

SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4664 GIBRALTAR Thursday 13th February 2020

LEGAL NOTICE NO. 75 OF 2020

ENVIRONMENT ACT 2005

GREENHOUSE GAS EMISSIONS TRADING SCHEME (AMENDMENT) REGULATIONS 2020

In exercise of the powers conferred on it by section 18 of the Environment Act 2005, and all other enabling powers, and for the purpose of transposing into the law of Gibraltar 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 reductions and low carbon investments, and Decision (EU) 2015/1814, the Government has made these Regulations-

Title.

1. These Regulations may be cited as the Greenhouse Gas Emissions Trading Scheme (Amendment) Regulations 2020.

Commencement.

2.(1) These Regulations come into operation in accordance with subregulations (2) to (4).

(2) This regulation and regulations 3(2)(g) and (l), 3(4)(c) and (d), 3(14)(b), 3(17)(b) to (d), 3(19), 3(22)(b) and 3(23) come into force on the day of publication.

(3) Regulation 3(24), which substitutes regulation 79 of the Greenhouse Gas Emissions Trading Scheme Regulations 2012 comes into force on 1st May 2020, to the extent that it relates to the making of arrangements under subregulation (5) of regulation 79 (as substituted), but otherwise comes into force on 1st January 2021.

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

Amendment of Regulations.

3.(1) The Greenhouse Gas Emissions Trading Scheme Regulations 2012 are amended in accordance with the provisions of these Regulations.

(2) In Regulation 3(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 14(A1);

“Article 27a installation” means an installation of the kind described in regulation 14A(1);

“Article 27 installation emissions permit” means a permit which—

(a) is granted following an application under regulation 9(2); or

(b) results from a variation made under regulation 79 or paragraph 2 of Schedule 5;”;

(c) after the definition of “cease operation” insert-

““change of status notice” means a notice under-

(a) paragraph 7(1) or 7(4) of Schedule 5 that an installation will cease to be treated as an Article 27 installation;

(b) paragraph 5(1) of Schedule 5A, that an installation will cease to be treated as an Article 27a installation;”;

(d) after the definition of “emissions”, insert-

““emissions target”, in relation to a scheme year, means an amount of reportable emissions specified in an Article 27 installation emissions permit as the target for that excluded installation in that year;”;

(e) for the definition of “excluded installation” substitute-

““excluded installation” means—

(a) an Article 27 installation; or

(b) an Article 27a installation;”;

(f) omit the definition of “excluded installation emissions permit”;

(g) after the definition of “the Free Allocation Decision”, insert-

““the Free Allocation Regulation” means Commission Delegated Regulation (EU) 2019/331 of 19 December 2018 determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87/EC of the European Parliament and of the Council, as amended from time to time;”;

(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;”;

(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;”;

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

(3) In regulation 3(2)—

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

(b) after 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”.

(4) Regulation 7 is amended as follows -

(a) For subregulation (6) substitute-

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

(b) Omit subregulation (7);

(c) for subregulation (9) substitute-

“(9) The regulator is designated as the focal point authorised by Gibraltar for the purpose of Article 70(2) of the Verification Regulation 2018.”;

(d) after subregulation (9), insert-

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

(5) Regulation 8 is amended as follows -

(a) number the existing text as subregulation (1) of that regulation;

(b) after subregulation (1), insert-

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

(6) Regulation 9 is amended as follows -

(a) In subregulations (2) and (3), for “excluded”, in each place it occurs, substitute “Article 27”;

(b) After subregulation (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.”;

(c) In subregulation (4), for “excluded installations” substitute “Article 27 installation emissions”;

(d) In subregulation (7), for “excluded” substitute “Article 27”.

(7) Regulation 10 is amended as follows -

(a) Omit subregulation (1);

(b) In subregulation (2)—

(i) omit subregulation (a); and

(ii) in subregulation (b), at the end, insert “2018”;

(c) In subregulation (4) (a), for “79(3)” substitute “79(2) or (4)”.

(8) Regulation 11 is amended as follows –

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

(9) Regulation 12 is amended as follows –

In subregulation (6)(a), for “excluded” substitute “Article 27”.

(10) Regulation 13 is amended as follows –

(a) In subregulation (1), for paragraph (b) substitute—

“(b) must do so where—

(i) the regulator becomes aware that the operator has failed to comply with regulation 12(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.”.

(11) Regulation 14 is amended as follows –

(a) In the heading, at the end, insert “: Article 27 installations”;

(b) Before subregulation (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 7(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.”;

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

(d) After Regulation 14, insert—

“Excluded installations: Article 27a installations

14A.(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 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.”.

(12) Regulation 24 is amended as follows -

In regulation 24, at the end, insert “2018”.

(13) Regulation 27 is amended as follows -

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

(14) Regulation 28 is amended as follows –

- (a) In subregulation (2)(a), after “Regulation”, insert “2018”;
- (b) In sub regulation (3), after “Regulation”, where it first occurs, insert “2018”.

(15) Regulation 29 is amended as follows -

In subregulation (1)(a), after “Regulation”, insert “2018”.

(16) Regulation 36 is amended as follows -

In subregulation (2)(b), after “Regulation”, insert “2018”.

(17) Regulation 37 is amended as follows -

(a) In subregulation (1)—

- (i) in the words before subregulation (a), after “Regulation”, insert “2018”.
- (ii) after subregulation (b), insert “or”;
- (iii) omit subregulation (c).;

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

(c) In subregulation (5)—

- (i) in the words before subregulation (a), after “(4)”, insert “or under subregulation (5C)(a);
- (ii) in subregulation (a), for “excluded” substitute “Article 27”; and
- (iii) in subregulation (b), after “Regulation”, insert “2018”;

(d) After subregulation (5), insert—

“(5A) Regulation (5B) applies where –

- (a) a determination of emissions has been notified to the operator or Gibraltar aircraft operator under subregulation (4); and

(iii) 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 Gibraltar aircraft operator concerned; and

(b) is to be treated as determining all of the reportable emissions from the installation (or of the Gibraltar aircraft operator) for the period to which the determination relates.

(5D) Where—

(a) any rectified determination is notified to the operator or Gibraltar 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.”;

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

(18) Regulation 38 is amended as follows -

(a) In subregulation (6)—

(i) at the end of subregulation (b), after “Regulation”, insert “2018”;

(ii) after subregulation (d), omit “or”; and

(iii) after subregulation (e), insert—

“; or

(f) the Free Allocation Regulation”.

(19) Regulation 46 is amended as follows -

(a) After subregulation (2), insert—

“(2A) Any—

- (a) increase in the amount of allowances required by regulation 35;
 - (b) increase in the amount of annual reportable emissions required by regulation 35; 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.”;
- (b) In subregulation (4), from “that—” to the end, substitute “exceed P’s verified annual reportable emissions for that year”;
- (c) For subregulation (5) substitute—
- “(5) This subregulation 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.”;
- (d) In subregulation (6), omit “by the relevant date”;
- (e) In subregulation (7)—
- (i) omit subregulation (b);
 - (ii) after subregulation (c), insert—
- “(ca)“verified annual reportable emissions” means annual reportable emissions that are—
- (i) verified pursuant to regulation 28(3) or paragraph 2(3)(b) of Schedule 4;
 - (ii) considered verified pursuant to regulation 28; or
 - (iii) determined by the regulator pursuant to regulation 37;”;
- (f) After subregulation (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 subregulations (4) to (7) apply in respect of such emissions.

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

(20) Regulations 47 to 50 are amended as follows -

In regulations 47 to 50 for “excluded”, in each place it occurs, including in the heading of each regulation, substitute “Article 27”.

(21) After regulation 50, insert—

“Exceeding the maximum amount for an Article 27a installation

50A.(1) The operator of an Article 27a installation is liable to the civil penalty in subregulation (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

50B.(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 subregulation (2) in respect of any penalty year.

(2) Subject to subregulation (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 subregulation (2), the regulator may increase the amount determined under that subregulation 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 9 of the Environment Act 2005, to give the regulator directions as to—

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

(b) the exercise of the regulator’s powers under subregulation (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.”.

(22) Regulation 70 is amended as follows -

(a) Omit subregulations (6), (11) and (12);

(b) In subregulation (15), in the words after subregulation (b)—

(i) after “where it is”, insert “not”;

(ii) after “representative is”, omit “not”;

(23) After Regulation 74, insert—

“Duty of Minister to publish information

74A.(1) By 31st March each year, the Minister 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) of the Directive.

(2) The Minister 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 Minister must set out in a report the reasons for exceeding that amount.”.

(24) For Regulation 79 substitute—

“Transitional provisions: permits

79.(1) A permit granted under rule 8 of the 2004 Rules 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 subregulations (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 9(2).

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

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

(a) vary a permit under subregulations (2), (4) or (5);

- (b) grant an Article 27 installation emissions permit under regulation 9(2);
- (c) revoke a permit under regulation 13(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.”.

(25) Schedule 4 is amended as follows -

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

(26) Schedule 5 is amended as follows -

- (a) In the heading, at the end, insert “: Article 27 installations”;
- (b) In paragraph 1, omit the definition of “emissions target”;
- (c) In paragraph 2—
 - (i) in sub-paragraphs (1) and (2)(a), for “excluded” substitute “Article 27”;
 - (ii) in sub-paragraph (2)(b), for “79(6)” substitute “79(2) or (4)”;
 - (iii) in sub-paragraph (3), for “2013” substitute “2021”;
- (d) In paragraph 3—
 - (i) for “excluded”, in each place it occurs, including in the heading of that paragraph, substitute “Article 27”;
 - (ii) in sub-paragraph (1)(e), for “prior to 2021” substitute “over the first or second allocation period, as the case may be”;
 - (iii) in sub-paragraph (3)—
 - (aa) in the words before paragraph (a), after “following scheme years”, insert “over the allocation period to which the direction relates”;
 - (bb) 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) of the Directive;”;

(iv) in sub-paragraph (6), at the end, insert “2018”;

(v) in sub-paragraph (7), after “Monitoring and Reporting Regulation”, in each places it occurs, insert “2018”;

(e) In paragraph 4, for “excluded” substitute “Article 27”;

(f) In paragraph 5—

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

(ii) 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.”;

(iii) in sub-paragraph (2)(b), for “2013”, in both places it occurs, substitute “2021”;

(iv) 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.”;

(v) in sub-paragraph (3), for “The application” substitute “An application under sub-paragraph (1) or (2A)”;

(vi) in sub-paragraph (4)—

(aa) after “sub-paragraph (1)”, insert “or (2A)”;

(bb) at the end, insert “within the allocation period to which the application relates”;

(vii) in sub-paragraph (7)(a), after “sub-paragraph (1)”, insert “or (2A)”;

(viii) in sub-paragraph (8)—

(aa) 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;”;

(bb) omit paragraph (d).

(g) In paragraph 6—

(i) in sub-paragraph (2), for “excluded” substitute Article 27”;

(ii) in sub-paragraph (4), for “sub-paragraph (5)” substitute “sub-paragraphs (5) and (8)”;

(iii) in sub-paragraph (5), for “excluded” substitute “Article 27”;

(iv) in sub-paragraph (7), for “Where”, substitute “Subject to paragraph (8), where”;

(v) after sub-paragraph (7), insert—

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

(h) In paragraph 7—

(i) for “excluded” in each place it occurs, substitute “Article 27”;

(ii) 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”;

(iii) After sub-paragraph (6), insert—

“(6A) Where regulation 14(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.”.

(i) Omit paragraph 8.

(27) After Schedule 5, insert the following Schedule 5A -

“SCHEDULE 5A

Regulations 14A, 50A, 50B

Excluded installations: Article 27a installations

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 9(1); or

(b) an Article 27 installation emissions permit, under regulation 9(2),

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

Saving provisions

4.(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)(1) had not been made.

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

(a) regulation 3(2);

(b) regulation 3(4);

(c) regulation 3(7);

(d) regulation 3(9);

(e) regulation 3(10);

(f) regulation 3(11);

- (g) regulation 3(15);
- (h) regulation 3(16);
- (i) regulation 3(17);
- (j) regulation 3(18);
- (k) regulation 3(25); and
- (l) regulation 3(26),

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.

Dated: 13th February 2020.

PROF. J CORTES,
Minister with responsibility for the Environment,
for the Government.

EXPLANATORY MEMORANDUM

The Greenhouse Gas Emissions Trading Scheme Regulations 2012 (“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 (“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 (“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 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.