

**EXPLANATORY MEMORANDUM TO**  
**THE GREENHOUSE GAS EMISSIONS TRADING SCHEME (WITHDRAWAL**  
**AGREEMENT) (EU EXIT) REGULATIONS**

**2020 No. 1369**

**1. Introduction**

1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

2.1 As part of leaving the European Union, the UK is ceasing participation in the EU Emissions Trading System (EU ETS) at the end of the implementation period.

2.2 This Statutory Instrument implements Article 9 and Annex 4 of the Revised Protocol to the Withdrawal Agreement on Ireland/Northern Ireland ('the NI Protocol'). It provides a continuing basis for emissions from electricity generation in Northern Ireland (for the single wholesale electricity market in Ireland and Northern Ireland) to remain subject to the EU ETS.

2.3 It also supports a smooth exit from the EU ETS by ensuring an appropriate legislative basis for UK operators to conclude their participation in the scheme at the end of the 2020 scheme year, while still meeting their compliance obligations for that year, which fall due in 2021, as required by Article 96(2) of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union ('the Withdrawal Agreement').

*Explanations*

What did any relevant EU law do before exit day?

2.4 The legal basis of the EU ETS is the EU Emissions Trading System Directive 2003/87/EC ('EU ETS Directive'), which has been transposed into UK law by the Greenhouse Gas Emissions Trading Scheme Regulations 2012 ('the 2012 Regulations').

Why is it being changed?

2.5 As part of leaving the EU, the UK is ceasing participation in the EU ETS at the end of the implementation period. Therefore, the 2012 Regulations, which transposed the EU ETS Directive into UK law, require amending to ensure they provide a continuing legislative basis for the purposes outlined below.

What will it now do?

2.6 The Statutory Instrument implements Article 9 and Annex 4 of the NI Protocol by providing a continuing basis for emissions from electricity generation in Northern Ireland (for the single wholesale electricity market in Ireland and Northern Ireland) to remain in the EU ETS. This will ensure the Single Electricity Market (SEM) across Ireland and Northern Ireland is not impacted by the UK exiting the EU.

- 2.7 It also supports a smooth exit from the EU ETS scheme, as required by Article 96(2) of the Withdrawal Agreement, by ensuring a legislative basis for UK operators to meet their compliance obligations in respect of the 2020 scheme year, which fall due in 2021. After the end of the implementation period, the UK will bring in an alternative domestic carbon pricing policy, either a domestic ETS or a carbon emissions tax, which will be covered by legislation elsewhere.

### **3. Matters of special interest to Parliament**

#### *Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 None.

#### *Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)*

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

### **4. Extent and Territorial Application**

- 4.1 The territorial extent of this instrument is England, Wales, Scotland, and Northern Ireland.
- 4.2 The territorial application of this instrument is England, Wales, Scotland, and Northern Ireland.

### **5. European Convention on Human Rights**

- 5.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

### **6. Legislative Context**

- 6.1 The EU ETS Directive, which establishes the EU ETS, was transposed into domestic law by the 2012 Regulations.
- 6.2 Under Article 9 and Annex 4 of the NI Protocol, the UK, in respect of Northern Ireland, has agreed that emissions from electricity generation in Northern Ireland will remain in the EU ETS as part of a wider agreement securing the continuation of the Single Electricity Market (SEM) on the island of Ireland.
- 6.3 Under Article 96(2) of the Withdrawal Agreement, the UK is required to ensure that UK operators meet their compliance obligations which fall due in 2021 and that relevant UK authorities enforce the relevant penalties in respect of any non-compliance.
- 6.4 This instrument is made under Sections 8B and 8C of the European Union (Withdrawal) Act 2018, which respectively provide powers to implement Part 3 of the Withdrawal Agreement (of which Article 96(2) forms part) and the NI Protocol.
- 6.5 The instrument provides a continuing basis for emissions from electricity generation in Northern Ireland (for the single wholesale electricity market in Ireland and Northern Ireland) to remain in the EU ETS, by limiting from 1st January 2021 the ongoing application of the 2012 Regulations to those emissions, with amendments as appropriate.

- 6.6 The instrument provides for the application, with modifications, of the 2012 Regulations as they relate to emissions which arose before 1st January 2021, to ensure that UK operators, including excluded installations, comply with their obligations in the 2012 Regulations in relation to emissions in the scheme year ending on 31st December 2020.
- 6.7 The instrument also revokes the majority of the ‘No Deal’ ETS legislation laid, including the Greenhouse Gas Emissions Trading Scheme (Amendment) (EU Exit) Regulations (S.I. 2019/107) and the Greenhouse Gas Emissions Trading Scheme (Amendment) (EU Exit) (No. 2) Regulations (S.I. 2019/916). This legislation was introduced to ensure operators continued to monitor their emissions if the UK left the EU without a deal in February 2019 and has therefore been superseded.
- 6.8 The 2012 Regulations implemented the EU Registries Regulation 2013 (Commission Regulation (EU) 389/2013) in relation to the Kyoto Protocol. This instrument ensures that the 2012 Regulations continue to apply insofar as they relate to the Kyoto Protocol and the UK Registry, which holds Kyoto Units related to emission targets for industrialised countries Parties under the Kyoto Protocol. A separate statutory instrument focusing on Kyoto Registry regulations is expected to be laid in early 2021.
- 6.9 After leaving the EU ETS, the UK will continue to impose a price on carbon emissions, either by implementing a UK ETS that is linked to the EU ETS, or by implementing a standalone UK ETS or a carbon emissions tax (CET). If the UK were to implement a CET, in light of the scope of powers to implement a CET under the Finance Act 2019, this instrument is without prejudice to the application of the 2012 Regulations for the purposes of that Act.

## **7. Policy background**

### *What is being done and why?*

- 7.1 The EU Emissions Trading System is a market-based approach to reducing carbon emissions and tackling climate change. The UK has been a member of the scheme since it began in 2005. It includes more than 11,000 power stations and industrial plants across the EU with around 1,000 of these in the UK. These include power stations, oil refineries, offshore platforms and industries that produce iron and steel, cement, lime, paper, glass, ceramics, and chemicals, as well as the aviation sector.
- 7.2 The EU ETS works on a ‘cap and trade’ basis; there is a cap or limit set on the total greenhouse gas emissions allowed by all participants covered by the system and this cap is converted into tradable emission allowances. One allowance equals one tonne of emitted carbon (or equivalent). Operators must record their annual emissions and subsequently surrender the corresponding amount of allowances. Given that their annual emissions report must cover all of each year’s allowances, these obligations fall in spring the following year (31 March for reporting and 30 April for surrendering allowances).
- 7.3 Some UK-based operators falling within the scope of the EU ETS Directive are excluded from the main scheme through their inclusion in the UK Small-Emitter and Hospital Opt-Out Scheme. These operators are still required to monitor and report their emissions, but instead of receiving and surrendering allowances, they are given emissions targets, and these excluded installations pay only for emissions which exceed their target.

- 7.4 The UK intends to cease participation in the EU ETS at the end of the transition period after exiting the EU.
- 7.5 This Statutory Instrument implements Article 9 and Annex 4 of the NI Protocol by providing a continuing basis for emissions from electricity generation in Northern Ireland (for the single wholesale electricity market in Ireland and Northern Ireland), to remain in the EU ETS. It also ensures UK operators in the EU ETS, including excluded installations, are required to meet their obligations in respect of greenhouse gases emitted during the last year of the transition period, as set out in Article 96(2) of the Withdrawal Agreement, by ensuring that these obligations and the regulators' powers and penalties supporting them continue to be implemented into domestic law.
- 7.6 While climate is a devolved area, as the legislation implements Article 96(2) of the Withdrawal Agreement for the whole of the UK, the UK Government has led in developing the instrument. It is only intended to be laid before the UK Parliament, with consent from the devolved administrations. While the NI Protocol elements have been developed alongside colleagues in the NI Civil Service (NICS), given their significant statutory backlog and the Withdrawal Agreement elements in the SI, we have agreed with NICS that this SI will not be laid before the NI Assembly.
- 7.7 There are no non-legislative approaches available to achieve the required policy goals.
- 7.8 Whilst public interest in climate change is increasing, the technical nature of the EU ETS means that attention tends to be limited to sector and sustainability media. A consultation on the 'Future of UK Carbon Pricing' published May 2019, looking at the scheme to replace the EU ETS for the UK, received 149 responses, primarily from affected industries, but also from climate academics and NGOs.

## **8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**

- 8.1 This instrument is not being made to address a deficiency in retained EU law but relates to the withdrawal of the United Kingdom from the European Union and is being made under Sections 8B and 8C of the European Union (Withdrawal) Act 2018, as introduced by the European Union (Withdrawal Agreement) Act 2020.

## **9. Consolidation**

- 9.1 A number of amendments to the 2012 Regulations have been made to date. As there will be multiple policy streams which will still rely on these regulations, this SI does not consolidate them.

## **10. Consultation outcome**

- 10.1 The governments and regulators of Wales, Scotland, and Northern Ireland, along with the Environment Agency, as the regulator for England, have been consulted during the development of this SI.
- 10.2 No public consultation was deemed necessary as, for the majority of the UK, the SI intends to conclude participation in the EU ETS, not to implement future policy. EU ETS Phase IV amendments, including civil penalties, were consulted on in '[The Future of UK Carbon Pricing](#)' and will be implemented in regards to NI electricity generators.
- 10.3 The Department for Agriculture, Environment and Rural Affairs (DAERA) in Northern Ireland have communicated with the impacted NI electricity generators, including holding a consultation session, to outline the impact of changes imposed under this SI.

## **11. Guidance**

- 11.1 Several communications have been sent out by the relevant regulators to provide guidance on exiting the EU ETS. Further, guidance has been sent separately to NI electricity generators. The Technical Notice, *Meeting Climate Change Requirements from 1 January 2021* has been updated to reflect the content of this SI. <https://www.gov.uk/government/publications/meeting-climate-change-requirements-if-theres-no-brex-it-deal/meeting-climate-change-requirements-if-theres-no-brex-it-deal>

## **12. Impact**

- 12.1 The impact on business is minimal. NI electricity generators will continue to face the same monitoring and compliance obligations as they currently do in the EU ETS. There is one Combined Heat and Power (CHP) plant in NI which produces heat alongside electricity and, as agreed with the European Commission, only the emissions from electricity generation will be captured in the EU ETS, while heat emissions will be managed outside the scope of this instrument.
- 12.2 The compliance obligations for the 2020 EU ETS scheme year are already established in UK law by the 2012 Regulations, and the UK's adoption of a new carbon pricing system on leaving the EU ETS is covered by other legislation.
- 12.3 There are minimal wider impacts, the most notable includes the costs for the registry and accounts administration for the NI electricity generators which fall to the regulator and national administrator. Given the low number of covered installations, this is not expected to be significant, especially as the regulator will be continuing to act in its current role.
- 12.4 The EU ETS only includes businesses in heavy polluting industries and therefore there is no expected impact on charities or voluntary bodies.
- 12.5 There is no, or no significant, impact on the public sector.
- 12.6 Given the minimal change in operator burden, significantly below the +£5 million per annum threshold, a full impact assessment is not required and has not been prepared for this instrument.

## **13. Regulating small business**

- 13.1 The legislation applies to activities that are undertaken by small businesses only in so far as the legislation relates to the 2012 Regulations, which apply to small businesses in certain industries that meet relevant emissions thresholds.
- 13.2 No specific action is proposed to minimise regulatory burdens on small businesses.

## **14. Monitoring & review**

- 14.1 A review clause is present in the 2012 Regulations and, from 2021, it will continue to apply in relation to the NI electricity generators remaining in the EU ETS. Regulation 2 of the 2012 Regulations 'Duty to Review' is amended to reflect the change in responsibility owner from BEIS Secretary of State to the NI Department of Environment, Agriculture and Rural Affairs (DAERA). The NI Government have chosen the Department over the Minister in order to mitigate any future scenarios where there may not be a sitting NI Assembly.

## **15. Contact**

- 15.1 Richard Vale at the Department for Business, Energy and Industrial Strategy Telephone: 0207 215 8586 or email: [Richard.vale@beis.gov.uk](mailto:Richard.vale@beis.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Charlie Lewis, Deputy Director for Emissions Trading, at the Department of Business Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Kwasi Kwarteng, Minister of State for Business, Energy and Clean Growth at the Department of Business, Energy and Industrial Strategy, can confirm that this Explanatory Memorandum meets the required standard.