EXPLANATORY MEMORANDUM TO

THE GREENHOUSE GAS EMISSIONS TRADING SCHEME (AMENDMENT) REGULATIONS 2020

2020 No. 18

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.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 These Regulations make technical corrections to the Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 3) Regulations 2019 ("S.I. 2019/1440").

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.

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

6. Legislative Context

6.1 The EU Emission Trading System (ETS) Directive established a system for greenhouse gas emission allowance trading within the Union. The EU ETS Directive

is implemented in the UK through the Greenhouse Gas Emissions Trading Scheme Regulations 2012 ("the 2012 Regulations") (S.I. 2012/3038).

6.2 As the EU ETS is moving from Phase III (2013-2020) to Phase IV (2021-2030), reforms to the EU ETS Directive for Phase IV were adopted with Directive 2018/410/EU.

6.3 S.I. 2019/1440 amended the 2012 Regulations to implement Directive 2018/410/EU as is the UK's obligation while we are a Member State or in an Implementation Period.

6.4 These Regulations make corrections to S.I. 2019/1440.

7. Policy Background

What is being done and why?

7.1 These Regulations are made to correct errors in S.I. 2019/1440 and make some additional amendments as a consequence of those corrections.

7.2 These Regulations amend the commencement provision in S.I. 2019/1440 so that additional provisions are brought into force before the main coming into force date for that instrument of 1st January 2021 and to provide that the amendments made by that instrument will remain operative for the duration of any implementation period following the UK's exit from the European Union.

7.3 These Regulations amend the definition of "the Northern Ireland Regulations" in the 2012 Regulations and correct references to those Regulations in the 2012 Regulations and in S.I. 2019/1440.

7.4 These Regulations amend the definition of "the Verification Regulation 2018" in the 2012 Regulations, as amended by S.I. 2019/1440, so that references to that Regulation are consistent throughout the 2012 Regulations.

7.5 These Regulations correct some cross-references in amendments made by S.I. 2019/1440.

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

8.1 This instrument does not relate to withdrawal from the European Union / 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 that further amendments to the 2012 Regulations are expected in 2020, if the UK is in an Implementation Period, with a third SI implementing remaining policy following a consultation conducted earlier this year as well as any further changes required as a result of outstanding EU tertiary legislation yet to be finalised.

10. Consultation outcome

10.1 Governments of Wales, Scotland and Northern Ireland and UK regulators have been consulted on the content of this legislation. No formal public consultation has been

taken as the Regulations only contain technical amendments to S.I. 2019/1440 and have negligible administrative impacts foreseen on operators.

10.2 S.I. 2019/1440, implements policy that had previously been consulted on and for which a Government response has been issued. Full details can be found at: https://www.gov.uk/government/consultations/the-future-of-uk-carbon-pricing

11. Guidance

11.1 Guidance is not required in relation to these regulations.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An impact assessment has not been prepared because these regulations only contain technical amendments to S.I. 2019/1440 and therefore have no significant impact. An impact assessment was conducted and published on Gov.uk when S.I. 2019/1440 was laid. Full details can be found at: https://www.gov.uk/government/consultations/the-future-of-uk-carbon-pricing

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 certain small businesses that meet relevant thresholds.

14. Monitoring & review

14.1 There is no specific monitoring or review requirement in relation to this instrument.

15. Contact

15.1 Suzanne Stafford at the Department for Business, Energy and Industrial Strategy Telephone: 020 7215 0929 or email: suzanne.stafford@beis.gov.uk can be contacted with any queries regarding the instrument.

15.2 Charlie Lewis, Deputy Director for Emissions Trading, at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.

15.3 Kwasi Kwarteng MP, Minister of State for Business and Energy at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.