

EXPLANATORY MEMORANDUM TO

THE GREENHOUSE GAS EMISSIONS TRADING SCHEME (AMENDMENT) (NO. 2) REGULATIONS 2019

2019 No. 644

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy (BEIS) and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments and the Select Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 These Regulations amend the Greenhouse Gas Emissions Trading Scheme Regulations 2012 (“the 2012 Regulations”), which transpose the provisions of Directive 2003/87/EC establishing a system for greenhouse gas emission allowance trading within the Union (“the EU ETS Directive”). These Regulations will amend the EU Emissions Trading System (EU ETS) compliance cycle deadline for UK participants for the 2018 scheme year. The surrender deadline is changed to 10.59 pm on 29th March 2019. It is further moved to (i) immediately before the UK’s exit from the EU if “exit day” within the meaning of the European Union (Withdrawal) Act 2018 is changed so that it falls on a day before 1st May 2019; or (ii) to 30th April 2019 if “exit day” within the meaning of the European Union (Withdrawal) Act 2018 is changed so that it falls on or after 1st May 2019. These deadlines also apply if, before the new surrender deadline, “exit day” is subsequently changed again.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 These Regulations are made in exercise of the powers conferred by both section 2(2) of the European Communities Act 1972 and section 2 of the Pollution Prevention and Control Act 1999. A combination of these powers is needed as section 2 of the 1999 Act is the appropriate domestic power, but does not extend to Northern Ireland. It is therefore necessary to exercise the powers in section 2(2) of the 1972 Act as well as those in section 2 of the 1999 Act.
- 3.2 It is convention that regulations subject to the negative procedure should be laid before Parliament at least 21 calendar days before they are due to come into effect. These Regulations are being laid less than 21 days before coming into force. This urgent action is required to allow UK operators additional time to meet their allowance surrender requirements for the 2018 scheme year and so must come into force before the current compliance deadline of 26 March 2019. The consequences of delaying the legislation to comply with the 21-day rule would mean that the Regulations would not come into force before the 26th March 2019 and so the current compliance date would remain.

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)

- 3.3 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 negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 These Regulations are made under s2(2) European Communities Act 1972 (c.68) and section 2 and 7(9) of, and Schedule 1 to, the Pollution Prevention and Control Act 1999 (c.24).
- 6.2 These Regulations make amendments to the Greenhouse Gas Emissions Trading Scheme Regulations 2012 (S.I. 2012/3038). The 2012 Regulations have been amended by, among others, S.I. 2017/1207 and S.I. 2019/528.

7. Policy background

What is being done and why?

- 7.1 The EU Emissions Trading System (EU ETS) is the world's first and largest major emissions trading system for greenhouse gas (GHG) emissions. The EU ETS works on the 'cap and trade' principle, where a cap is set on the total amount of certain greenhouse gases that can be emitted by installations and aircraft covered by the system. Within the cap, companies receive or buy emission allowances which they can trade with one another as needed. This cap is reduced over time, so that total emissions fall. Sectors covered by the EU ETS include electricity generation, energy-intensive industries (including iron and steel production, cement manufacture and ceramics), and aviation. Together, the sectors covered by the EU ETS account for around 45% of EU emissions.
- 7.2 EU ETS compliance obligations require operators to monitor their emissions during a calendar year, and surrender one emissions allowance for every tonne of carbon dioxide equivalent (CO₂e) they have emitted at the end of each reporting year. The current date for surrender compliance is set out in UK regulations as 26 March 2019.
- 7.3 These Regulations amend the 2012 Regulations to extend the surrender deadline to 10.59 pm on 29th March 2019. It is further moved to (i) immediately before the UK's exit from the EU if "exit day" within the meaning of the European Union (Withdrawal) Act 2018 is changed so that it falls on a day before 1st May 2019; or (ii) to 30th April 2019 if "exit day" within the meaning of the European Union (Withdrawal) Act 2018 is changed so that it falls on or after 1st May 2019. These

deadlines also apply if, before the new surrender deadline, “exit day” is subsequently changed again. In the event that the European Union (Withdrawal) Act is not changed, then the compliance deadline of 10:59 p.m. on 29 March 2019 will fall while the UK applies EU law.

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

8.1 This instrument does not trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 Although a number of amendments have now been made to the 2012 Regulations, the Department has not made consolidating regulations at this time, given the limited nature of these amendments, and the fact that additional changes will likely need to be made by the end of 2019 to transpose changes made at EU level for the next phase of the EU ETS (Phase IV). It is therefore more appropriate for consolidated regulations to be made in respect of those more extensive amendments.

10. Consultation outcome

10.1 Governments of Wales, Scotland and Northern Ireland and UK regulators have been consulted on the content of this legislation.

10.2 No formal public consultation has been taken due to this short timeframe and the negligible administrative impacts foreseen on operators.

10.3 UK Operators have been informed about this amendment through formal government stakeholder communications provided by the Department for Business, Energy & Industrial Strategy, and notifications by UK regulators.

11. Guidance

11.1 The Department for Business, Energy & Industrial Strategy has not issued guidance for this amendment. This is a technical amendment that does not require specific guidance, as HMG has worked with UK regulators and Devolved Administrations to communicate this change to affected stakeholders and UK participants.

12. Impact

12.1 The impact on business, charities or voluntary bodies is limited to small additional administrative burden on regulators, operators and verifiers who will be required to adapt to understand the change in compliance deadlines. Significant costs resulting from this, or additional resource needed to comply are not expected, and operators may be able to reduce costs associated with compliance by having additional time to comply. EU ETS operators have been reminded that they are still able to surrender their allowances on any day up and until the deadline if desired, and if any arrangements already made make this preferable.

12.2 There is no significant impact on the public sector.

12.3 A full regulatory Impact Assessment has not been prepared for this instrument as no significant impact on the private or voluntary sectors is foreseen.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is to make all UK participants, including small businesses, aware of this legislation and impact to their compliance obligations, through communications from HMG and UK regulators. Activities performed by businesses that emit less than 25000 tonnes of carbon dioxide equivalent (excluding emissions from biomass) in any one calendar year (and all Hospital installations) are exempt from EU ETS surrender obligations and unaffected by these Regulations.

14. Monitoring & review

- 14.1 A statutory review clause is included in Regulation 2 of the 2012 Regulations. This places an obligation on the Secretary of State to carry out a review of those Regulations every five years, and to publish a report which must in particular: (a) set out the objectives intended to be achieved by the regulatory system established by these Regulations; (b) assess the extent to which those objectives are achieved; and (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

15. Contact

- 15.1 Michael Evans, at the Department for Business, Energy & Industrial Strategy Telephone 020 7215 5000 or Michael.Evans@beis.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Paul Chambers, Deputy Director for EU ETS, at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Rt Hon Claire Perry MP, the Minister of State for Energy and Clean Growth at the Department for Business, Energy and Industrial Strategy, can confirm that this Explanatory Memorandum meets the required standard.