
STATUTORY INSTRUMENTS

2019 No. 1440

**The Greenhouse Gas Emissions Trading
Scheme (Amendment) (No. 3) Regulations 2019**

Citation and commencement

1.—(1) These Regulations may be cited as the Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 3) Regulations 2019 and come into force in accordance with paragraphs (2) to (4).

(2) This regulation and regulations 3(2)(g) and (l), 4(4) and (5), 15(3), 18(3) to (5), 20, 24(3), 25 and 26 come into force 21 days after the day on which these Regulations are laid.

(3) Regulation 27, which substitutes regulation 88 of the Greenhouse Gas Emissions Trading Scheme Regulations 2012⁽¹⁾ comes into force on 1st May 2020, to the extent that it relates to the making of arrangements under paragraph (5) of regulation 88 (as substituted), but otherwise comes into force on 1st January 2021.

(4) The remainder of these Regulations come into force on 1st January 2021.

(5) These Regulations will cease to have effect and are revoked on exit day⁽²⁾, and the provisions amended by the regulations referred to in paragraph (2) are deemed never to have been amended.

Amendment of the Greenhouse Gas Emissions Trading Scheme Regulations 2012

2. These Regulations amend the Greenhouse Gas Emissions Trading Scheme Regulations 2012 in accordance with regulations 3 to 30.

Amendment of regulation 3

3.—(1) Regulation 3 is amended as follows.

(2) In paragraph (1)—

(a) after the definition of “allocation”, insert—

““allocation period” means—

(a) the period which begins with 1st January 2021 and ends with 31st December 2025 (“the first allocation period”);

(b) the period which begins with 1st January 2026 and ends with 31st December 2030 (“the second allocation period”);”;

(b) after the definition of “annual reportable emissions”, insert—

““Article 27 installation” means an installation of the kind described in regulation 15(A1);

(1) S.I. 2012/3038; relevant amending instruments are S.I. 2013/755 (W. 90), 2013/3135, 2014/3125, 2015/1849, 2016/1154, 2017/1207 and 2018/306.

(2) “Exit day” is defined in Schedule 1 to the Interpretation Act 1978 (c. 30) as having the same meaning as in section 20(1) to (5) of the European Union (Withdrawal) Act 2018 (c. 16).

- “Article 27a installation” means an installation of the kind described in regulation 15A(1);
- “Article 27 installation emissions permit” means a permit which—
- (a) is granted following an application under regulation 10(2); or
 - (b) results from a variation made under regulation 88 or paragraph 2 of Schedule 5;”;
- (c) for the definition of “change of status notice”(3) substitute—
- ““change of status notice” means a notice under—
- (a) paragraph 8(1) or 8(4) of Schedule 5 that an installation will cease to be treated as an Article 27 installation;
 - (b) paragraph 5(1) of Schedule 5A, that an installation will cease to be treated as an Article 27a installation;”;
- (d) after the definition of “emissions”, insert—
- ““emissions target”, in relation to a scheme year, means an amount of reportable emissions specified in an Article 27 installation emissions permit as the target for that excluded installation in that year;”;
- (e) for the definition of “excluded installation” substitute—
- ““excluded installation” means—
- (a) an Article 27 installation; or
 - (b) an Article 27a installation;”;
- (f) omit the definition of “excluded installation emissions permit”;
- (g) after the definition of “the Free Allocation Decision”, insert—
- ““the Free Allocation Regulation” means Commission Delegated Regulation (EU) 2019/331 of 19 December 2018 determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of [Directive 2003/87/EC](#) of the European Parliament and of the Council, as amended from time to time(4);”;
- (h) after the definition of “the Monitoring and Reporting Regulation”, insert—
- ““the Monitoring and Reporting Regulation 2018” means Commission Implementing Regulation (EU) 2018/2066 of 19 December 2018 on the monitoring and reporting of greenhouse gas emissions pursuant to [Directive 2003/87/EC](#) of the European Parliament and of the Council and amending [Commission Regulation \(EU\) No 601/2012](#), as amended from time to time(5);”;
- (i) in the definition of “permit”, in paragraph (b), for “excluded” substitute “Article 27”;
- (j) in the definition of “sub-installation” for “Article 3(b)” to the end substitute “Article 2, points (2), (3), (5), (6), and (10) and Article 10 of the Free Allocation Regulation”;
- (k) in the definition of “trading period”—
- (i) in the words before paragraph (a), omit “eight-year”; and
 - (ii) in paragraph (b), for “eight” substitute “ten”;
- (l) for the definition of “the Verification Regulation”, substitute—

(3) The definition of “change of status notice” was inserted by [S.I. 2015/1849](#).

(4) OJ L No 59, 27.02.2019, p. 8.

(5) OJ L No 334, 31.12.2018, p. 1.

““the Verification Regulation 2018” means Commission Implementing Regulation (EU) 2018/2067 of 19 December 2018 on the verification of data and on the accreditation of verifiers pursuant to [Directive 2003/87/EC](#) of the European Parliament and of the Council, as amended from time to time(6);”;

(m) in the definition of “written procedures”, at the end, insert “2018”.

(3) In paragraph (2)—

(a) in sub-paragraph (b), after “an installation”, insert “that is not an Article 27a installation”;

(b) after sub-paragraph (b)—

(i) omit “and”;

(ii) insert—

“(ba) an Article 27a installation has ceased operation, the operator is the person who had control over its operation immediately before the installation ceased operation; and”.

Amendment of regulation 8

4.—(1) Regulation 8 is amended as follows.

(2) For paragraph (6) substitute—

“(6) The regulator is the competent authority designated by the United Kingdom for the purposes of the Monitoring and Reporting Regulation 2018.”.

(3) Omit paragraph (7).

(4) For paragraph (9) substitute—

“(9) The Environment Agency is designated as the focal point authorised by the United Kingdom for the purpose of Article 70(2) of the Verification Regulation 2018.”.

(5) After paragraph (9), insert—

“(10) The regulator is the competent authority designated by the United Kingdom for the purposes of the Free Allocation Regulation.”.

Amendment of regulation 9

5.—(1) Regulation 9 is amended as follows.

(2) Number the existing text as paragraph (1) of that regulation.

(3) After paragraph (1), insert—

“(2) Paragraph (1) does not apply in relation to a person carrying out a regulated activity at an Article 27a installation.”.

Amendment of regulation 10

6.—(1) Regulation 10 is amended as follows.

(2) In paragraphs (2) and (3), for “excluded”, in each place it occurs, substitute “Article 27”.

(3) After paragraph (3), insert—

“(3A) An Article 27 installation emissions permit that is granted for the purposes of the first allocation period continues to have effect for the purposes of the second allocation

period if the installation is deemed to be approved by the European Commission under the first subparagraph of Article 27(2) of the Directive in relation to that period.”.

- (4) In paragraph (4), for “excluded installations” substitute “Article 27 installation emissions”.
- (5) In paragraph (7), for “excluded” substitute “Article 27”.

Amendment of regulation 11

- 7.—(1) Regulation 11 is amended as follows.
- (2) Omit paragraph (1).
- (3) In paragraph (2)—
 - (a) omit sub-paragraph (a);
 - (b) in sub-paragraph (b), at the end, insert “2018”.
- (4) In paragraph (4)—
 - (a) in sub-paragraph (a), for “88(6)” substitute “88(2) or (4)”;
 - (b) in sub-paragraph (b)(v), at the end, insert “or 8(6A)”.

Amendment of regulation 12

8. In regulation 12(4)(b)(ii), for “excluded installations” substitute “Article 27 installation”.

Amendment of regulation 13

9. In regulation 13(6)(a), for “excluded” substitute “Article 27”.

Amendment of regulation 14

10. In regulation 14(1), for sub-paragraph (b) substitute—
 - “(b) must do so where—
 - (i) the regulator becomes aware that the operator has failed to comply with regulation 13(1) to (3);
 - (ii) a greenhouse gas emissions permit is held by the operator of an Article 27a installation;
 - (iii) an Article 27 installation emissions permit is held by the operator of an Article 27a installation.”.

Amendment of regulation 15

- 11.—(1) Regulation 15 is amended as follows.
- (2) In the heading, at the end, insert “: Article 27 installations”.
- (3) Before paragraph (1), insert—
 - “(A1) An installation is an Article 27 installation for the duration of a particular allocation period if, in relation to that period, it is deemed to be approved by the European Commission under the first subparagraph of Article 27(2) of the Directive, unless a notice has been given to the operator under paragraph 8(1) or (4) of Schedule 5 (in which case the installation ceases to be an Article 27 installation as from the date specified in the notice).
 - (B1) An installation’s status as an Article 27 installation expires at the end of the particular allocation period in relation to which it has been excluded.

(C1) Where an installation ceases to be an Article 27 installation at the end of the first allocation period in accordance with paragraph (B1) and approval is not deemed in accordance with paragraph (A1) in respect of the second allocation period, paragraph 6A of Schedule 5 applies.”.

(4) In paragraphs (1), (2) in the first place it occurs, (4)(a)(i) and (4)(b)(i), for “excluded” substitute “Article 27”.

Insertion of regulation 15A

12. After regulation 15, insert—

“Excluded installations: Article 27a installations

15A.—(1) An installation is an Article 27a installation for the duration of a particular allocation period, if, in relation to that period, the installation is excluded pursuant to Article 27a(7) of the Directive, unless a notice has been given to the operator under paragraph 5(1) of Schedule 5A (in which case the installation ceases to be an Article 27a installation as from the date specified in the notice).

(2) An installation’s status as an Article 27a installation expires at the end of the particular allocation period in relation to which it is excluded.

(3) Schedule 5A makes further provision about Article 27a installations.”.

Amendment of regulation 31

13. In regulation 31, at the end, insert “2018”.

Amendment of regulation 34

14. In regulation 34(2)(a), after “Regulation”, insert “2018”.

Amendment of regulation 35

15.—(1) Regulation 35 is amended as follows.

(2) In paragraph (2)(a)(8), after “Regulation”, insert “2018”.

(3) In paragraph (3), after “Regulation”, where it first occurs, insert “2018”.

(4) In paragraph (7)(9), for the words before sub-paragraph (a) substitute—

“A’s aviation emissions in a scheme year are to be considered verified for the purposes of Article 15(10) of the Directive where—”.

Amendment of regulation 36

16. In regulation 36(1)(a), after “Regulation”, insert “2018”.

(7) Article 27a was inserted by Directive (EU) 2018/410 of the European Parliament and of the Council of 14 March 2018 and amending [Directive 2003/87/EC](#) to enhance cost-effective emission reduction and low-carbon investments, and Decision (EU) 2015/1814 (OJ L No 76, 19.03.2018, p. 3).

(8) Paragraphs (2) and (3) were amended by [S.I. 2014/3125](#).

(9) Paragraph (7) was substituted by [S.I. 2018/306](#).

(10) Article 15 was amended by Directive (EU) 2018/410 of the European Parliament and of the Council of 14 March 2018 and amending [Directive 2003/87/EC](#) to enhance cost-effective emission reduction and low-carbon investments, and Decision (EU) 2015/1814 (OJ L No 76, 19.03.2018, p. 3).

Amendment of regulation 43

17. In regulation 43(2)(b), after “Regulation”, insert “2018”.

Amendment of regulation 44

18.—(1) Regulation 44 is amended as follows.

(2) In paragraph (1)—

- (a) in the words before sub-paragraph (a), after “Regulation”, insert “2018”.
- (b) after sub-paragraph (b), insert “or”;
- (c) omit sub-paragraph (c).

(3) In paragraph (4)(b), before “is to be treated”, insert “except where paragraph (5B) applies to that determination.”.

(4) In paragraph (5)—

- (a) in the words before sub-paragraph (a), after “(4)”, insert “or under paragraph (5C)(a);
- (b) in sub-paragraph (a), for “excluded” substitute “Article 27”;
- (c) in sub-paragraph (b), after “Regulation”, insert “2018”.

(5) After paragraph (5), insert—

“(5A) Paragraph (5B) applies where –

- (a) a determination of emissions has been notified to the operator or UK aircraft operator under paragraph (4); and
- (b) the regulator is satisfied that there is a defect in the estimate of the reportable emissions in that determination.

(5B) The regulator must withdraw the determination and make a further determination of emissions (the “rectified determination”).

(5C) A rectified determination—

- (a) must be notified to the operator or UK aircraft operator concerned; and
- (b) is to be treated as determining all of the reportable emissions from the installation (or of the UK aircraft operator) for the period to which the determination relates.

(5D) Where—

- (a) any rectified determination is notified to the operator or UK aircraft operator concerned; and
- (b) the regulator is satisfied that there is a defect in the estimate of the reportable emissions in that determination,

the regulator must withdraw the rectified determination and make one or more further rectified determinations.”.

(6) In paragraph (6), after “Regulation”, insert “2018”.

Amendment of regulation 45

19. In regulation 45(6)—

- (a) at the end of sub-paragraph (b), after “Regulation”, insert “2018”;
- (b) after sub-paragraph (d), omit “or”;
- (c) after sub-paragraph (e), insert—

“; or

(f) the Free Allocation Regulation”.

Amendment of regulation 54

20.—(1) Regulation 54 is amended as follows.

(2) After paragraph (2), insert—

“(2A) Any—

- (a) increase in the amount of allowances required by regulation 42B(2);
- (b) increase in the amount of annual reportable emissions required by regulation 42B(3); or
- (c) deemed increase in an installation’s annual reportable emissions in a recovery year pursuant to paragraph 2(5) of Schedule 4,

must be disregarded for the purpose of calculating the excess emissions penalty.”.

(3) In paragraph (4), from “that—” to the end, substitute “exceed P’s verified annual reportable emissions for that year”.

(4) For paragraph (5) substitute—

“(5) This paragraph applies where—

- (a) the regulator becomes aware that P’s annual reportable emissions in a scheme year exceed P’s verified annual reportable emissions in respect of that year; and
- (b) P failed to surrender a number of allowances equal to the unreported emissions by 30th April in the following scheme year.”.

(5) In paragraph (6), omit “by the relevant date”.

(6) In paragraph (7)—

- (a) omit sub-paragraph (b);
- (b) after sub-paragraph (c), insert—

“(ca) “verified annual reportable emissions” means annual reportable emissions that are—

- (i) verified pursuant to regulation 35(3) or paragraph 2(3)(b) of Schedule 4;
- (ii) considered verified pursuant to regulation 35(7); or
- (iii) determined by the regulator pursuant to regulation 44;”.

(7) After paragraph (8), insert—

“(9) Where—

- (a) a person was liable to a civil penalty under this regulation for a failure to surrender a number of allowances equal to the unreported emissions in any relevant year; and

- (b) a penalty notice has not been served in respect of that penalty,

the provisions of paragraphs (4) to (7) apply in respect of such emissions.

(10) In paragraph (9), “relevant year” means a scheme year during the years 2013 to 2018.”.

Amendment of regulations 55 to 58

21. In regulations 55 to 58 for “excluded”, in each place it occurs, including in the heading of each regulation, substitute “Article 27”.

Insertion of regulations 58ZA and 58ZB

22. After regulation 58, insert—

“Exceeding the maximum amount for an Article 27a installation

58ZA.—(1) The operator of an Article 27a installation is liable to the civil penalty in sub-paragraph (2) where in any scheme year the installation exceeds the maximum amount.

(2) The civil penalty is $(A - B) \times C$, where—

A is the reportable emissions arising in the scheme year;

B is the maximum amount;

C is the carbon price for that year.

(3) In this regulation, “maximum amount” has the meaning given in paragraph 1(a) of Schedule 5A.

Carrying out regulated activity without the necessary permit

58ZB.—(1) Where the regulator is satisfied that the operator of an Article 27a installation has—

(a) exceeded the maximum amount in any scheme year; and

(b) failed to notify the regulator under paragraph 4(1) of Schedule 5A,

the operator of the installation (“P”) is subject to the civil penalty in paragraph (2) in respect of any penalty year.

(2) Subject to paragraph (3), the civil penalty is $A + (B \times C)$, where—

A is the estimated amount of the costs avoided by P in any penalty year as a result of carrying out a regulated activity without the necessary permit;

B is the estimated amount of reportable emissions from the installation in the period during which a regulated activity was carried out without the necessary permit;

C is the carbon price for that penalty year.

(3) In imposing the penalty under paragraph (2), the regulator may increase the amount determined under that sub-paragraph by a percentage designed to ensure that the penalty exceeds the amount of any economic benefit that P has obtained as a result of carrying out a regulated activity without the necessary permit.

(4) The authority must exercise powers under section 40 of the Environment Act 1995⁽¹¹⁾, article 11 of the NRBW Order⁽¹²⁾ or regulation 37 of the Northern Ireland Regulations⁽¹³⁾ to give the regulator directions as to—

(a) the estimation by the regulator of A and B in paragraph (2); and

(b) the exercise of the regulator’s powers under paragraph (3).

(5) In this regulation—

(a) “maximum amount” has the meaning given in paragraph 1(a) of Schedule 5A;

(b) “necessary permit” means the Article 27 permit or the greenhouse gas emissions permit which P would have been required to comply with under paragraph 5(3)(b)

(11) 1995 c. 25. Section 40 was amended by paragraph 43 of Schedule 3 to the Regulatory Reform (Scotland) Act 2014 (asp 3), S.I. 2011/1043 and 2013/755.

(12) S.I. 2012/1903 (W. 230). Article 11 was amended by S.I. 2013/755 (W. 90).

(13) S.R. (N.I.) 2003 No. 46. Regulation 37 was amended by S.R. (N.I.) 2003/496 and 2003/3311; there are other amending instruments which are not relevant.

or (4) of Schedule 5A if P had not failed to notify the regulator under paragraph 4(1) of that Schedule;

- (c) “penalty year” means any scheme year during which P would have been required to comply with the conditions of the necessary permit, if P had not failed to notify the regulator under paragraph 4(1) of Schedule 5A.”.

Amendment of regulations 58A and 58B

23. In regulations 58A and 58B(14), in the heading of each regulation, for “excluded” substitute “Article 27”.

Amendment of regulation 80

- 24.**—(1) Regulation 80 is amended as follows.
- (2) Omit paragraphs (6), (11) and (12).
- (3) In paragraph (15), in the words after sub-paragraph (b)—
- (a) after “where it is”, insert “not”;
- (b) after “representative is”, omit “not”.

Insertion of regulation 84A

25. After regulation 84, insert—

“Duty of Secretary of State to publish information

84A.—(1) By 31st March each year, the Secretary of State must publish the total amount of compensation that has been provided in the previous scheme year for the purposes of the first subparagraph of Article 10a(6)(15) of the Directive.

(2) The Secretary of State must publish that information in a form that is easily accessible to the public.

(3) Where the compensation provided in a particular scheme year exceeds an amount that is more than 25% of the revenues generated from the auctioning of allowances in that year, the Secretary of State must set out in a report the reasons for exceeding that amount.”.

Amendment of regulation 87B

- 26.**—(1) Regulation 87B(16) is amended as follows.
- (2) For paragraphs (1) and (2) substitute—
- “(1) Where paragraph (2) applies, a person (“P”) is not liable to an excess emissions penalty for a failure to surrender allowances in respect of those reportable emissions in a relevant year (“Y”) that exceed P’s verified annual reportable emissions for that year.
- (2) This paragraph applies where—
- (a) the regulator becomes aware that P’s reportable emissions in Y exceed P’s verified annual reportable emissions in respect of that year; and

(14) Regulations 58A and 58B were inserted by [S.I. 2015/1849](#).

(15) Paragraph 6 was substituted by Directive (EU) 2018/410 of the European Parliament and of the Council of 14 March 2018 and amending [Directive 2003/87/EC](#) to enhance cost-effective emission reduction and low-carbon investments, and Decision (EU) 2015/1814 (OJ L No 76, 19.03.2018, p. 3).

(16) Regulation 87B was inserted by [S.I. 2013/3135](#).

- (b) P failed to surrender a number of allowances equal to the unreported emissions by 30th April in the year following Y.”.
- (3) In paragraph (5)—
- (a) omit sub-paragraph (b);
 - (b) omit sub-paragraph (d);
 - (c) after sub-paragraph (e), insert—
 - “(ea) “verified annual reportable emissions” means—
 - (i) reportable emissions that are verified pursuant to regulation 10 of the 2005 Regulations⁽¹⁷⁾ or regulation 21 of the 2010 Regulations⁽¹⁸⁾;
 - (ii) reportable emissions that are determined by the regulator under regulation 30 of the 2005 Regulations or regulation 22 of the 2010 Regulations;”.

Substitution of regulation 88

27. For regulation 88 substitute—

“Transitional provisions: permits

88.—(1) A permit granted under regulation 9 of the 2005 Regulations that is in force immediately before 1st January 2021, continues to have effect until it is revoked or surrendered under these Regulations.

(2) The regulator must vary the content of a greenhouse gas emissions permit that is in force immediately before 1st January 2021 to comply with the requirements of paragraph 2 of Schedule 4.

(3) Subject to paragraphs (4) and (5), an excluded installation emissions permit that is in force immediately before 1st January 2021 continues to have effect as if it were an Article 27 installation emissions permit until it is revoked, surrendered or varied under these Regulations.

(4) The regulator must vary the excluded installation emissions permit as necessary to bring it into a form in which it could have been granted under regulation 10(2).

(5) The regulator must, where an excluded installation is not eligible to obtain an Article 27 installation emissions permit, vary the excluded emissions permit with effect from 1st January 2021 so that the provisions of the permit that satisfy the requirements of paragraph 3 of Schedule 5 are replaced by provisions satisfying the requirements of paragraph 2 of Schedule 4.

(6) The regulator may make any arrangements it considers necessary during the transitional period to—

- (a) vary a permit under paragraph (2), (4) or (5);
- (b) grant an Article 27 installation emissions permit under regulation 10(2);
- (c) revoke a permit under regulation 14(1)(b)(ii) or (iii);
- (d) vary a greenhouse gas emissions permit under paragraph 2 of Schedule 5.

(7) In this regulation, the “transitional period” means the period which—

- (a) begins with 1st May 2020; and

⁽¹⁷⁾ S.I. 2005/925, revoked by S.I. 2012/3038.

⁽¹⁸⁾ S.I. 2010/1996, revoked by S.I. 2012/3038.

(b) ends with 31st December 2020.”.

Amendment of Schedule 4

28. In Schedule 4(19), after “Monitoring and Reporting Regulation”, in each place it occurs, insert “2018”.

Amendment of Schedule 5

29.—(1) Schedule 5 is amended as follows.

(2) In the heading, at the end, insert “: Article 27 installations”.

(3) In paragraph 1(4), omit the definition of “emissions target”.

(4) In paragraph 2—

(a) in sub-paragraphs (1) and (2)(a), for “excluded” substitute “Article 27”;

(b) in sub-paragraph (2)(b), for “88(6)” substitute “88(2) or (4)”;

(c) in sub-paragraph (3), for “2013” substitute “2021”.

(5) In paragraph 3(20)—

(a) for “excluded”, in each place it occurs, including in the heading of that paragraph, substitute “Article 27”;

(b) in sub-paragraph (1)(e), for “prior to 2021” substitute “over the first or second allocation period, as the case may be”;

(c) in sub-paragraph (3)—

(i) in the words before paragraph (a), after “subsequent scheme year”, insert “over the allocation period to which the direction relates”;

(ii) for paragraph (b) substitute—

“(b) any relevant changes to the determinations in respect of the sectors and subsectors made by the European Commission pursuant to Article 10b(5)(21) of the Directive;”;

(d) in sub-paragraph (7), at the end, insert “2018”;

(e) in sub-paragraph (8), after “Monitoring and Reporting Regulation”, in each places it occurs, insert “2018”.

(6) For paragraph 4 substitute—

“Activities during 2020: duty to notify regulator

4. An operator of an Article 27 installation which primarily provided services to a hospital before 2021, but ceased to do so during 2020, must give notice to the regulator of that cessation no later than 31st March 2021.”.

(7) In paragraph 5, for “excluded” substitute “Article 27”.

(8) In paragraph 6(22)—

(a) in the heading, for “excluded” substitute “Article 27”;

(19) Schedule 4 was amended by [S.I. 2013/3135](#), [2015/1849](#), [2016/1154](#) and [2017/1207](#).

(20) Paragraph 3 was amended by [S.I. 2013/755 \(W. 90\)](#) and [2013/3135](#).

(21) Paragraph 5 was substituted by Directive (EU) 2018/410 of the European Parliament and of the Council of 14 March 2018 and amending [Directive 2003/87/EC](#) to enhance cost-effective emission reduction and low-carbon investments, and Decision (EU) 2015/1814 (OJ L No 76, 19.03.2018, p. 3).

(22) Paragraph 6 was amended by [S.I. 2013/755 \(W. 90\)](#).

- (b) for sub-paragraph (1) substitute—
 - “(1) Where a capacity increase has occurred at an Article 27 installation after 30th June 2019, the operator may apply to the regulator for an increase in the emissions targets for the installation for the subsequent scheme years within the first allocation period.”;
- (c) in sub-paragraph (2)(b), for “2013”, in both places it occurs, substitute “2021”;
- (d) after sub-paragraph (2), insert—
 - “(2A) Where a capacity increase occurs at an Article 27 installation after 30th June 2024, the operator may apply to the regulator for an increase in the emissions targets for the installation for the subsequent scheme years within the second allocation period.
 - (2B) An application under sub-paragraph (2A) must be made—
 - (a) by 31st December in the year during which the capacity increase occurred or within 3 months of the date of the capacity increase, whichever is later; or
 - (b) where the capacity increase occurred before 1st January 2026, by 30th June 2026.”;
- (e) in sub-paragraph (3), for “The application” substitute “An application under sub-paragraph (1) or (2A)”;
- (f) in sub-paragraph (4)—
 - (i) after “sub-paragraph (1)”, insert “or (2A)”;
 - (ii) at the end, insert “within the allocation period to which the application relates”;
- (g) in sub-paragraph (7) for “excluded” substitute “Article 27”;
- (h) in sub-paragraph (8)(a), after “sub-paragraph (1)”, insert “or (2A)”;
- (i) in sub-paragraph (9)—
 - (i) for paragraphs (b) and (c) substitute—
 - “(b) “installed capacity” means—
 - (i) for the purpose of calculating new emission targets for the first allocation period, the sub-installation’s installed capacity on 30th June 2019;
 - (ii) for the purpose of calculating new emission targets for the second allocation period, the sub-installation’s installed capacity on 30th June 2024;
 - (iii) in the case of an installation which has had a capacity increase either since 30th June 2019, or since 30th June 2024, as the case may be, the installed capacity of the sub-installation following the last capacity increase;
 - (c) “measurable heat” has the same meaning as in Article 2(7) of the Free Allocation Regulation.”;
 - (ii) omit paragraph (d).
- (9) In paragraph 7—
 - (a) in sub-paragraph (2), for “excluded” substitute Article 27”;
 - (b) in sub-paragraph (4), for “sub-paragraph (5)” substitute “sub-paragraphs (5) and (8)”;
 - (c) in sub-paragraph (5), for “excluded” substitute “Article 27”;
 - (d) in sub-paragraph (7), for “Where”, substitute “Subject to paragraph (8), where”;
 - (e) after sub-paragraph (7), insert—

“(8) The regulator may not vary an emissions target under sub-paragraph (4)(a) or (7) (a) for a scheme year which begins after the end of the allocation period during which any increase has occurred.”.

(10) In paragraph 8—

- (a) for “excluded” in each place it occurs, substitute “Article 27”;
- (b) in sub-paragraphs (2)(b) and (5)(b), at the end, insert “for the remainder of the allocation period during which the notice is given”;
- (c) After sub-paragraph (6), insert—

“(6A) Where regulation 15(C1) applies, the regulator must vary the excluded installation emissions permit, with effect from 1st January 2026, so that the provisions of the permit that satisfy the requirements of paragraph 3 of this Schedule are replaced by provisions satisfying the requirements of paragraph 2 of Schedule 4.”.

(11) Omit paragraph 9.

Insertion of Schedule 5A

30. After Schedule 5, insert the Schedule (Schedule 5A) set out in the Schedule to these Regulations.

Saving provisions

31.—(1) In relation to the verification of emissions occurring prior to 1st January 2019, references to the Verification Regulation are to be treated as if the amendment made by regulation 3(2)(l) had not been made.

(2) Notwithstanding the amendments made to references to “the Monitoring and Reporting Regulation” by—

- (a) regulation 3(2)(h);
- (b) regulation 4(2);
- (c) regulation 7(3)(b);
- (d) regulation 13;
- (e) regulation 14;
- (f) regulation 15(2) and (3);
- (g) regulation 16;
- (h) regulation 17;
- (i) regulation 18(2)(a), (4)(c) and (6);
- (j) regulation 19(a);
- (k) regulation 28; and
- (l) regulation 29(5)(d) and (e),

references to “the Monitoring and Reporting Regulation” in the Greenhouse Gas Emissions Trading Scheme Regulations 2012 continue to apply, without amendment, in relation to the monitoring, reporting and verification of emissions occurring prior to 1st January 2021.

30th October 2019

Kwasi Kwarteng
Minister of State
Department for Business, Energy and Industrial
Strategy