STATUTORY INSTRUMENTS

2015 No. 1849

CLIMATE CHANGE

The Greenhouse Gas Emissions Trading Scheme (Amendment) Regulations 2015

Made - - - -	*1st November 2015*
Laid before Parliament	*4th November 2015*
Coming into force - -	*4th December 2015*

The Secretary of State is a Minister designated [F1] for the purposes of section 2(2) of the European Communities Act 1972 [F2] in relation to the environment.

In accordance with section 2(4) of the Pollution Prevention and Control Act 1999 ("the 1999 Act") [F3], 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.

Accordingly the Secretary of State, in exercise of the powers conferred by section 2 and 7(9) of and Schedule 1 to the 1999 Act [F4], and by section 2(2) of the European Communities Act 1972, as read with paragraph 1A of Schedule 2 to the European Communities Act 1972 [F5], makes the following Regulations [F6]:

F1 S.I. 2008/301.

F2 1972 c. 68; section 2(2) was amended by section 27(1)(a) 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).

F3 1999 c. 24.

F4 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)).

F5 Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (c. 51) and amended by S.I. 2007/1388 and by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7).

F6 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 EU 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.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Greenhouse Gas Emissions Trading Scheme (Amendment) Regulations 2015 and come into force on 4th December 2015.

(2) In these Regulations a reference to a numbered regulation or a numbered Schedule is to that regulation of, or Schedule to, the Greenhouse Gas Emissions Trading Scheme Regulations 2012 [F7].

F7 S.I. 2012/3038; those Regulations are amended by Schedule 4 to W.S.I. 2013/755 (W. 90) (see in particular paragraph 425), by S.I. 2013/1037, by S.I. 2013/3135, by S.I. 2014/3125, by S.I. 2015/933, and by S.I. 2015/1388.

Amendments to definitions

2.—(1) Regulation 3 is amended as follows.

(2) In paragraph (1)—

(a) after the definition of "cease operation", insert—

""change of status notice" means a notice under paragraph 8(1), 8(4) or 9(1) of Schedule 5 that an installation will cease to be treated as an excluded installation;";

(b) after the definition of "emissions", insert—

""entry year" means the scheme year following the scheme year in which the operator of an excluded installation is given a change of status notice;".

(3) For paragraph (3)(b), substitute—

"(b) the installation is a relevant installation, and has permanently ceased the carrying out of regulated activities by virtue of meeting the condition in paragraph 7(1)(d) of Schedule 6 or paragraph 8(1)(d) of Schedule 6A.".

Surrender of permits

3. For paragraphs (2) and (3) of regulation 13, substitute—

"(2) An application under paragraph (1) must be made by the date specified in paragraph (3), or such later date as may be agreed with the regulator.

(3) The date specified is, in the case of an installation that has ceased operation by virtue of meeting the condition in—

(a) paragraph 7(1)(b) or (c) of Schedule 6, the last day of the one month period beginning with the day on which the installation ceased operation;

(b) paragraph 7(1)(d) of Schedule 6, the last day of the one month period following the end of the relevant period (as defined by paragraph 7(5) of that Schedule);

(c) paragraph 8(1)(d) of Schedule 6A—

(i) where the entry year is 2015, the later of 31st December 2015 or the last day of the one month period following the end of the relevant period (as defined by paragraph 8(15)(b) of Schedule 6A);

(ii) where the entry year is any other scheme year, the later of 31st January in the entry year or the last day of the one month period following the end of the relevant period (as defined by paragraph 8(15)(b) of Schedule 6A).".

Excluded installations

4. For paragraph (3) of regulation 15, substitute—

"(3) The following provisions do not so apply—

(a) regulation 12(2); and

(b) Chapter 3 of this Part (except that regulation 16(3A) and Schedule 6A do apply where the operator of an excluded installation has been given a change of status notice).".

Allocation of allowances for 2013 to 2020

5.—(1) Regulation 16 is amended as follows.

(2) After paragraph (3), insert—

"(3A) Schedule 6A sets out procedures for the allocation of allowances to operators of installations which cease to be excluded installations, and for the adjustment of such allocations.".

(3) In paragraph (4)(a), after "Schedule 6", insert " or Schedule 6A ".

Failures to notify changes at an excluded installation

6. After regulation 58, insert—

"**Failure to notify when an excluded installation has had a significant capacity reduction or partial cessation of regulated activities**

58A. An operator is liable to a civil penalty of £5,000 where the operator fails to comply with a notification requirement under paragraph 7(2) or 9(2) of Schedule 6A.

Failure to notify when the operator of an excluded installation has suspended the carrying out of regulated activities at the installation

58B. An operator is liable to a civil penalty of £3,750 where the operator fails to comply with a notification requirement under paragraph 8(10) or Schedule 6A.".

Failure to return allowances

7.—(1) Regulation 67 is amended as follows.

(2) In paragraph (1)(b)(i), omit "or".

(3) After paragraph (1)(b)(i), insert—

"(ia) paragraph 12(4) of Schedule 6A; or".

Providing false or misleading information

8.—(1) Regulation 70(1) is amended as follows.

(2) In sub-paragraph (f), at the end, omit "or".

(3) For sub-paragraph (g), substitute—

"(g) pursuant to paragraph 6(2), 8(4)(a), or 8(5)(a) of Schedule 6; or".

(4) After sub-paragraph (g), insert—

"(h) pursuant to paragraph 7(2) or 9(2) of Schedule 6A.".

Rights of appeal

9.—(1) Regulation 73 is amended as follows.

(2) In paragraph (1)(b), after "notice served on them", insert " or notification given to them ".

(3) After paragraph (2)(n), insert—

"(na) paragraph 7(7)(a) of Schedule 6A, in relation to a decision to notify the registry administrator to withhold allowances under paragraph 7(5)(a) or (b) of that Schedule;

(nb) paragraph 8(14)(a) of Schedule 6A, in relation to a decision to notify the registry administrator to withhold allowances under paragraph 8(12)(a) or (b) of that Schedule;

(nc) paragraph 8(14)(b) of Schedule 6A;

(nd) paragraph 9(7)(a) of Schedule 6A, in relation to a decision to notify the registry administrator to withhold allowances under paragraph 9(5)(a) or (b) of that Schedule;

(ne) paragraph 12(2) of Schedule 6A;".

Effect of an appeal

10.—(1) Regulation 76(2)(c) is amended as follows.

(2) After "a notice", insert " or notification ".

(3) In sub-paragraph (iv), at the end, omit "or".

(4) In sub-paragraph (v), at the end, for ".", substitute " ; or ".

(5) After sub-paragraph (v), insert—

"(vi) paragraph 7(7)(a), 8(14)(a) or (b), or 9(7)(a) of Schedule 6A.".

The Union Registry

11. For paragraph (11)(b) of regulation 80, substitute—

"(b) for any other reason (and in particular in consequence of paragraph 8(1) or 8(5) of Schedule 5, paragraph 5 or 10 of Schedule 6, or paragraph 6 or 11 of Schedule 6A).".

Content of greenhouse gas emissions permit

12. In paragraph 2(7)(a) of Schedule 4 for "paragraph 1(3)(b)" substitute " paragraph 1A(1)(a) ".

Allocation and adjustment of allowances

13.—(1) Schedule 6 is amended as follows.

(2) After sub-paragraph (1)(b) of paragraph 1, insert—

"(ba) "partial cessation" means a reduction in activity levels at a sub-installation of an installation, as described in paragraph 8(2);".

(3) Omit paragraph 1(3).

(4) After paragraph 1, insert—

"**Application**

1A.—(1) Subject to sub-paragraph (2), this Schedule does not apply—

(a) to an installation that, by virtue of Article 10a(3) of the Directive, is not eligible for an allocation;

(b) where—

(i) a significant capacity extension;

(ii) a significant capacity reduction; or

(iii) a partial cessation,

occurs while the installation is an excluded installation;

(c) where an installation permanently ceases the carrying out of regulated activities by virtue of meeting the conditions in paragraph 7(1)(a),(b) or (c) while the installation is an excluded installation; or

(d) where an installation permanently ceases the carrying out of regulated activities by virtue of meeting the condition in paragraph 7(1)(d), but only where the suspension of regulated activities occurs when the installation is an excluded installation.

(2) Paragraph 8(8) applies where—

(a) the allocation of allowances to an operator of an installation which used to be an excluded installation is reduced in accordance with paragraph 9 of Schedule 6A; and

(b) after the installation ceases to be an excluded installation, the activity of the sub-installation reaches more than the levels in paragraph 8(7)(a) or 8(7)(b) of this Schedule.".

(5) In paragraph 2(2), for "Such", substitute " Subject to paragraph 8(6) of Schedule 6A, such ".

(6) In paragraph 4(1)—

(a) for "paragraph 2(6) or 3(5)", substitute " paragraph 2(7) or 3(6) "; and

(b) for "paragraph 2(5)(c) or 3(4)(c)", substitute " 2(6)(c) or 3(5)(c) ".

(7) After sub-paragraph (4) of paragraph 7, insert—

"(4A) For the purpose of sub-paragraph (4), where an installation permanently ceases the carrying out of regulated activities by virtue of meeting the condition in sub-paragraph (1)(d), the date of the permanent cessation is deemed to be the date on which the operator suspends the carrying out of regulated activities at the installation.".

Allocation and adjustment of allowances: installations which cease to be excluded installations

14. After Schedule 6, insert—