



STATUTORY INSTRUMENTS.

S.I. No. 755 of 2020

EUROPEAN UNION (GREENHOUSE GAS EMISSIONS TRADING)
(AMENDMENT) REGULATIONS 2020

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I, EAMON RYAN, Minister for the Environment, Climate and Communications, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972), for the purpose of -

- (a) giving further effect to Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003¹ establishing a system for greenhouse gas emission allowance trading within the Union and amending Council Directive 96/61/EC, as amended by Directive 2004/101/EC of the European Parliament and of the Council of 27 October 2004², Directive 2008/101/EC of the European Parliament and of the Council of 19 November 2008³, Directive 2009/29/EC of the European Parliament and of the Council of 23 April 2009⁴, and Directive (EU) 2018/410 of the European Parliament and of the Council of 14 March 2018⁵ in Regulation 13,
- (b) giving further effect to Commission Regulation (EU) No 1031/2010 of 12 November 2010⁶ on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances pursuant to Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowances trading within the Community, as amended by Commission Regulation (EU) No 1210/2011 of 23 November 2011⁷, Commission Regulation (EU) No 784/2012 of 30 August 2012⁸, Commission Regulation (EU) No 1042/2012 of 7 November 2012⁹, Commission Regulation (EU) No 1143/2013 of 13 November 2013¹⁰, Commission Regulation (EU) No 176/2014 of 25 February 2014¹¹, Commission Regulation (EU) 2017/1902 of 18 October 2017¹², Commission Delegated Regulation (EU) 2019/7 of 30 October 2018¹³ and Commission Delegated Regulation (EU) 2019/1868 of 28 August 2019¹⁴ in Regulation 14(a), and

¹ O.J. No. L 275 25.10.2003 p.32

² O.J. No. L 338 13.11.2004 p.18

³ O.J. No. L 8 13.1.2009 p.3

⁴ O.J. No. L 140, 5.6.2009 p.63

⁵ O.J. No. L 76 19.3.2018 p. 3

⁶ O.J. No. L 302 18.11.2010 p.1

⁷ O.J. No. L 308 24.11.2011 p.2

⁸ O.J. No. L 234 31.8.2012 p.4

⁹ O.J. No. L 310 9.11.2012 p.19

¹⁰ O.J. No. L 303 14.11.2013 p.10

¹¹ O.J. No. L 56 26.2.2014 p.11

¹² O.J. No. L 269 19.10.2017 p.13

¹³ O.J. No. L 2 4.1.2019 p.1

¹⁴ O.J. No. L 289 8.11.2019 p. 9

- (c) for the purpose of giving effect to Directive (EU) 2018/410 of the European Parliament and of the Council of 14 March 2018⁵ amending Directive 2003/87/EC to enhance cost-effective emission reductions and low-carbon investments, and Decision (EU) 2015/1814 in Regulations 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14(b), 14, 15, 16 and 17,

hereby make the following regulations:

Title and commencement

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

(2) These Regulations shall come into operation on 31 December 2020.

Definition

2. In these Regulations, “the Principal Regulations” means the European Communities (Greenhouse Gas Emissions Trading) Regulations 2012 (S.I. No. 490 of 2012).

Amendment of Regulation 3 of Principal Regulations

3. Regulation 3 of the Principal Regulations is amended -

- (a) in the definition of “combustion”, by the substitution of “waste gas scrubbing;” for “waste gas scrubbing, and is without prejudice to any decision taken under any national allocation plan in accordance with Regulation 10;”,
- (b) by the substitution of the following definition for the definition of “Commission”:
 “ ‘Commission’ means the European Commission;”,
- (c) by the substitution of the following definition for the definition of “Commission's Auctioning Regulation”:
 “ ‘Commission’s Auctioning Regulation’ means Commission Regulation (EU) No 1031/2010 of 12 November 2010⁶ on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances pursuant to Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowances trading within the Community, as amended by Commission Regulation (EU) No 1210/2011 of 23 November 2011⁷, Commission Regulation (EU) No 784/2012 of 30 August 2012⁸, Commission Regulation (EU) No 1042/2012 of 7 November 2012⁹, Commission Regulation (EU) No 1143/2013 of 13 November 2013¹⁰, Commission Regulation (EU) No 176/2014 of 25 February 2014¹¹, Commission Regulation (EU) 2017/1902 of 18 October 2017¹², Commission Delegated Regulation (EU)

2019/7 of 30 October 2018¹³ and Commission Delegated Regulation (EU) 2019/1868 of 28 August 2019¹⁴,”

- (d) by the substitution of the following definition for the definition of “Commission’s Free Allocation Rules”:

“ ‘Commission’s Free Allocation Rules’ means -

- (a) in relation to allocations relating to the period prior to 1 January 2021, Commission Decision of 27 April 2011¹⁵ 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, and
- (b) in relation to allocations relating to the period commencing on 1 January 2021, Commission Delegated Regulation (EU) 2019/331 of 19 December 2018¹⁶ 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;”

- (e) by the substitution of the following definition for the definition of “Commission’s Monitoring and Reporting Regulation”:

“ ‘Commission’s Monitoring and Reporting Regulation’ means Commission Regulation (EU) No 601/2012 of 21 June 2012¹⁷ on the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87/EC of the European Parliament and of the Council, as amended by Commission Implementing Regulation (EU) 2018/2066 of 19 December 2018¹⁸,”

- (f) by the substitution of the following definition for the definition of “Commission’s Verification and Accreditation Regulation”:

“ ‘Commission’s Verification and Accreditation Regulation’ means Commission Implementing Regulation (EU) 2018/2067 of 19 December 2018¹⁹ 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;”

- (g) by the deletion of the definition of “Community scheme”,

- (h) by the substitution of the following definition for the definition of “Directive”:

“ ‘Directive’ means Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003¹ establishing a system for greenhouse gas emission allowance trading within the

¹⁵ O.J. No. L 130 17.5.2011 p. 1

¹⁶ O.J. No. L 59 27.2.2019 p. 8

¹⁷ O.J. No. L 181 12.7.2012 p.30

¹⁸ O.J. No. L 334 31.12.2018 p.1

¹⁹ O.J. No. L 334 31.12.2018 p.94

Union and amending Council Directive 96/61/EC, as amended by Directive 2004/101/EC of the European Parliament and of the Council of 27 October 2004², Directive 2008/101/EC of the European Parliament and of the Council of 19 November 2008³, Directive 2009/29/EC of the European Parliament and of the Council of 23 April 2009⁴, and Directive (EU) 2018/410 of the European Parliament and of the Council of 14 March 2018⁵,”

- (i) by the substitution of the following definition for the definition of Minister:

“ ‘Minister’ means the Minister for the Environment, Climate and Communications;”,

- (j) by the substitution of the following definition for the definitions of “new entrant”:

“ ‘new entrant’ means -

- (a) for the purposes of the allocation of allowances prior to 1 January 2021 -

(i) any installation carrying out one or more of the activities listed in Schedule 1 which has obtained a greenhouse gas emissions permit for the first time after 30 June 2011,

(ii) any installation carrying out an activity which is included in the EU ETS pursuant to Article 24(1) or (2) of the Directive for the first time, or

(iii) any installation carrying out one or more of the activities listed in Schedule 1 or an activity which is included in the EU ETS pursuant to Article 24(1) or (2) of the Directive, which has had a significant extension after 30 June 2011, only in so far as this extension is concerned, and in accordance with the Commission's Free Allocation Rules,

and

- (b) for the purposes of the allocation of allowances from 1 January 2021, any installation carrying out one or more of the activities listed in Schedule 1, which has obtained a greenhouse gas emissions permit for the first time within the period starting from three months before the date for submission of the list under Article 11(1) of the Directive, and ending three months before the date for the submission of the subsequent list under that Article of the Directive;”,

and

- (k) by the insertion of the following definition:
 - “ ‘EU ETS’ means the system for greenhouse gas emission allowance trading within the European Union provided for in the Directive;”.

Amendment of Regulation 4 of Principal Regulations

- 4. Regulation 4(1) of the Principal Regulations is amended by -
 - (a) the substitution of “system” for “scheme”, and
 - (b) the substitution of “Union” for “Community”.

Amendment of Regulation 7 of Principal Regulations

- 5. Regulation 7 of the Principal Regulations is amended by the deletion of paragraph (6).

Amendment of Regulation 9 of Principal Regulations

- 6. Regulation 9 of the Principal Regulations is amended -
 - (a) in paragraph (1), by the substitution of “for licences issued under Part IV of the 1992 Act” for “for integrated pollution prevention and control licenses provided for in the 1992 Act and the 1996 Act”, and
 - (b) in paragraph (2), by the substitution of “for licences issued under Part IV of the 1992 Act” for “for integrated pollution prevention and control licensing provided for in the 1992 Act and the 1996 Act”.

Amendment of Regulation 13 of Principal Regulations

- 7. Regulation 13 of the Principal Regulations is amended -
 - (a) in paragraph (1), by -
 - (i) the substitution of “EU ETS” for “Community scheme”, and
 - (ii) the substitution of “Union-wide” for “Community-wide”, and
 - (b) by the deletion of paragraph (4).

Amendment of Regulation 14 of Principal Regulations

- 8. Regulation 14 of the Principal Regulations is amended -
 - (a) by the deletion of subparagraph (b) of paragraph (1),
 - (b) by the insertion of the following paragraphs after paragraph (2):

“(2A) An operator of an installation eligible for free allocation pursuant to Article 10a of the Directive may submit to the Agency an application for free allocation in accordance with the Commission’s Free Allocation Rules.

(2B) An application under paragraph (2A) shall include information, of such nature and in such form as shall be specified by the Agency in accordance with the Commission’s Free Allocation Rules, and any other requirements of the Agency which are necessary for the purposes of the administration and implementation of the Directive.

(2C) A person who knowingly or recklessly submits information to the Agency under paragraph (1)(a) or in an application under paragraph (2A) that is false or misleading in a material respect shall be guilty of an offence.”,

- (c) by the deletion of paragraphs (3) and (4),
- (d) in paragraph (5) -
 - (i) by the substitution of “in accordance with Article 11 of the Directive and the Commission’s Free Allocation Rules” for “not later than 30 September 2011 and in accordance with the Commission’s Free Allocation Rules”, and
 - (ii) by the substitution of “in the State” for “in its territory” in both places it occurs, and
- (e) by the insertion of the following paragraph after paragraph (7):

“(8) In this Regulation, “allocation period” has the same meaning as it has in the Commission’s Free Allocation Rules.”.

Amendment of Regulation 15 of Principal Regulations

9. Regulation 15 of the Principal Regulations is amended -
- (a) by the substitution of “EU ETS” for “Community scheme” in each place it occurs, and
 - (b) in paragraph (4)(b), by the substitution of “the Union” for “the Community”.

Amendment of Regulation 16 of Principal Regulations

10. Regulation 16 of the Principal Regulations is amended:
- (a) in paragraph (1), by the substitution of “Union” for “Community”,
 - (b) in paragraph (3) -
 - (i) by the substitution, in subparagraph (b), of “from 1 May 2013 to 30 April 2021 (for the period ending on 31 December 2020)” for “from 1 May 2013”, and

- (ii) by the insertion of the following subparagraph after subparagraph (b):

“(c) For the period commencing on 1 January 2021, the operator of each installation shall surrender, by 30 April each year at the latest, a number of allowances, equal to the total emissions from that installation during the preceding calendar year, as verified in accordance with Regulation 19.”,

and

- (c) by the insertion of the following paragraph after paragraph (5):

“(5A)(a) In the event of the closure of an electricity generator due to additional national measures, the Minister may, having consulted with the Minister for Public Expenditure and Reform, direct the Agency to cancel allowances from the total quantity of allowances to be auctioned by the State up to an amount corresponding to the average verified emissions of the installation concerned over a period of 5 years preceding the closure.

- (b) The Minister shall, in considering whether to direct the Agency to cancel allowances pursuant to subparagraph (a), take into account -

- (i) the likely effect of such cancellation on the operation of the EU ETS in the State and in the European Union,
- (ii) the potential environmental benefit of such cancellation, having regard to the interaction between climate policies in the State and in the European Union, and
- (iii) the impact of the cancellation on auction proceeds.”.

Amendment of Regulation 17 of Principal Regulations

11. Regulation 17 of the Principal Regulations is amended:

- (a) by the substitution of the following paragraph for paragraph (2):

“(2) (a) Allowances issued from 1 January 2013 onwards shall be valid indefinitely.

- (b) Without prejudice to subparagraph (a), allowances issued from 1 January 2021 onwards shall -

- (i) include an indication showing in which ten-year period beginning from 1 January 2021 they were issued, and

- (ii) be valid for emissions from the first year of that period onwards.”, and
- (b) by the deletion of paragraph (3).

Amendment of Regulation 21 of Principal Regulations

12. Regulation 21 of the Principal Regulations is amended -
- (a) in paragraph (c), by the substitution of “direction,” for “direction, and”, and
 - (b) by the insertion of the following paragraph after paragraph (c):
 - “(ca) specify the date by which the direction is to be complied with, and”.

Amendment of section 26 of Principal Regulations

13. Regulation 26 of the Principal Regulations is amended -
- (a) by the deletion of paragraph (1), and
 - (b) in paragraph (2), by the substitution of the following subparagraphs for subparagraphs (a) and (b):
 - “(a) on summary conviction, to a Class A fine or to imprisonment for a term not exceeding 12 months, or both, or
 - (b) on conviction on indictment, to a fine not exceeding €500,000, or to imprisonment for a term not exceeding 3 years, or both.”.

Amendment of Regulation 29 of Principal Regulations

14. Regulation 29 of the Principal Regulations is amended -
- (a) by the insertion of the following paragraph after paragraph (3):
 - “(3A) The Agency shall carry out the obligation, on behalf of the State, to notify the Commission under Article 25 of the Commission’s Auctioning Regulation of its intention to cancel allowances under Regulation 16(5A).”, and
 - (b) in paragraph (4) -
 - (i) in subparagraph (a) -
 - (I) by the substitution of “seek the deduction of” for “deduct”, and
 - (II) by the substitution of “system” for “scheme”, and
 - (ii) in subparagraph (b), by the substitution of “Minister” for “Agency”.

Amendment of Regulation 31 of Principal Regulations

15. The Principal Regulations are amended by the substitution of the following Regulation for Regulation 31:

“Reporting to the Commission

31. The Agency shall submit to the Commission an annual report on the application of these Regulations in accordance with Article 21 of the Directive, which annual report -

- (a) shall, each year, provide information on the matters specified in paragraph 1 of that Article, and
- (b) shall, every 3 years, also provide information on the matters specified in paragraph 4 of that Article.”.

Amendment of Regulation 33 of Principal Regulations

16. Regulation 33(2)(a) of the Principal Regulations is amended by the substitution of “sections 83(4)(a), 83(5)(a)(vi), 86(1)(a)(i), 86(1)(b)(i), 86A(2), 86A(3)(b), 86A(3)(c)(ii) and (c)(iii) (in so far as it applies to emission limit values), 86A(4), 86A(5), 86A(6), 90(4)(a)(i) and 90(4)(a)(iia) of that Act” for “Sections 83(4)(a), 83(5)(a)(vi), 86(1)(a)(i), 86(1)(b)(i) and 90(4)(a)(i)”.

Amendment of Regulation 35 of Principal Regulations

17. Regulation 35(5)(b) of the Principal Regulations is amended by the substitution of “EU ETS” for “Community scheme”.

Amendment of Schedule 1 to Principal Regulations

18. Schedule 1 to the Principal Regulations is amended by the substitution of “EU ETS” for “Community scheme” in each place it occurs.



GIVEN under my Official Seal,
30 December 2020.

EAMON RYAN
Minister for the Environment, Climate and
Communications.

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