
STATUTORY INSTRUMENTS

2020 No. 1265

The Greenhouse Gas Emissions Trading Scheme Order 2020

[^{F1}PART 4A

Free Allocation

CHAPTER 3

Common provisions

[^{F1}Notice to withhold allowances

34W.—(1) The regulator may, by notice (a “notice to withhold”) to the registry administrator, require the registry administrator to withhold allowances that would otherwise have been allocated in respect of an installation under article 34E or to a person with an entry in the aviation allocation table under article 34O in any of the following circumstances—

- (a) if the regulator is investigating whether the installation has ceased operation;
- (b) if the operator of the installation has applied to surrender the installation's permit under paragraph 11 of Schedule 6 but the application has not yet been determined;
- (c) if a surrender notice under that paragraph or a revocation notice under paragraph 12 of that Schedule has been given to the operator of the installation but the surrender or revocation of the permit has not yet taken effect;
- (d) if an appeal against a revocation notice given to the operator of the installation has been made and has not been determined or withdrawn;
- (e) if the regulator is assessing a renunciation notice given by the operator of the installation under Article 24 of the Free Allocation Regulation;
- (f) if, following an application for the transfer of the installation's permit under paragraph 7 of Schedule 6, the regulator—
 - (i) considers that, if the application is granted, there may be a merger or split (as defined in Article 2(17) and (18) of the Free Allocation Regulation); or
 - (ii) is assessing the reports referred to in Article 25(3) of that Regulation;
- (g) in a case where allowances have not already been allocated in respect of the installation for a scheme year, if the regulator is investigating whether, as a result of a relevant error (as defined in article 34H), the final annual number of allowances set out in the allocation table to be allocated in respect of the installation for the scheme year exceeds the number that would otherwise have been set out in the table but for the relevant error;

[in relation to allowances that would otherwise have been allocated in respect of the ^{F2}(ga) installation for the 2023 scheme year, if the operator of the installation has made an application under Article 5a of the Activity Level Changes Regulation that has not been determined or has been granted an extension of time to make such an application that has not expired;]

Changes to legislation: The Greenhouse Gas Emissions Trading Scheme Order 2020, Section 34W is up to date with all changes known to be in force on or before 23 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- [if the regulator is investigating for the purposes of Article 2b(4)(b) of the Free Allocation Regulation whether the installation has produced electricity for sale for consumption outside the installation;]
- ^{F3}(gb) Regulation whether the installation has produced electricity for sale for consumption outside the installation;]
- (h) if the regulator is investigating whether the person with an entry in the aviation allocation table has permanently ceased to perform aviation activity under article 34P;
 - (i) if the regulator is assessing an application under article 34Q for the transfer of some or all of the aviation free allocation entitlement of the person with an entry in the aviation allocation table;
 - (j) in a case where allowances have not already been allocated to a person for a scheme year under article 34O, if the regulator is investigating whether, but for a relevant error (as defined in article 34R), the number of allowances set out in the aviation allocation table as the person's aviation free allocation entitlement for the scheme year would be materially less.

(2) The notice to withhold must set out the installation referred to in [^{F4}paragraph (1)(a) to (ga)] [^{F4}paragraph (1)(a) to (gb)] or the person referred to in paragraph (1)(h) to (j).

(3) Where a notice to withhold is given, no allowances may be allocated in respect of the installation set out in the notice, or to the person set out in the notice, until a further notice under paragraph (4) is given.

(4) The regulator may by further notice to the registry administrator withdraw the notice to withhold at any time, and must do so as soon as reasonably practicable after the circumstances for giving the notice to withhold no longer apply and, where relevant, the UK ETS authority has updated the allocation table in consequence of those circumstances.

(5) Where the regulator gives a notice to withhold, the regulator must also give notice to the operator of the installation set out in the notice to withhold, or to the person set out in the notice to withhold, setting out the reasons for giving the notice.

(6) Where the regulator gives a further notice under paragraph (4), the regulator must also give notice to the operator of the installation set out in the notice to withhold, or to the person set out in the notice to withhold, setting out any explanation that the regulator considers appropriate.]

- | | |
|-----------|--|
| F1 | Pt. 4A inserted (31.12.2020) by The Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020 (S.I. 2020/1557) , arts. 2(1), 18 |
| F2 | Art. 34W(1)(ga) inserted (1.1.2023) by The Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2022 (S.I. 2022/1173) , arts. 2, 7(2) |
| F3 | Art. 34W(1)(gb) inserted (E.W.S.) (1.1.2024 immediately after S.I. 2023/850 comes into force) by The Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2023 (S.I. 2023/1387) , arts. 2(1), 9(2) |
| F4 | Words in art. 34W(2) substituted (E.W.S.) (1.1.2024 immediately after S.I. 2023/850 comes into force) by The Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2023 (S.I. 2023/1387) , arts. 2(1), 9(3) |

Changes to legislation:

The Greenhouse Gas Emissions Trading Scheme Order 2020, Section 34W is up to date with all changes known to be in force on or before 23 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

[View outstanding changes](#)

Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- art. 4A(4)(aa) inserted by [S.I. 2024/192 art. 5\(2\)\(c\)](#)
- art. 4A(5)(g) inserted by [S.I. 2024/192 art. 5\(3\)](#)