order.
- (4) To avoid doubt, no appeal may be brought under paragraph (1)(a) in respect of a preliminary assessment under—
- (a) paragraph 5(3) of Schedule 7;
 - (b) paragraph 3(3) of Schedule 8.

Appeal body

- 71.**—(1) In an appeal against a decision of SEPA, the appeal body is the Scottish Land Court(4).
- (2) In an appeal against a decision of the chief inspector, the appeal body is the Planning Appeals Commission(5).
- (3) In an appeal against any other decision, the appeal body is the First-tier Tribunal(6).

Effect of appeals

- 72.**—(1) Subject to paragraphs (2) to (4), 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);
 - (ii) article 44(1) (enforcement notices);
 - (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).
- (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.

(1) 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.

(2) [S.I. 2012/1903 \(W. 230\)](#).

(3) [S.R. \(NI\) 2013 No. 160](#).

(4) 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).

(5) The Planning Appeals Commission was continued by section 203(1) of the Planning Act (Northern Ireland) 2011 (c. 25).

(6) The First-tier Tribunal was established by section 3(1) of the Tribunals, Courts and Enforcement Act 2007 (c. 15).

(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).

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 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.

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.