

2019 No. 1440

CLIMATE CHANGE

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

Made - - - - *30th October 2019*

Laid before Parliament *31st October 2019*

Coming into force in accordance with regulation 1

The Secretary of State has been designated^(a) for the purposes of making regulations under section 2(2) of the European Communities Act 1972^(b) in relation to the environment.

The Secretary of State makes these Regulations^(c) in exercise of the powers conferred by sections 2 and 7(9) of, and Schedule 1 to, the 1999 Act^(d) and by section 2(2) of the European Communities Act 1972 and paragraph 1A of Schedule 2 to the European Communities Act 1972^(e),

In accordance with section 2(4) of the Pollution Prevention and Control Act 1999 (“the 1999 Act”)^(f), the Secretary of State has consulted the Environment Agency, the Natural Resources Body for Wales, the Scottish Environment Protection Agency, and such bodies or persons appearing to the Secretary of State to be representative of the interests of local government, industry, agriculture and small businesses, and such other bodies and persons, as the Secretary of State considers appropriate.

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972, and it appears to the Secretary of State that it is expedient for the references to EU instruments in these Regulations to be construed as references to those instruments as amended from time to time.

(a) S.I. 2008/301.
(b) 1972 c. 68. Section 2(2) was amended by section 27(1) of the Legislative and Regulatory Reform Act 2006 (c. 51) and by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7).
(c) Under section 57 of the Scotland Act 1998 (c. 46), despite the transfer to the Scottish Ministers of functions in relation to observing and implementing obligations under Community law in respect of devolved matters, any function of the Secretary of State in relation to any matter continues to be exercisable as regards Scotland for the purposes specified in section 2(2) of the European Communities Act 1972. And similarly, under paragraph 5 of Schedule 3 to the Government of Wales Act 2006 (c. 32), despite the transfer to the Welsh Ministers of functions under section 2 of the 1999 Act so far as exercisable in relation to Wales (except in relation to offshore oil and gas exploration and exploitation), those functions continue to be exercisable by the Secretary of State in relation to Wales for such purposes.
(d) Paragraph 9A of Schedule 1 was inserted by S.I. 2005/925 and amended by S.I. 2012/2788. There are other amendments to Schedule 1 which are not relevant to these Regulations.
(e) Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (c. 51) and amended by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7) and S.I. 2007/1388.
(f) 1999 (c. 24); section 2(4) was amended by paragraph 395 of Schedule 2 to the Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755 (W. 90)).

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 (1), 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(a) 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(b), 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);

“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”(c) 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;”;

(a) 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.

(b) “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).

(c) The definition of “change of status notice” was inserted by S.I. 2015/1849.

- (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(a);”;
 - (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(b);”;
 - (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—
 - ““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(c);”;
 - (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.

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- (a) OJ L No 59, 27.02.2019, p. 8.
 - (b) OJ L No 334, 31.12.2018, p. 1.
 - (c) OJ L No 334, 31.12.2018, p. 94.

(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(a) 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”.

(a) 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).

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)(a), after “Regulation”, insert “2018”.

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

(4) In paragraph (7)(b), 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(c) of the Directive where—”.

Amendment of regulation 36

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

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

(a) Paragraphs (2) and (3) were amended by S.I. 2014/3125.

(b) Paragraph (7) was substituted by S.I. 2018/306.

(c) 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).

- (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(a), article 11 of the NRBW Order(b) or regulation 37 of the Northern Ireland Regulations(c) 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) 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(d), 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)(e) 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.”.

(a) 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.

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

(c) 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.

(d) Regulations 58A and 58B were inserted by S.I. 2015/1849.

(e) 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).

Amendment of regulation 87B

26.—(1) Regulation 87B(a) 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
- (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(b) or regulation 21 of the 2010 Regulations(c);
- (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) Regulation 87B was inserted by S.I. 2013/3135.

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

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

- (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
 - (b) ends with 31st December 2020.”.

Amendment of Schedule 4

28. In Schedule 4(a), 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(b)—
 - (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)(c) 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.”.

(a) Schedule 4 was amended by S.I. 2013/3135, 2015/1849, 2016/1154 and 2017/1207.
(b) Paragraph 3 was amended by S.I. 2013/755 (W. 90) and 2013/3135.
(c) 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).

- (7) In paragraph 5, for “excluded” substitute “Article 27”.
- (8) In paragraph 6(a)—
- (a) in the heading, for “excluded” substitute “Article 27”;
 - (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—

(a) Paragraph 6 was amended by S.I. 2013/755 (W. 90).

“(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.

Kwasi Kwarteng
Minister of State

30th October 2019

Department for Business, Energy and Industrial Strategy

SCHEDULE

Regulation 30

Excluded installations: Article 27a installations

“SCHEDULE 5A Regulations 15A, 58ZA, 58ZB

Interpretation

1. In this Schedule—

- (a) “maximum amount” means an amount of less than 2,500 tonnes of carbon dioxide equivalent, disregarding emissions from biomass;
- (b) “the operator’s preferred alternative permit” has the meaning given in paragraph 3(1).

Duty to monitor emissions

2.—(1) The operator of an Article 27a installation must monitor the installation’s emissions of carbon dioxide equivalent in accordance with an appropriate monitoring plan.

(2) An appropriate monitoring plan for the first allocation period is a monitoring plan that—

- (a) was approved in relation to the installation in accordance with Articles 11 to 13 of the Monitoring and Reporting Regulation, for the purposes of the scheme year immediately before the first allocation period; or
- (b) is otherwise approved by the regulator, following an application made by the operator, as a plan that is capable of monitoring whether the installation has exceeded the maximum amount in any scheme year.

(3) An appropriate monitoring plan for the second allocation period is a monitoring plan that—

- (a) was approved in relation to the installation in accordance with Articles 11 to 13 of the Monitoring and Reporting Regulation, for the purposes of the scheme year immediately before the first allocation period;
- (b) was approved in relation to the installation in accordance with Article 11 to 13 of the Monitoring and Reporting Regulation 2018, for the purposes of the scheme year immediately before the second allocation period; or
- (c) is otherwise approved by the regulator, following an application made by the operator, as a plan that is capable of monitoring whether the installation has exceeded the maximum amount in any scheme year.

The operator’s preferred alternative permit

3.—(1) The operator of an Article 27a installation may notify the regulator that, if the installation exceeds the maximum amount in any scheme year, the operator prefers to comply with the conditions of an Article 27 installation emissions permit or, alternatively, a greenhouse gas emissions permit in respect of the installation (“the operator’s preferred alternative permit”).

(2) A notice under sub-paragraph (1) must be received by the regulator by 31st August 2024, in relation to the second allocation period.

Duty to notify if emissions exceed maximum amount during an allocation period

4.—(1) The operator of an Article 27a installation must notify the regulator by the relevant date if the reportable emissions from the installation in any scheme year exceed the maximum amount.

(2) For the purposes of sub-paragraph (1), the relevant date is 31st March in the year following the scheme year in question.

Termination of Article 27a status

5.—(1) Where the regulator is satisfied that an Article 27a installation has exceeded the maximum amount in any scheme year, the regulator must, as soon as is reasonably practicable, give a notice to the operator.

(2) A notice that is given pursuant to sub-paragraph (1) must state that, from the beginning of the scheme year following the year in which the notice is given—

- (a) the installation will not be treated as an Article 27a installation; and
- (b) the operator will be required to comply with the conditions of the operator's preferred alternative permit for the remainder of the allocation period during which the notice is given.

(3) Where the regulator has not received the operator's preferred alternative permit by the date specified in paragraph 2(2)(a) or (b), as the case may be, the notice under sub-paragraph (1) must state that, from the beginning of the scheme year following the year in which the notice is given, until the end of the allocation period during which the notice is given, the operator will be required to comply with the conditions of a greenhouse gas emissions permit in respect of the installation.

(4) The operator of an Article 27a installation who has received a notice given pursuant to sub-paragraph (1) may apply for—

- (a) a greenhouse gas emissions permit, under regulation 10(1); or
- (b) an Article 27 installation emissions permit, under regulation 10(2),

whichever is stated in the notice given pursuant to sub-paragraph (2)(b) or sub-paragraph (3).”

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.

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.

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