

EXPLANATORY MEMORANDUM TO
THE GREENHOUSE GAS EMISSIONS (KYOTO PROTOCOL REGISTRY)
REGULATIONS 2021

2021 No. 511

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.

2. Purpose of the instrument

- 2.1 The purpose of this instrument is to amend retained EU law related to the UK’s Kyoto Protocol (“KP”) registry, and to KP projects, to ensure that it will be operable in the UK. The KP is a protocol to the United Nations Framework Convention on Climate Change (“the UNFCCC”), which is an international climate change treaty. The KP set out emission reduction obligations that applied for the period up to 31st December 2020 for certain countries, including the EU Member States and the UK.

Explanations

What did any relevant EU law do before exit day?

- 2.2 The EU Registries Regulation (No 389/2013) (the “Registries Regulation”) sets out requirements for the European Union Emissions Trading System (“EU ETS”) registry and the KP registries of Member States. These registries are housed on an EU-wide software platform (the “Consolidated System of European Union Registries”, or “CSEUR”). The CSEUR provides for the accounting of all allowances issued under the EU ETS and units held within each Member State’s KP registry. These EU ETS allowances and KP units each represent a fixed amount of greenhouse gas emissions. They can be owned, traded and surrendered by those holding electronic accounts. KP units are generated from emission reduction or removal enhancement projects in developing countries. The CSEUR keeps track of the ownership of allowances and units held in electronic accounts, just as a bank has a record of all its customers and their money. The Registries Regulation requires EU Member States to have a KP registry to demonstrate their compliance with emission reduction obligations under the KP, as set out in further detail in Section 7 of this Explanatory Memorandum. The Regulation also details how KP units and EU ETS allowances can be stored, traded, and accounted for, as well as how the EU ETS Registry and Member State KP registries are to be administered.
- 2.3 The Greenhouse Gas Emissions Trading Scheme (Amendment) and National Emissions Inventory Regulations 2005/2903 (the “2005 Regulations”) contains two EU-derived provisions requiring the Environment Agency to comply with EU law in considering applications regarding KP projects.

Why is it being changed?

- 2.4 This instrument is necessary to:

- a) make operability amendments to the Registries Regulation to reflect that the UK's KP registry is no longer housed on the CSEUR and that EU entities have ceased to have functions in relation to the UK. This ensures that the UK KP registry, which will be housed on a new UK software platform going forwards, has a clear legal basis on which to function.
- b) revoke provisions of the Registries Regulation related to the EU ETS. These are no longer relevant because the UK Government and Devolved Administrations have created the UK Emissions Trading Scheme including the UK ETS Registry via the Greenhouse Gas Emissions Trading Scheme Order 2020¹ and the Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020.² Guidance for the UK ETS can be found on gov.uk.³
- c) remove the obligation in the 2005 Regulations on the Environment Agency to comply with EU law. The legislation is being amended so that the Environment Agency must instead act consistently with the UK's relevant international climate law obligations.

What will it now do?

- 2.5 The amendments made under this SI ensure that the UK can operate a domestic UK KP registry that is independent of the CSEUR. This will help to enable ongoing compliance with international obligations under the KP. Further detail on the specific changes being made by this instrument is in Section 7 of this Explanatory Memorandum.
- 2.6 As a result of amendments to the 2005 Regulations, the Environment Agency will no longer have to take account of EU law when considering applications regarding KP projects. The Environment Agency must instead act consistently with the UK's relevant international climate law obligations.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

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 The territorial application of this instrument includes Scotland and Northern Ireland.
- 3.3 The powers under which this instrument is made cover the entire United Kingdom (see section 24 of the European Union (Withdrawal) Act 2018) and the territorial application of this instrument is not limited either by the Act or by the instrument.

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.

¹ <https://www.legislation.gov.uk/ukdsi/2020/9780348209761/contents>

² <https://www.legislation.gov.uk/ukdsi/2020/1557/contents/made>

³ <https://www.gov.uk/government/publications/participating-in-the-uk-ets/participating-in-the-uk-ets>

5. European Convention on Human Rights

5.1 The Rt Honourable Anne-Marie Trevelyan MP has made the following statement regarding Human Rights:

“In my view the provisions of the Greenhouse Gas Emissions (Kyoto Protocol Registry) Regulations 2021 are compatible with the Convention rights.”

6. Legislative Context

6.1 This instrument makes amendments to retained EU law. The amendments to the Registries Regulation ensure that it will be operable in the UK, so the UK has a clear legal basis for the functioning of the UK KP registry.

6.2 Additionally, this instrument incorporates provisions in the Greenhouse Gas Emissions Trading Scheme Regulations 2012 (S.I. 2012/3038) (“the 2012 Regulations”) that are relevant to the UK KP registry into the Registries Regulation. Provisions in the 2012 Regulations that are relevant to the UK KP registry were saved by regulation 46(1)(b) of the Greenhouse Gas Emissions Trading Scheme (Withdrawal Agreement) (EU Exit) Regulations 2020. However, BEIS considered that it may be difficult for those unfamiliar with the legislation to work out which provisions in the 2012 Regulations are relevant to the UK KP registry, and that it would be clearer to set out the relevant provisions in the Registries Regulation. Consequently, the 2012 Regulations have been revoked in so far as they continued to apply for UK KP registry purposes. This does not make any substantive change to the law.

6.3 This instrument makes minor amendments to the 2005 Regulations, as explained in Section 2 above.

6.4 Amendments have also been made to charging powers relating to the UK KP registry in the Environment Act 1995 (c. 25).

7. Policy background

What is being done and why?

7.1 The UK is a party to the UNFCCC. This treaty unites nearly all the countries in the world in agreeing that climate change is an important issue and seeking to combat it by stabilising emissions of greenhouse gases. The KP is a protocol to the UNFCCC. Certain countries agreed to emission reduction commitments under the KP, including the UK and EU Member States. The EU also entered into emission reduction commitments under the KP. The first commitment period under the KP ran from 2008-2012. A second commitment period was agreed under the Doha Amendment to the KP, and this commitment period ended on 31st December 2020. The UK still has accounting obligations in relation to this commitment period, in order to demonstrate its compliance. The UK ratified the KP in its own right. Leaving the EU has not affected the UK’s obligations with regard to the UNFCCC and the KP.

7.2 Under the KP regime, the UK must maintain a KP registry to hold and trade Kyoto units. The UK is establishing its own domestic KP registry independent of the CSEUR to ensure continued compliance.

7.3 The UK’s access to the EU’s KP Registry system ended at the end of the Transition Period (TP). The IT platform for the new UK KP registry is currently in development and is due to be operational in Spring 2021. For the period between the end of the TP

and Spring 2021, businesses with accounts in the UK KP registry will temporarily lose access to them and have been advised to open KP accounts in other countries' registries if they wish to trade KP units during this time.

7.4 The Environment Agency will remain the “national administrator” of the UK KP registry, and their role and responsibilities will not change significantly compared to activities that they carried out under the EU registry system.

7.5 If left unamended, the retained EU law would be inoperable for the UK (as it is designed to apply to EU Member States whose registries are located on the CSEUR). This instrument ensures a clear legal basis for operating the new UK KP registry when it becomes operational in Spring 2021.

7.6 Amendments include:

- revoking all provisions that are only relevant to the EU ETS, and not KP registries, as explained in Section 2 of this Explanatory Memorandum;
- ensuring that all necessary functions sit with the Environment Agency, or Secretary of State as appropriate, rather than the European Commission and the central administrator for the CSEUR;
- removing references to EU institutions or other Member States;
- ensuring that provisions regarding the operation of KP registries are compatible with the software for the UK KP registry.

7.7 There are provisions in the 2005 Regulations which require the Environment Agency to comply with EU law in considering applications for KP projects. These requirements are being replaced with a requirement to meet the UK's relevant international climate law obligations.

7.8 Changes to the Registries Regulation and the 2005 Regulations are the minimum required to make them operable.

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

8.1 This instrument is being made using the power in section 8(1) of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. The instrument is also made under paragraph 21 of Schedule 7 to, the Withdrawal Act 2018. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

9. Consolidation

9.1 There are no current plans to consolidate the legislation amended by this instrument.

10. Consultation outcome

10.1 No public consultation has been undertaken for the amendments being made under this instrument, as the amendments will not change existing UK policy or significantly affect businesses using the UK KP registry. We have informed businesses who use the UK KP registry about the transition to the new UK registry system. Informal consultations were held with the Environment Agency.

10.2 BEIS has engaged the Devolved Administrations regarding this instrument and obtained formal agreement from them.

11. Guidance

11.1 Guidance is not required for this instrument.

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. The Environment Agency's role as registry administrator will largely be the same as it is currently.

12.3 An Impact Assessment has not been prepared for this instrument. This instrument impacts a limited number of organisations who hold KP Registry accounts. The costs to business are expected to be minimal as the instrument allows for the continued functioning of business through the operation of the UK KP registry, rather than making substantive changes to existing policy.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses. There are pre-existing requirements under the Registries Regulation and the 2005 Regulations that apply to all businesses that choose to participate in KP unit trading, or KP projects respectively. We consider that these requirements are not unduly onerous and ensure compliance with international law, and they do not fall disproportionately on small businesses.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is continued liaison with UK KP registry account holders and the Environment Agency, as national administrator.

14.2 As this instrument is made under the European Union (Withdrawal) Act 2018, no review clause is required.

15. Contact

15.1 Isabel Sloman at BEIS, Telephone: 02072154237 or email: Isabel.Sloman@beis.gov.uk can be contacted with any queries regarding the instrument.

15.2 Rachael Drake, Deputy Director for International Climate Strategy, at BEIS, can confirm that this Explanatory Memorandum meets the required standard.

15.3 Rt Hon Anne-Marie Trevelyan MP, the Minister of State for Business, Energy and Clean Growth at the BEIS, can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 14, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 15, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Appropriateness statement

- 1.1 The Minister of State for Business, Energy and Clean Growth, Rt Hon Anne-Marie Trevelyan MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view The Greenhouse Gas Emissions (Kyoto Protocol Registry) Regulations 2021 does no more than is appropriate”.

- 1.2 This is the case because: the amendments to retained EU law are the minimum required to make the legislation operable. Sections 2 and 7 of this Explanatory Memorandum explain this in further detail.

2. Good reasons

- 2.1 The Minister of State for Business, Energy and Clean Growth, Rt Hon Anne-Marie Trevelyan MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”.

- 2.2 These are: the amendments made to retained EU law are the minimum required to make the legislation operable. Sections 2 and 7 of this Explanatory Memorandum explain this in further detail.

3. Equalities

- 3.1 The Minister of State for Business, Energy and Clean Growth, Rt Hon Anne-Marie Trevelyan MP, has made the following statement:

“The draft instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.

- 3.2 The Minister of State for Business, Energy and Clean Growth, Rt Hon Anne-Marie Trevelyan MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the draft instrument, I, Anne-Marie Trevelyan MP, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.”

4. Explanations

- 4.1 The explanations statement has been made in section 2 of the main body of this explanatory memorandum.