
EXPLANATORY NOTE

(This note is not part of the Regulations)

The Greenhouse Gas Emissions Trading Scheme Regulations 2012 ([S.I. 2012/3038](#)) (“the 2012 Regulations”) implement [Directive 2003/87/EC](#) of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowance trading within the Community (OJ L No 275, 25.10.2004, p. 32) (“the Directive”).

These Regulations amend the 2012 Regulations to implement some of the amendments made to the Directive by Directive (EU) 2018/410 of the European Parliament and of the Council of 14 March 2018 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) (“the Amending Directive”).

The Amending Directive makes provision in respect of the EU Emissions Trading Scheme (“the EU ETS”) during Phase IV of the EU ETS, which is to begin on 1st January 2021. These Regulations define the two allocation periods in Phase IV (in regulation 3(2)(a)) and also amend the 2012 Regulations so that references to Phase III of the EU ETS in those Regulations are updated to refer to the allocation periods within Phase IV.

The Amending Directive inserts new Article 27a into the Directive to allow Member States to exclude from the main EU ETS certain installations which emit less than 2,500 tonnes of carbon dioxide equivalent (the “maximum amount”) in each of the three years preceding the beginning of each allocation period. These Regulations insert a definition of “Article 27a installations” into the 2012 Regulations to describe the newly excluded installations (see regulation 3(2)(b) and regulation 12 of these Regulations). These Regulations also make provision for the way in which Article 27a installations must be monitored (paragraph 2 of Schedule 5A), the consequences of exceeding the maximum amount (regulation 22) or of failing to notify the regulator that the maximum amount has been exceeded (regulation 22).

Installations which report emissions of less than 25,000 tonnes of carbon dioxide equivalent in each of the three years preceding an allocation period, may be excluded under Article 27 of the Directive. The 2012 Regulations referred to installations which were excluded under Article 27 during Phase III of the EU ETS as “excluded installations”. These Regulations amend the 2012 Regulations so that they are now referred to as “Article 27 installations” during Phase IV. The 2012 Regulations now provide, therefore, that an excluded installation may be an Article 27 installation or an Article 27a installation (see regulation 3(2)(e)).

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](#) (OJ L No 334, 31.12.2018, p. 1) (“the Monitoring and Reporting Regulation 2018”) comes into force on 1st January 2021. These Regulations amend the 2012 Regulations to update references in those Regulations to the Commission Regulation which the Monitoring and Reporting Regulation 2018 repeals.

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 (OJ L No 334, 31.12.2018, p. 94.) (“the Verification Regulation”) came into force on 1st January 2019. These Regulations amend the 2012 Regulations to update references in those Regulations to the Commission Regulation which the Verification Regulation repeals.

Status: This is the original version (as it was originally made).

Regulation 4 of these Regulations amends regulation 8 of the 2012 Regulations so that the designations in regulation 8 can be updated and aligned with the new Monitoring and Reporting Regulation 2018 and the new Verification Regulation 2018.

Regulation 18 of these Regulations amends regulation 44 of the 2012 Regulations to describe the circumstances in which the regulator may rectify a determination of emissions.

Regulation 20 of these Regulations amends regulation 54 of the 2012 Regulation to ensure that it is better aligned with the judgment of the Court of Justice of the European Union in the case of *Bundesrepublik Deutschland v Nordzucker AG* (Case C-148/14), on 29 April 2015. The amendments ensure that an operator is not subject to the full excess emissions penalty for surrendering a number of greenhouse gas emission allowances equal to the emissions for the preceding year as reported and verified, where it is established, following an additional verification carried out by the regulator, that those emissions were understated, so that the number of allowances surrendered are insufficient. These Regulations also amend regulation 87B of the 2012 Regulations and insert new paragraphs (9) and (10) into regulation 54 of those Regulations so that such amendments may apply also to unreported emissions arising in this way before 2013 and similarly to unreported emissions arising between 2013 and 2018.

The Amending Directive substitutes Article 10a(6) of the Directive to require Member States to publish by 31st March each year, the total amount of compensation that was provided in the previous scheme year to compensate those sectors or subsectors that are at risk of carbon leakage. In addition, where the compensation provided exceeds 25% of the revenue generated from the auctioning of allowances, Member States are required to publish the reason for exceeding that amount. Regulation 25 of these Regulations inserts regulation 84A into the 2012 Regulations to implement this requirement.

A full regulatory impact assessment of the effect that these Regulations will have on the costs of business and the voluntary sector is available from the Department for Business, Energy and Industrial Strategy and is also available alongside these Regulations on www.legislation.gov.uk. An Explanatory Memorandum and a transposition note are also available with these Regulations on www.legislation.gov.uk. Copies have been placed in the Libraries of both Houses of Parliament.