

EXPLANATORY MEMORANDUM TO
THE FLUORINATED GREENHOUSE GASES (AMENDMENT) REGULATIONS
2023

2023 No. 1161

1. Introduction

1.1 This explanatory memorandum has been prepared by Department for Environment, Food and Rural Affairs (“Defra”) and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

2.1 The purpose of this instrument is to correct a technical error in Article 16(3) of Regulation (EU) No 517/2014 of the European Parliament and of the Council on fluorinated greenhouse gases (which is retained direct EU legislation), as amended.

2.2 The correction will ensure annual quotas (which limit the quantity of hydrofluorocarbons (HFCs) which can be placed on the market in Great Britain each year by producers and importers are calculated as intended.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England, Wales, and Scotland.

5. European Convention on Human Rights

5.1 The Minister of State, Lord Benyon, has made the following statement regarding Human Rights:

“In my view the provisions of the Fluorinated Greenhouse Gases (Amendment) Regulations 2023 are compatible with the Convention rights.

6. Legislative Context

6.1 Fluorinated greenhouse gases (F-gases) are powerful greenhouse gases used mainly in refrigeration, air-conditioning, heat pumps, insulation foams, electrical equipment, aerosol sprays, medical inhalers, solvents, fire extinguishers and other industrial applications. The most commonly used are HFCs.

6.2 Regulation (EU) No 517/2014 (the F-gas Regulation) is retained direct EU legislation which regulates F-gases in Great Britain. It was amended using powers in section 8 of the European Union (Withdrawal) Act 2018 to address operational deficiencies in preparation for the end of the EU Exit Transition Period. The amendments were made

through the Ozone-Depleting Substances and Fluorinated Greenhouse (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/583) and the Ozone-Depleting Substances and Fluorinated Greenhouse Gases (Amendment etc.) (EU Exit) Regulations 2020 (S.I. 2020/1616). Pursuant to the Windsor Framework, EU F-gas legislation and systems apply in Northern Ireland. The Secretary of State, the Scottish Ministers and the Welsh Ministers have functions under the F-gas Regulation.

- 6.3 The F-gas Regulation includes a phasedown of HFCs, which limits and gradually reduces the amount of HFCs that can be placed on the GB market for the first time. The phasedown is implemented using a quota system, which is calculated in equivalent tonnes of carbon dioxide (tCO₂e). A business may only place HFCs on the market up to the amount of quota they hold. Annex V of the Regulation sets out the phasedown schedule, with the starting point being 2015. Phasedown steps occur every three years through to 2030, when a 79% cut in HFCs placed on the market for the first time (compared to the baseline of average use between 2015-2019) is applied. The next phasedown step starts from 1 January 2024.
- 6.4 Annual quota amounts allocated to businesses are calculated based on reference values. Article 16 of the F-gas Regulation sets out how such reference values are to be calculated. The calculation is based on the annual average of HFCs placed on the market by a business from a specified start date. Article 16(3) states that reference values are to be recalculated by 31 October 2023 and every three years after that.
- 6.5 The Environment Agency performs the functions set out in Article 16 as the appropriate regulator for England and, under directions from Scottish and Welsh governments, for Scotland and Wales. Those functions include calculation of reference values and allocation of annual quota.
- 6.6 Following the UK's departure from the EU and the end of the Transition Period, the F-gas Regulation was amended by S.I. 2019/583 and S.I. 2020/1616, to address operational deficiencies. As part of those amendments, the start date referred to in Article 16(3) from which to base the calculation of reference values was changed from 1 January 2015 to 1 January 2021 (the date following the end of the EU Exit Transition Period). Using 2021 instead of 2015 as the start date for reference values directly affects quota calculations. This was a technical error. If the error is not addressed, the impact would be that the amount of quota businesses receive would reduce significantly faster than intended. The intention was to retain the substance of the F-gas Regulation following EU Exit, including the process to calculate HFC reference values, quota and the pace of phasedown set out in the EU F-gas Regulation. The intention was not to change the process and pace of phasedown. Reverting the start date to 2015 through this correcting instrument will reflect the policy intent.
- 6.7 The power in section 14(2) of the Retained EU Law (Revocation and Reform) Act 2023 is used in this instrument because the amendment it makes will achieve the same or similar objectives as the current provision in Article 16(3) of the F-gas Regulation. The objective of the provision prior to and following its amendment is to reduce the use of HFCs. In addition, the corrections made will meet the original intended objective during EU Exit of retaining the substance and HFC phasedown pace of the EU F-gas Regulation.

7. Policy background

What is being done and why?

- 7.1 The Environment Agency for England and, under direction by Scottish and Welsh Ministers respectively, for Scotland and Wales exercises the functions in Article 16(3).
- 7.2 As set out in section 6 above, the purpose of this instrument is to correct a technical error in Article 16(3) of the F-gas Regulation. Once corrected, the Environment Agency can, using the correct start date of 1 January 2015, recalculate reference values and associated HFC quota for companies placing HFCs on the GB market ahead of the next phasedown step starting from 1 January 2024. The Regulation, as originally written prior to EU Exit, states that the period to be used when determining the annual average of HFCs placed on the market starts on 1 January 2015. The changes made by S.I. 2019/583 and S.I. 2020/1616 to address operational deficiencies of the F-gas Regulation in preparation for EU Exit incorrectly amended Article 16(3) to change this start date from 2015 to 2021. It was subsequently discovered that the change to the start date has implications for the amount of quota issued to businesses and therefore does not reflect the policy intent when the F-gas Regulation was retained.
- 7.3 The amendment made by this instrument relates to the correction of a technical error in the F-gas Regulation and the changes it makes will meet the original intended objective of retaining the substance and phasedown pace of the EU Regulation. The correction of the technical error will prevent unintended regulatory burden on businesses which could severely impact supply chains of HFCs and the sectors reliant on them.

Explanations

What did any law do before the changes to be made by this instrument?

- 7.4 As set out in section 6 above, the F-gas Regulation includes a phasedown of HFCs that relies on a quota system. Quota is needed to place HFC on the market for the first time and the amount of quota issued is reduced over time. Quota is calculated on the basis of reference values that are recalculated every three years. The next phasedown step starts from 1 January 2024 and the deadline for recalculating the underlying reference values for it is 31 October 2023.
- 7.5 Under the current wording of Article 16(3) of the F-gas Regulation, the start date from which to determine the annual average of HFCs placed on the market in order to recalculate reference values, and consequently quota, is 1 January 2021.

What will it now do?

- 7.6 The start date referred to in Article 16(3) of the F-gas Regulation will be changed from 1 January 2021 to 1 January 2015, and relevant data relating to the period from the beginning of 2015 may be used to calculate reference values from which to allocate quota. As a result, the recalculation of reference values will be based on the annual average of HFCs placed on the market by a business from 2015 onwards. Quota amounts to be issued to businesses will subsequently be calculated based on those values.

7.7 This change will reflect the original and current intended objective of retaining the substance and HFC phasedown pace of the F-gas Regulation following EU Exit.

8. European Union Withdrawal, Future Relationship and REUL

8.1 This instrument does not relate to withdrawal from the European Union or trigger the statement requirements under the European Union (Withdrawal) Act. This instrument is being made using the power in section 14(2) of the Retained EU Law (Revocation and Reform) Act 2023 to revoke and replace a provision in retained EU law. The changes, however, made by S.I. 2019/583 and S.I. 2020/1616 to address operational deficiencies of the F-gas Regulation arising from the withdrawal of the UK from the EU incorrectly amended Article 16(3). This instrument corrects that technical error as set out in section 7 above.

9. Consolidation

9.1 No consolidation is required.

10. Consultation outcome

10.1 Consultation was not deemed necessary as the amendments introduced by this instrument relates to technical operability and there is no policy change.

10.2 A GB-wide F-gas regime currently operates under the Regulation. There is an F-gas Common Framework in place through which the UK, Scottish, Welsh and Northern Irish administrations collaborate, including on the application of the GB-wide F-gas regime. Using the Common Framework working arrangements, Devolved Administrations were engaged throughout the development of this instrument and agreement between officials on its provisions was reached. Ministerial consent has been provided by the Welsh Government and Scottish Government.

11. Guidance

11.1 Guidance on HFC quota requirements and processes is already available on gov.uk and issued by the Environment Agency. Further guidance is not required. The publication can be found here:

<https://www.gov.uk/guidance/applying-for-quota-to-produce-or-import-f-gas>.

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 for this instrument because there is no impact as a result of its implementation. The instrument corrects a technical error which occurred when retaining the direct EU legislation and the changes it makes will meet the objective of retaining the substance and phasedown pace of the EU F-gas Regulation.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 There is no impact on small businesses because there is no change in the related existing policy.

14. Monitoring & review

- 14.1 A review of the F-gas Regulation is currently being undertaken by Defra and Scottish and Welsh governments to identify potential further action to ensure continued compliance with international obligations (under the UN Montreal Protocol) and to support the UK's net zero commitment. As this instrument is made under the Retained EU Law (Revocation and Reform) Act 2023 a statutory review clause is not required.

15. Contact

- 15.1 Ademola Adeseun at the Department for Environment, Food and Rural Affairs, Telephone: +44 (0)2087203545 or email: ademola.adeseun@defra.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Robert Mason, Deputy Director for Climate, at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Lord Benyon, Minister of State, at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.