

2020 No. 1369

EXITING THE EUROPEAN UNION
CLIMATE CHANGE

The Greenhouse Gas Emissions Trading Scheme (Withdrawal Agreement) (EU Exit) Regulations 2020

Made - - - - - *26th November 2020*

Laid before Parliament *30th November 2020*

Coming into force in accordance with regulation 1(2)

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 8B and 8C of the European Union (Withdrawal) Act 2018(a).

PART 1

Introduction

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Greenhouse Gas Emissions Trading Scheme (Withdrawal Agreement) (EU Exit) Regulations 2020.

(2) These Regulations come into force immediately before IP completion day.

(3) In these Regulations “the 2012 Regulations” means the Greenhouse Gas Emissions Trading Scheme Regulations 2012(b);

PART 2

Implementation of withdrawal agreement in relation to electricity generation in Northern Ireland from 2021

Amendments to the 2012 Regulations

2. The 2012 Regulations are amended in accordance with regulations 3 to 42.

(a) 2008 c. 16; section 8B was inserted by section 18 of, and section 8C was inserted by section 21 of, the European Union (Withdrawal Agreement) Act 2020 (c. 1).

(b) S.I. 2012/3038 to which there are amendments which are not relevant.

Limitation of application of legislation

3. After regulation 1 insert—

“Application

1A. From 1st January 2021 these Regulations apply in Northern Ireland only, in relation to any emissions created on or after that date, from a regulated activity at an installation, by the generation of electricity in Northern Ireland for the single wholesale electricity market in Ireland and Northern Ireland.”.

Review of Regulations

4. In regulation 2—

- (a) in paragraph (1), for “Secretary of State” substitute “DAERA”;
- (b) in paragraph (2)—
 - (i) for “Secretary of State” substitute “DAERA”,
 - (ii) omit “other”.

Interpretation

5. In regulation 3—

- (a) in the definition of “allowance”, omit—
 - (i) in paragraph (a), “in this regulation”,
 - (ii) paragraph (b) and the “but” which precedes it;
- (b) for the definition of “authority” substitute—
““authority” means DAERA;”;
- (c) after the definition of “current operator” insert—
““DAERA” means the Department of Agriculture, Environment and Rural Affairs in Northern Ireland;”;
- (d) in the definition of “fee”, omit paragraphs (a) and (b);
- (e) in the definition of “permit” omit “and paragraph 7(12) of Schedule 6”;
- (f) after the definition of “the Registries Regulation 2013”(a) insert—
““the Registries Regulation 2019” means Commission Delegated Regulation (EU) 2019/1122 of 12 March 2019 supplementing Directive 2003/87/EC of the European Parliament and of the Council as regards the functioning of the Union Registry, as amended from time to time(b);”;
- (g) in the definition of “registry account” omit “or an aircraft operator holding account”;
- (h) in the definition of “regulated activity” omit “(other than an aviation activity)”;
- (i) for the definition of “regulator”, substitute—
““regulator” means the chief inspector;”;
- (j) in the definition of “reportable emissions” omit paragraph (b) and the “or” which precedes it;
- (k) omit the following definitions—
 - (i) aviation activity,
 - (ii) aviation allowance,

(a) The definition of the 2013 Regulation was inserted by regulation 5(1)(a) of S.I. 2013/3135.

(b) OJ L 177, 2.7.2019, p. 3-62.

- (iii) aviation emissions,
- (iv) aviation emissions plan,
- (v) banned non-UK operator,
- (vi) commercial air transport operator,
- (vii) exempt non-commercial air transport operator,
- (viii) the Free Allocation Decision,
- (ix) the Free Allocation Regulation(a),
- (x) non-commercial air transport operator,
- (xi) the NRBW,
- (xii) the NRBW Order,
- (xiii) offshore installation,
- (xiv) offshore petroleum installation,
- (xv) the Offshore Regulations(b),
- (xvi) offshore storage or unloading installation,
- (xvii) SEPA,
- (xviii) sub-installation,
- (xix) UK administered operator,
- (xx) UK aircraft operator;
- (l) for paragraphs (3) and (4) substitute—
 - “(3) For the purposes of these Regulations, an installation has ceased operation if—
 - (a) a regulated activity is no longer being carried out at the installation; and
 - (b) it is technically impossible to resume operation.”.

Designations

- 6. In regulation 8(c)—
 - (a) in paragraph (1)—
 - (i) for “The Environment Agency” substitute “DAERA”,
 - (ii) for “2013”(d) substitute “2019”;
 - (b) in paragraph (2), for “2013 (other than Articles 25(3) and 34(6))” substitute “2019 (other than for Articles 22(3) and 30(7))”;
 - (c) for paragraph (3) substitute—
 - “(3) DAERA is the competent authority so designated for the purposes of—
 - (a) Article 28(1);
 - (b) Article 30(8);
 - (c) Article 30(11); and
 - (d) Article 66(1).”;
 - (d) in paragraph (8) omit “Subject to paragraph (9).”;
 - (e) omit paragraphs (9) and (10).

(a) The definition of Free Allocation Regulation was inserted by regulation 3(2)(g) of S.I. 2019/1440.
 (b) The definition of the Offshore Regulations was substituted by regulation 2(f) of S.I. 2014/3125.
 (c) Amended by regulation 5 of S.I. 2013/3135, regulation 4 of S.I. 2019/1440 and regulation 5 of S.I. 2020/18.
 (d) The reference to “2013” was substituted by regulation 5(2)(a) of S.I. 2013/3135.

Transfer of permits

7. In regulation 12(4) omit “Subject to paragraph 3(2)(b) of Schedule 4,”.

Transfer of permits: underreporting discovered after transfer

8. After regulation 12 insert—

“Transfer of permits: underreporting discovered after transfer

12A.—(1) This regulation applies where—

- (a) after the transfer of a greenhouse gas emissions permit under regulation 12 takes effect, the regulator becomes aware, following a determination of reportable emissions under regulation 44, of an error in a report submitted for a scheme year by the transferring operator under the monitoring and reporting requirements of the permit; and
- (b) as a result of the error, the transferring operator failed to comply with the surrender requirements of the permit in respect of the scheme year to which the error relates.

(2) The regulator must give notice to the transferring operator of the error as soon as reasonably practicable.

(3) The transferring operator must, within the period of one month beginning with the date the transferring operator received the notice, effect a transfer to the new operator of allowances equal to the reportable emissions in respect of which, as a result of the error, the transferring operator failed to comply with the surrender condition of the permit.

(4) The new operator must surrender the allowances within the period of one month beginning with the date of the transfer of the allowances.

(5) In paragraph (1), the reference to the transfer of a permit under regulation 12 includes a reference to an application for a transfer of a permit to which effect is given by a variation of the new operator’s existing permit.

(6) In this regulation—

- (a) “transferring operator” means the person who was the current operator for the purposes of regulation 12; and
- (b) “new operator” has the same meaning as in regulation 12.”.

Surrender of permits

9. In regulation 13—

(a) after paragraph (1) insert—

“(1A) Where a permit authorises regulated activity to be carried out at an installation where a regulated activity is no longer being carried out but it is not technically impossible to resume operation, the operator of the installation may apply to the regulator to surrender the permit.”.

(b) for paragraphs (2) and (3) substitute—

“(2) An application under paragraph (1) must be made before the end of the period of one month beginning with the date that the regulated activities at the installation ceased, or such later date as may be agreed with the regulator.”.

Omission of regulations

10. Omit—

- (a) regulation 15(3)(b) and the “and” which precedes it^(a);
- (b) regulations 16 to 40; and
- (c) regulations 42A and 42B^(b).

Enforcement notices

11. In regulation 43(2), omit sub-paragraph (d) and the “or” which precedes it.

Determination of emissions

12. In regulation 44(c)—

- (a) in paragraph (4)—
 - (i) in sub-paragraph (a), omit “or UK aircraft operator”,
 - (ii) in sub-paragraph (b), omit “(or of the UK aircraft operator)”;
- (b) in paragraph (5)—
 - (i) in sub-paragraph (a), for “Article 35(6) of the Registries Regulation 2013”^(d) substitute “Article 31(6) of the Registries Regulation 2019”,
 - (ii) in sub-paragraph (b), omit “in regulation 35(3) or”;
- (c) in paragraph (5A), omit “or UK aircraft operator”;
- (d) in paragraph (5C)—
 - (i) in sub-paragraph (a), omit “or UK aircraft operator”,
 - (ii) in sub-paragraph (b), omit “(or of the UK aircraft operator)”;
- (e) in paragraph (5D)(a), omit “or UK aircraft operator”;
- (f) in paragraph (6), omit “or UK aircraft operator”.

Provision of information

13. In regulation 45—

- (a) in paragraph (1), omit “or the Secretary of State”, in both places;
- (b) omit paragraph (4)(b) and the “and” which precedes it;
- (c) omit paragraph (5);
- (d) in paragraph (6)^(e), at the end insert—
 - “; or
 - (ea) the Registries Regulation 2019”.

National security

14. In regulation 47, omit paragraph (1)(a) and the “or” which follows it.

Carbon price

15. In regulation 49—

(a) Paragraph (3) was substituted by regulation 4 of S.I. 2015/1849.
 (b) Regulations 42A and 42B were inserted by regulation 13 of S.I. 2014/3125; there are amendments not relevant to these Regulations.
 (c) Paragraphs (5A) to (5D) were inserted into regulation 44 by regulation 18(1) and (5) of S.I. 2019/1440.
 (d) The text being substituted was itself substituted by regulation 5(3) of S.I. 2013/3135.
 (e) Paragraph (6) is amended by regulation 19 of S.I. 2019/1440; the amendment to be made by regulation 19(c) is revoked by regulation 44(e) of these Regulations before it takes effect.

- (a) in paragraph (2), for “For each subsequent scheme year the Secretary of State” substitute “From the scheme year beginning with 1st January 2021, and for each subsequent scheme year, DAERA”;
- (b) in paragraph (4), for “The Secretary of State” substitute “DAERA”.

Penalty notices

16. In regulation 50—

- (a) in paragraph (2)(d), for “53(2)(b), 56(2)(b), 60(2)(b), 62(2)(b), 63(2)(b), 64(2)(b), 67(2)(b)” substitute “53(3)(b), 56(2)(b)”;
- (b) in paragraph (3) omit “and to paragraph (4);
- (c) omit paragraph (4);
- (d) in paragraph (6) omit sub-paragraph (b) and the “and” which precedes it.

Carrying out regulated activity contrary to regulation 9

17. In regulation 52(4), omit “section 40 of the Environment Act 1995, article 11 of the NRBW Order or”(a).

Failure to comply with a condition of a permit

18. In regulation 53—

- (a) in paragraph (1)
 - (i) in sub-paragraph (a) omit “(but excluding the condition mentioned in paragraph (4) below)”,
 - (ii) in sub-paragraph (c) for “regulation 88(6) or (7)” substitute “regulation 88”(b);
- (b) in paragraph (3)—
 - (i) in sub-paragraph (a) for “£3,750” substitute “£20,000”;
 - (ii) in sub-paragraph (b)—
 - (aa) for “£375” substitute “£500”,
 - (bb) for “£33,750” substitute “£45,000”;
- (c) omit paragraph (4).

Failure to transfer or surrender allowances where underreporting discovered after transfer

19. After regulation 53 insert—

“Failure to transfer or surrender allowances where underreporting discovered after transfer

53A.—(1) A person is liable to a civil penalty where the person fails—

- (a) to effect a transfer (or to effect a transfer on time) of allowances, contrary to regulation 12A(3) (transfer of permits: underreporting discovered after transfer);
- (b) to surrender (or to surrender on time) allowances, contrary to regulation 12A(4).

(2) The civil penalty is the sterling equivalent of 20 Euros for each allowance that the person failed to transfer or surrender.”.

(a) Paragraph (4) is amended by paragraphs 418 and 423 of Schedule 4 to S.I. 2013/755, regulation 3 of S.I. 2013/3135 and regulation 6 of S.I. 2020/18.

(b) Regulation 88 is to be substituted by regulation 27 of S.I. 2019/1440.

Failure to surrender allowances

20. In regulation 54(a)—

- (a) in paragraph (1), omit “or regulation 42A”;
- (b) in paragraph (2A), omit sub-paragraphs (a) and (b);
- (c) in paragraph (7)—
 - (i) omit sub-paragraph (a),
 - (ii) in sub-paragraph (ca)—
 - (aa) in paragraph (i), omit “regulation 35(3) or”,
 - (bb) omit paragraph (ii) (but not the “or” which follows it).

Excluded installations

- 21.**—(1) In regulation 57(2), for “£3,750” substitute “£5,000”.
(2) Omit regulations 58A and 58B(b).

Omission of regulations

22. Omit regulations 60 to 67.

Information notices

23. In regulation 69(2)—

- (a) in sub-paragraph (a) for “£1,500” substitute “£5,000”;
- (b) in sub-paragraph (b)—
 - (i) for “£150” substitute “£500”,
 - (ii) for “£13,500” substitute “£45,000”.

Providing false or misleading information

24. In regulation 70—

- (a) in paragraph (1)—
 - (i) omit sub-paragraphs (b) and (c),
 - (ii) in sub-paragraph (f), omit “or an aviation emissions plan”,
 - (iii) omit sub-paragraphs (g) and (h);
- (b) in paragraph (2), for “£1,000” substitute “£50,000”.

Appeals: interpretation

25. In regulation 72(c) omit sub-paragraph (ii) and the “and” which precedes it.

Rights of appeal

26. In regulation 73—

- (a) in paragraph (2) omit sub-paragraphs (c), (d), (j) to (o)(c);

(a) Amended by regulation 14 of S.I. 2014/3125, regulation 2 of S.I. 2017/1207 and regulation 20 of S.I. 2019/1440.
(b) Regulations 58A and 58B were inserted by regulation 6 of S.I. 2015/1849.
(c) Sub-paragraphs (na) to (ne) were inserted by regulation 9 of S.I. 2015/1849.

- (b) in paragraph (3) omit “section 40 of the Environment Act 1985, article 11 of the NRBW Order or”(a).

Rights of appeal: registries

27. In regulation 74—

- (a) in paragraph (1) for “2013”(b) substitute “2019”;
- (b) for paragraph (2)(c) substitute—
 - “(2) Those provisions are—
 - (a) Article 19(4);
 - (b) Article 21(6);
 - (c) Article 22(3);
 - (d) Article 28(5);
 - (e) Article 30(7);
 - (f) Article 80(8).”.

Appeal body

28. In regulation 75—

- (a) omit paragraph (1);
- (b) in paragraph (2), after “chief inspector” insert “or the registry administrator”;
- (c) omit paragraph (3).

Effect of an appeal

29. In regulation 76—

- (a) in paragraph (1) for “(2) to (4)” substitute “(2) and (3)”;
- (b) omit paragraph (2)(c)(ii), (v) and (vi)(d);
- (c) omit paragraph (4).

Determination of an appeal

30. In regulation 77, in paragraphs (2) and (3) for “2013” substitute “2019”(e).

Procedure for appeals

31.—(1) In the Chapter heading before regulation 78, omit “Scotland and”.

(2) In regulation 78, omit paragraphs (1) to (3).

Union Registry: interpretation

32. In regulation 79(f)—

- (a) in the Part heading which precedes the regulation, omit “and UK registry”;
- (b) in paragraph (1) for “2013” substitute “2019”;

(a) Paragraph (3) was amended by paragraphs 418 and 423 of Schedule 4 to S.I. 2013/755.
(b) The reference to 2013 was substituted by regulation 5(5)(a)(ii) of S.I. 2013/3135.
(c) Substituted by regulation 5(5)(b) of S.I. 2013/3135.
(d) Paragraph (2)(c) was amended by regulation 10 of S.I. 2015/1849.
(e) Paragraphs (2) and (3) were amended by regulation 5(6) of S.I. 2013/3135.
(f) Regulation 79 was amended by regulation 5 of S.I. 2013/3135.

- (c) omit paragraph (2).

Union Registry

33. In regulation 80(a)—

- (a) in paragraph (2)—
 - (i) for “Article 35(2)” substitute “Article 31(2)”,
 - (ii) omit sub-paragraph (b) and the “or” which precedes it;
- (b) in paragraph (3), for “Article 35(4) and (5)” substitute “Article 31(4) and (5)”;
- (c) in paragraph (4)—
 - (i) omit “or the UK administered operator”,
 - (ii) for “Article 16(1) or 17(1)” substitute “Article 14(1)”;
- (d) in paragraph (5), omit “or the UK administered operator”;
- (e) omit paragraph (9);
- (f) in paragraph (10), for “(8) or (9)” substitute “or (8)”;
- (g) omit paragraph (11);
- (h) in paragraph (13) omit “pursuant to Article 31”;
- (i) in paragraph (16) for “extend the suspension of the running of delays under Article 39(3) to all days in a scheme year that are not working days” substitute “decide that national public holidays in Northern Ireland are not working days under Article 35(8)”.

Recovery of fees

34. For regulation 82 substitute—

“Recovery of fees

82. Any fee payable by virtue of these Regulations may be recovered by the regulator as a civil debt.”.

Guidance

35. In regulation 84—

- (a) omit paragraph (2);
- (b) in paragraph (3) omit—
 - (i) “, the registry administrator or the KP registry administrator”,
 - (ii) “or (2)”.

Further omission of regulations

36. Omit regulations 84A(b), 87, 87A(c), 87AA(d) and 89.

Notices

37. In Schedule 2, omit paragraphs 9 and 10.

(a) Regulation 8- was amended by regulation 5(8) of S.I. 2013/3135.
(b) Regulation 84A was inserted by regulation 25 of S.I. 2019/1440.
(c) Regulation 87A was inserted by regulation 2 of S.I. 2013/1037.
(d) Regulation 87AA was inserted by regulation 19 of S.I. 2014/3125.

Applications etc.

38. In Schedule 3, in paragraph 1—

- (a) in sub-paragraph (1)(a)—
 - (i) at the end of sub-paragraph (i) insert “or”,
 - (ii) omit sub-paragraph (iii) and the “or” which precedes it;
- (b) in sub-paragraph (10) omit paragraph (b) and the “and” which precedes it.

Permits

39. In Schedule 4—

- (a) in paragraph 1(2)—
 - (i) in paragraph (a), omit “Part 1 of the Environmental Protection Act 1990 or”,
 - (ii) in paragraph (b), omit sub-paragraphs (i), (ii), (iii) and the “or” after sub-paragraph (iii);
- (b) in paragraph 2(7)—
 - (i) omit paragraph (a),
 - (ii) in paragraph (b), omit “capacity, activity level or”;
- (c) in paragraph 3—
 - (i) omit sub-paragraph (2),
 - (ii) omit sub-paragraph (12).

Article 27 installations

40. In Schedule 5—

- (a) in paragraph 1, omit sub-paragraphs (1) to (3);
- (b) in paragraph 3—
 - (i) in sub-paragraph (2), omit “section 40 of the Environment Act 1985, article 11 of the NRBW Order or”(a),
 - (ii) omit sub-paragraph (3)(c),
 - (iii) in sub-paragraph (4), omit “that is granted in respect of an installation which does not primarily provide services to a hospital”,
 - (iv) omit sub-paragraph (5),
 - (v) in sub-paragraph (6) for “sub-paragraphs (4) and (5)” substitute “sub-paragraph (4)”,
 - (vi) omit sub-paragraph (9),
 - (vii) in sub-paragraph (11) omit “section 40 of the Environment Act 1995, article 11 of the NRBW Order or”(b);
- (c) omit paragraph 4;
- (d) in paragraph 6—
 - (i) omit sub-paragraph (3)(d),
 - (ii) for sub-paragraph (7)(c), substitute—

“(7) However, the increase in an emissions target under sub-paragraph (4) or (6) may not result in an emissions target which exceeds the maximum amount.”,

(a) The reference to article 11 of the NRBW Order was inserted by paragraphs 418 and 426 of Schedule 4 to S.I. 2013/755.

(b) Sub-paragraph (11) was amended by paragraphs 418 and 426 of Schedule 4 to S.I. 2013/755.

(c) Paragraph 6(7) was amended to a limited extent by regulation 29(8)(g) of S.I. 2019/1440 from 1st February 2020 and that amendment which was due to come fully into force on 1st January 2021 is revoked by regulation 44(h)(ii) of these Regulations.

- (iii) in sub-paragraph (8), omit “section 40 of the Environment Act 1995, article 11 of the NRBW Order or”(a),
- (iv) in sub-paragraph (9)(a) for “a sub-installation’s” substitute “an installation’s”,
- (v) to the extent that sub-paragraph 9(b) to (d) has been substituted by regulation 29(8)(i) of the Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 3) Regulations 2019(b), those substituted provisions cease to have effect (but to the extent that those provisions are to be substituted from 1st January 2021 by that regulation, those amendments are to have effect);
- (e) in paragraph 7—
 - (i) in sub-paragraph (1), omit “Subject to sub-paragraph (2),”,
 - (ii) omit sub-paragraphs (2) and (3),
 - (iii) in sub-paragraph (5), omit “Except where the excluded installation primarily provides services to a hospital,”;
- (f) in paragraph 8—
 - (i) for sub-paragraph (1) substitute—

“(1) Where the regulator is satisfied that the annual reportable emissions from an Article 27 installation have exceeded the maximum amount, the regulator must, as soon as is reasonably practicable, give a notice to the operator.”,
 - (ii) in sub-paragraph (9) for “2013” substitute “2019”(c),
 - (iii) in sub-paragraph (10) for “2013” substitute “2019”.

Omission of Schedules

- 41. Omit Schedules 6 to 11.

Amendment to Schedule 12

- 42. In Schedule 12—
 - (a) in paragraph 1—
 - (i) in sub-paragraph (1)—
 - (aa) after “regulation 73(1)” insert “or 74(1),
 - (bb) after “chief inspector” insert “or registry administrator”,
 - (ii) in sub-paragraph (2) and (3) after “regulator” in both places insert “or registry administrator”;
 - (b) in paragraph 3(1), for “paragraphs (1), (3), (4) and (5) of Article 11 of the Planning (Northern Ireland) Order 1991 apply” substitute “section 204(1), (3) and (4) of the Planning Act (Northern Ireland) 2011(d) applies”;
 - (c) in paragraph (4) for “a fee; and Article 127(2)(b) of the Planning (Northern Ireland) Order 1991 has effect as if the reference to an appeal under that Order” substitute “any fee for the appeal prescribed in regulations made under section 223(7)(b) of the Planning Act (Northern Ireland) 2011; and for that purpose section 223(7)(b) has effect as if a reference to an appeal under that Act”.

(a) Sub-paragraph (8) was amended by paragraphs 418 and 426 of Schedule 4 to S.I. 2013/755.
 (b) Regulation 1(2B)(f) of S.I. 2019/1440 (inserted by S.I. 2020/18) provides that regulation 29(8) of S.I. 2019/1440 comes into force for limited purposes from 1st February 2020 and comes into force fully on 1st January 2021; the provisions to be substituted by that regulation are amended by regulation 44(h)(iii) of these Regulations.
 (c) Sub-paragraphs (9) and (10) were amended by regulation 5(13) of S.I. 2013/3135.
 (d) 2011 c. 25 (N. I.).

Revocation of regulations

43. The following are revoked—

- (a) the Greenhouse Gas Emissions Trading Scheme (Amendment) (EU Exit) Regulations 2019(a);
- (b) regulations 2 to 6 of the Greenhouse Gas Emissions Trading Scheme (Amendment) (EU Exit) (No. 2) Regulations 2019(b).

Amendments to Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 3) Regulations 2019

44. In the Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 3) Regulations 2019(c)—

- (a) omit regulation 1(5)(d);
- (b) omit regulation 3(2)(j);
- (c) in regulation 10, in the provision to be substituted as regulation 14(1)(b)(i) of the 2012 Regulations for “to (3)” substitute “and (2);
- (d) omit regulations 13 to 16;
- (e) omit regulation 19(c);
- (f) in regulation 22, in the provision to be inserted as regulation 58ZB(4) of the 2012 Regulations, omit “section 40 of the Environment Act 1995, article 11 of the NRBW Order or”;
- (g) omit regulation 23;
- (h) in regulation 29—
 - (i) omit paragraph (6),
 - (ii) omit paragraph (8)(g),
 - (iii) in paragraph 8(i)—
 - (aa) in the provision to be substituted as paragraph (b) of sub-paragraph (9) of paragraph 6 of Schedule 5 to the 2012 Regulations, for “sub-installation’s”, in both cases, substitute “installation’s”, and for “sub-installation” substitute “installation”,
 - (bb) omit the provision to be inserted as paragraph (c) of sub-paragraph (9) of paragraph 6 of Schedule 5 to the 2012 Regulations,
 - (iv) omit paragraph (9)(a) and (c).

PART 3

Implementation of withdrawal agreement other than in relation to electricity generation in Northern Ireland from 2021

Modification of application of 2012 Regulations in the United Kingdom before 2021

45.—(1) Save as is provided in regulation 46(1)(b), the 2012 Regulations have effect, so far as they relate to emissions which arose before 1st January 2021, with the modifications specified in paragraph (2).

(2) The modifications are—

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- (a) S.I. 2019/107.
 - (b) S.I. 2019/916.
 - (c) S.I. 2019/1440.
 - (d) Paragraph (5) was substituted by regulation 11 of S.I. 2020/18.

- (a) the 2012 Regulations apply as if the following provisions did not have effect—
 - (i) Part 2 of these Regulations,
 - (ii) the Greenhouse Gas Emissions Trading Scheme (Amendment) (EU Exit) Regulations 2019,
 - (iii) the Greenhouse Gas Emissions Trading Scheme (Amendment) (EU Exit) (No. 2) Regulations 2019;
- (b) in regulation 3 (interpretation) the definition of “Registries Regulation 2013” is to be read so that references in the 2012 Regulations include, so far as is possible, references to any equivalent provision in Commission Delegated Regulation (EU) 2019/1122 of 12 March 2019 supplementing Directive 2003/87/EC of the European Parliament and of the Council as regards the functioning of the Union Registry;
- (c) regulation 34 (issue of an emissions plan) applies as if any requirement on the regulator to issue a plan may be satisfied by the regulator serving a notice on A, and as any such notice is to be treated as a plan within the meaning of that regulation;
- (d) paragraph 6 of Schedule 5 (excluded installations) is to be read as if—
 - (i) in sub-paragraph (5), for “must vary the permit” there were substituted “must serve a notice on the operator”, and any such notice served by the regulator is to be treated as a variation of a permit,
 - (ii) in sub-paragraph (6), for “vary the permit” there were substituted “serve a notice on the operator”, and any such notice served by the regulator is to be treated as a variation of a permit;
- (e) in Schedule 6 (allocation and adjustment of allowances), paragraphs 6 and 8 do not require the operator to report a significant capacity reduction or a partial cessation of regulated activities (as the case may be), which occurred on or after 1st January 2020;
- (f) in Schedule 6A (allocation and adjustment of allowances: installations which cease to be excluded installations), paragraphs 7 and 9 do not require the operator to report a significant capacity reduction of an excluded installation or partial cessation of regulated activities of an excluded installation (as the case may be), which occurred on or after 1st January 2020.

(3) In the modified application of the 2012 Regulations, terms which are not subject to modification by paragraph (2) are to be interpreted after IP completion day, as they were interpreted before these Regulations came into force, as if the implementation period were still in force.

Application of 2012 Regulations for specific purposes

46.—(1) Nothing in these Regulations limits the application of—

- (a) the 2012 Regulations, as they had effect before the amendments made by regulations 2 to 42 of these Regulations, for the purposes of Part 3 of the Finance Act 2019(a);
- (b) regulation 81 (the UK Registry) of the 2012 Regulations, or any other provision in the 2012 Regulations so far as it relates to the UK Registry.

(2) In paragraph (1)(b), “the UK Registry” has the same meaning as in regulation 3 of the 2012 Regulations.

Signed

Kwasi Kwarteng
Minister of State

26th November 2020

Department for Business, Energy and Industrial Strategy

(a) 2019 c. 1; Part 3 is amended by Schedule 12 to the Finance Act 2020 (c. 14).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Article 96(2) of the agreement between the United Kingdom and the EU under Article 50(2) of the Treaty on European Union (which sets out the arrangements for the United Kingdom's withdrawal from the EU) ("the withdrawal agreement"), and Article 9 of the Protocol on Ireland/Northern Ireland in the withdrawal agreement ("the Protocol"). They relate to the EU greenhouse gas emissions trading system established pursuant to Directive 2003/87/EC (listed in Annex 4 to the Protocol) implemented in the UK by the Greenhouse Gas Emissions Trading Scheme Regulations 2012 ("the 2012 Regulations").

Part 2 provides for the continued membership of the EU emissions trading system for generators of electricity for the wholesale market in Ireland/Northern Ireland, by limiting the ongoing application of the 2012 Regulations to that electricity generation. It amends the 2012 Regulations and other provisions which would otherwise amend those Regulations, as appropriate.

Part 3 provides for the ongoing application, with modifications, of the 2012 Regulations in relation to the emissions of greenhouse gases on or before 31st December 2020 and has the effect that operators must comply with the obligations in the 2012 Regulations in relation to emissions in the scheme year ending on that date. Regulation 46 ensures that the 2012 Regulations continue to apply in so far as they relate to the Finance Act 2019, and to the UK Registry, which is the registry that the UK uses to fulfil certain obligations relating to the Kyoto Protocol. Separate instruments will make provision for the control of greenhouse gas emissions and the ending of the rights and obligations contained in the 2012 Regulations after 2020.

A full impact assessment has not been produced for this instrument as no substantial impact on the private or voluntary sector is foreseen.

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