

## STATUTORY INSTRUMENTS

# 2020 No. 1265

## The Greenhouse Gas Emissions Trading Scheme Order 2020

### PART 1

#### Preliminary

##### Citation

1. This Order may be cited as the Greenhouse Gas Emissions Trading Scheme Order 2020.

##### Commencement Information

- I1** Art. 1 in force at 12.11.2020, see art. 2(1)

##### Commencement

2.—(1) Except as provided by paragraph (2), this Order comes into force on the day after the day on which it is made.

(2) Article 25, Schedule 5 and paragraph 4 of Schedule 8 come into force—

- (a) on the day after the day on which this Order is made; or
- (b) immediately after IP completion day,

whichever is later.

##### Commencement Information

- I2** Art. 2 in force at 12.11.2020, see art. 2(1)

##### Extent

3. This Order extends to the whole of the United Kingdom.

##### Commencement Information

- I3** Art. 3 in force at 12.11.2020, see art. 2(1)

##### Interpretation

4.—(1) In this Order—

“2021-2025 allocation period” means the 2021, 2022, 2023, 2024 and 2025 scheme years;

“2026-2030 allocation period” means the 2026, 2027, 2028, 2029 and 2030 scheme years;

[<sup>F1</sup>“ account ” means account in the registry;

“Activity Level Changes Regulation” means Commission Implementing Regulation (EU) 2019/1842 of 31 October 2019, as it forms part of domestic law;]

“aerodrome” means a defined area (including any buildings, installations and equipment) on land or water or on a fixed, fixed offshore or floating structure to be used either wholly or in part for the arrival, departure and surface movement of aircraft;

“aircraft operator” has the meaning given in article 6;

[<sup>F2</sup>“ aircraft operator holding account ” means an aircraft operator holding account opened under paragraph 13(3) of Schedule 5A;]

“allocation period” means—

(a) the 2021-2025 allocation period; or

(b) the 2026-2030 allocation period;

[<sup>F3</sup>“ allocation table ” means an allocation table for the 2021-2025 allocation period or the 2026-2030 allocation period referred to in article 34A;]

“allowance” means an allowance created under this Order (see article 18);

“aviation activity” means an activity set out in paragraph 1 of Schedule 1;

[<sup>F4</sup>“ aviation allocation table ” means the aviation allocation table for the 2021-2025 allocation period referred to in article 34N;]

“aviation emissions” means emissions of carbon dioxide arising from an aviation activity;

“carbon price”, in relation to a scheme year, has the meaning given in article 46;

“CCA 2008” means the Climate Change Act 2008;

[<sup>F5</sup>“ central account ” has the meaning given in paragraph 9(2) of Schedule 5A;]

“the Chicago Convention” means the Convention on International Civil Aviation which was, on 7th December 1944, signed on behalf of the Government of the United Kingdom at the International Civil Aviation Conference held at Chicago <sup>M1</sup>;

“chief inspector” means the chief inspector constituted under regulation 8(3) of the Pollution Prevention and Control (Industrial Emissions) Regulations (Northern Ireland) 2013 <sup>M2</sup>;

“commercial air transport operator” means a person that, for remuneration, provides scheduled or non-scheduled air transport services to the public for the carriage of passengers, freight or mail and holds an air operator certificate (AOC) or equivalent document as required by Part I of Annex 6 to the Chicago Convention;

“Directive” means Directive [2003/87/EC](#) of the European Parliament and of the Council of 13 October 2003 establishing a system for greenhouse gas emission allowance trading within the Union and amending Council Directive [96/61/EC](#) <sup>M3</sup>;

“emission factor” has the same meaning as in the Monitoring and Reporting Regulation 2018;

“emissions monitoring plan” has the meaning given in article 28(1);

“EU ETS” means the system for greenhouse gas emission allowance trading established by the Directive;

“Eurocontrol” has the meaning given in section 24 of the Civil Aviation Act 1982 <sup>M4</sup>;

“excluded flights” means flights set out in paragraph 2 of Schedule 1;

[<sup>F6</sup>“ FA installation”, “FA installation for the 2021-2025 allocation period” and “FA installation for the 2026-2030 allocation period” must be construed in accordance with article 4A;]

“flight” means one flight sector that is a flight or one of a series of flights which commences at a parking place of the aircraft and terminates at a parking place of the aircraft;

[<sup>F7</sup>“free allocation” means the allocation of allowances free of charge under Part 4A;

“free allocation conditions” means the conditions referred to in paragraph 4(6) of Schedule 6;

“Free Allocation Regulation” means Commission Delegated Regulation (EU) 2019/331 of 19 December 2018, as it forms part of domestic law;]

“full-scope flights” means flights departing from, or arriving in, an aerodrome situated in the United Kingdom, Gibraltar [<sup>F8</sup>, Switzerland] or an EEA state, other than excluded flights;

“GGETSR 2012” means the Greenhouse Gas Emissions Trading Scheme Regulations 2012 <sup>M5</sup>;

“GGETSR emissions plan” means an emissions plan as defined in regulation 20 of the GGETSR 2012;

“greenhouse gas emissions permit” means a greenhouse gas emissions permit—

(a) issued under paragraph 3 or 9 of Schedule 6; or

(b) converted under paragraph 24 or 26 of Schedule 7 or paragraph 1(4) of Schedule 11;

“hospital and small emitter list for 2021-2025” has the meaning given in paragraph 3(2) of Schedule 7;

“hospital and small emitter list for 2026-2030” has the meaning given in paragraph 5(4)(b) of Schedule 7;

“hospital or small emitter” must be construed in accordance with paragraphs 3 and 4 of Schedule 7;

“hospital or small emitter permit” means a hospital or small emitter permit—

(a) issued under paragraph 9 of Schedule 7; or

(b) converted under paragraph 10 of Schedule 7 or paragraph 1(3) of Schedule 11;

“installation” must be construed in accordance with Schedule 2;

“monitoring and reporting conditions” means—

(a) in relation to a greenhouse gas emissions permit, the conditions referred to in paragraph 4(2) of Schedule 6;

(b) in relation to a hospital or small emitter permit, the conditions referred to in paragraph 11(2) of Schedule 7;

“Monitoring and Reporting Regulation 2012” means Commission Regulation (EU) No. 601/2012 of 21 June 2012 on the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87/EC of the European Parliament and of the Council <sup>M6</sup>;

“Monitoring and Reporting Regulation 2018” means Commission Implementing Regulation (EU) 2018/2066 of 19 December 2018 on the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87/EC of the European Parliament and of the Council [<sup>F9</sup>(disregarding any amendments adopted after 11th November 2020) and, except in article 24 and Schedule 4, it means that Regulation]<sup>M7</sup> as given effect subject to modifications by article 24;

“non-commercial air transport operator” means a person who operates flights and is not a commercial air transport operator;

“NRW” means the Natural Resources Body for Wales <sup>M8</sup>;

“operator”, in relation to an installation, has the meaning given in article 5;

[<sup>F10</sup>“operator holding account” means an operator holding account for an installation opened under paragraph 11(4) or 12(3) of Schedule 5A;]

“outermost region” means—

- (a) the Canary Islands;
- (b) French Guiana;
- (c) Guadeloupe;
- (d) Mayotte;
- (e) Martinique;
- (f) Réunion;
- (g) Saint-Martin;
- (h) the Azores; or
- (i) Madeira;

“permit” means—

- (a) a greenhouse gas emissions permit; or
- (b) a hospital or small emitter permit,

and a reference to a permit includes the monitoring plan (see paragraph 4(1)(f) of Schedule 6 and paragraph 11(1)(g) of Schedule 7) [<sup>F11</sup>and, in the case of a greenhouse gas emissions permit, any monitoring methodology plan (see paragraph 4(1)(hb) and (7) of Schedule 6)];

[<sup>F12</sup>“registry ” has the meaning given in paragraph 5(1) of Schedule 5A;

“registry administrator” has the meaning given in article 8A;]

“regulated activity” has the meaning given in paragraph 3(1) of Schedule 2;

“regulator” must be construed in accordance with articles 9 to 13;

“relevant Northern Ireland electricity generator” means an installation within the meaning of GGETSR 2012 to which those Regulations continue to apply to regulate the carrying out of regulated activities at the installation on or after 1st January 2021;

“reportable emissions”, in relation to an installation, means the total specified emissions (in tonnes of carbon dioxide equivalent <sup>M9</sup>) from the regulated activities carried out at the installation;

“scheme year” means the calendar year beginning on 1st January 2021 or any of the 9 subsequent calendar years; and a reference to a scheme year described by a calendar year (for example, the “2021 scheme year”) is a reference to the scheme year beginning on 1st January of that year;

“SEPA” means the Scottish Environment Protection Agency <sup>M10</sup>;

“specified emissions” has the meaning given in paragraph 3(7) of Schedule 2;

“surrender”, in relation to an allowance, means use the allowance to account for reportable emissions or aviation emissions in a particular scheme year [<sup>F13</sup>in accordance with article 27 or 34];

“surrender condition” has the meaning given in paragraph 4(3) of Schedule 6;

“trading period” means the period beginning on 1st January 2021 and ending on 31st December 2030;

“UK coastal waters” has the meaning given in section 89(2) of CCA 2008;

“UK ETS” has the meaning given in article 16(1);

“UK ETS authority” has the meaning given in article 14;  
“UK sector of the continental shelf” has the meaning given in section 89(2) of CCA 2008;  
“ultra-small emitter” must be construed in accordance with paragraph 2 of Schedule 8;  
“ultra-small emitter list for 2021-2025” has the meaning given in paragraph 2(2) of Schedule 8;  
“ultra-small emitter list for 2026-2030” has the meaning given in paragraph 3(5) of Schedule 8;  
“Verification Regulation 2012” means Commission Regulation (EU) No 600/2012 of 21 June 2012 on the verification of greenhouse gas emission reports and tonne-kilometre reports and the accreditation of verifiers pursuant to Directive 2003/87/EC of the European Parliament and of the Council <sup>M11</sup>;  
“Verification Regulation 2018” means Commission Implementing Regulation (EU) 2018/2067 of 19 December 2018 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 [<sup>F14</sup>(disregarding any amendments adopted after 11th November 2020) and, except in article 25 and Schedule 5, it means that Regulation as given effect subject to modifications by article 25]<sup>M12</sup>.

[<sup>F15</sup>“ verification report ” has the same meaning as in the Verification Regulation 2018.]

(2) For the purposes of this Order, the amount of an installation's reportable emissions (including reportable emissions within the meaning of GGETSR 2012) from biomass must be treated as zero where the emission factor of the biomass under the Monitoring and Reporting Regulation 2012 or the Monitoring and Reporting Regulation 2018 is zero.

[<sup>F16</sup>(2A) For the purposes of this Order, the amount of an aircraft operator's aviation emissions from biofuel must be treated as zero where the emission factor of the biofuel under the Monitoring and Reporting Regulation 2018 is zero.]

(3) For the purposes of this Order, an installation has ceased operation if—

- (a) a regulated activity is no longer being carried out at the installation; and
- (b) it is technically impossible to resume operation.

(4) For the purposes of this Order, the question of whether any waters are adjacent to Northern Ireland, Scotland or Wales must be determined in accordance with—

- (a) any Order in Council made under section 98(8) of the Northern Ireland Act 1998 <sup>M13</sup>;
- (b) any Order in Council made under section 126(2) of the Scotland Act 1998 <sup>M14</sup>;
- (c) any Order in Council made under sections 58 and 158(4), or order made under section 158(3), of the Government of Wales Act 2006 <sup>M15</sup>.

**F1** Words in art. 4(1) inserted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), arts. 2(1), **5(2)(a)**

**F2** Words in art. 4(1) inserted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), arts. 2(1), **5(2)(b)**

**F3** Words in art. 4(1) inserted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), arts. 2(1), **5(2)(c)**

**F4** Words in art. 4(1) inserted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), arts. 2(1), **5(2)(d)**

**F5** Words in art. 4(1) inserted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), arts. 2(1), **5(2)(e)**

**F6** Words in art. 4(1) inserted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), arts. 2(1), **5(2)(f)**

**F7** Words in art. 4(1) inserted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), arts. 2(1), **5(2)(g)**

- F8** Word in art. 4(1) inserted (E.W.S.) (1.1.2023) by The Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 3) Order 2022 (S.I. 2022/1336), arts. 1(2)(a), **3**
- F9** Words in art. 4(1) inserted (31.12.2020) by The Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020 (S.I. 2020/1557), arts. 2(1), **5(2)(h)**
- F10** Words in art. 4(1) inserted (31.12.2020) by The Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020 (S.I. 2020/1557), arts. 2(1), **5(2)(i)**
- F11** Words in art. 4(1) inserted (31.12.2020) by The Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020 (S.I. 2020/1557), arts. 2(1), **5(2)(j)**
- F12** Words in art. 4(1) inserted (31.12.2020) by The Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020 (S.I. 2020/1557), arts. 2(1), **5(2)(k)**
- F13** Words in art. 4(1) substituted (31.12.2020) by The Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020 (S.I. 2020/1557), arts. 2(1), **5(2)(l)**
- F14** Words in art. 4(1) inserted (31.12.2020) by The Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020 (S.I. 2020/1557), arts. 2(1), **5(2)(m)**
- F15** Words in art. 4(1) inserted (31.12.2020) by The Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020 (S.I. 2020/1557), arts. 2(1), **5(2)(n)**
- F16** Art. 4(2A) inserted (7.2.2022) by The Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021 (S.I. 2021/1455), arts. 2, **5(2)**

#### Commencement Information

- I4** Art. 4 in force at 12.11.2020, see art. 2(1)

#### Marginal Citations

- M1** Treaty Series No. 8 (1953); Cmd 8742.
- M2** S.R. 2013 No. 160.
- M3** OJ No. L 275, 25.10.2003, p. 32.
- M4** 1982 c. 16. Section 24 was amended by section 3(1) of the [Civil Aviation \(Eurocontrol\) Act 1983](#) (c. 11).
- M5** [S.I. 2012/3038](#), to which there are amendments not relevant to this Order.
- M6** OJ No. L 181, 12.7.2012, p. 30.
- M7** OJ No. L 334, 31.12.2018, p. 1.
- M8** The Natural Resources Body for Wales was established by article 3 of [S.I. 2012/1903](#) (W.230).
- M9** Section 93(2) of the Climate Change Act 2008 defines “tonne of carbon dioxide equivalent”.
- M10** The Scottish Environment Protection Agency was established by section 20 of the [Environment Act 1995](#) (c. 25).
- M11** OJ No. L 181, 12.7.2012, p. 1.
- M12** Commission Implementing Regulation (EU) 2018/2067 is amended prospectively by [S.I. 2019/916](#) with effect from IP completion day and is further amended by this Order.
- M13** 1998 c. 47.
- M14** 1998 c. 46.
- M15** 2006 c. 32. Section 58 was amended by paragraph 6(3) of Schedule 4 to the [Marine and Coastal Access Act 2009](#) (c. 23) and sections 21(1) and 49 of the [Wales Act 2017](#) (c. 4). Section 158(3) was substituted by section 43(3) of the Marine and Coastal Access Act 2009.

#### [<sup>F17</sup>Meaning of FA installation, etc.

**4A.**—(1) For the purposes of this Order, an installation is an “FA installation” if the installation is—

- (a) an FA installation for the 2021-2025 allocation period; or
- (b) an FA installation for the 2026-2030 allocation period.

(2) For the purposes of this Order, an installation is an FA installation for the 2021-2025 allocation period from—

- (a) the date of publication of the allocation table for the 2021-2025 allocation period (including an updated allocation table) that first includes an entry for the installation; or
- (b) if earlier, the date on which the regulator gives notice of the final annual amount of allowances to be allocated in respect of the installation for any scheme year in the 2021-2025 allocation period under—
  - (i) article 34H(7) (installations: errors in applications for free allocation, etc.);  
[ paragraph 4(7) of Schedule 8A (former hospital or small emitters or ultra-small<sup>F18</sup>(ia) emitters);]
  - (ii) Article 18a(9) of the Free Allocation Regulation (new entrants);
  - (iii) Article 25(9) of that Regulation (mergers and splits).

(3) An installation ceases to be an FA installation for the 2021-2025 allocation period at the earliest of—

- (a) the end of the 2025 scheme year;
- (b) if the operator of the installation gives a renunciation notice under Article 24 of the Free Allocation Regulation in respect of the installation as a whole, the end of the scheme year in which the renunciation notice is given;
- (c) the date on which, following the partial transfer under paragraph 9 of Schedule 6 of the greenhouse gas emissions permit of an installation that is an FA installation, the regulator gives notice to the transferring operator (within the meaning of that paragraph) under Article 25(9)(b) of the Free Allocation Regulation that the installation is not an FA installation for the 2021-2025 allocation period;
- (d) if the installation's permit is surrendered under paragraph 11(1) of Schedule 6 or revoked under paragraph 12(1) of that Schedule, the end of the scheme year in which the installation ceases operation;
- (e) if the installation's permit is surrendered under paragraph 11(2) of Schedule 6 or revoked under paragraph 12(3) of that Schedule, the end of the scheme year in which the surrender or revocation takes effect;
- (f) the date on which, following the inclusion of an entry for the installation in the allocation table for the 2021-2025 allocation period in error, the regulator gives notice to the operator under article 34H(7)(c) that the installation is not an FA installation for the 2021-2025 allocation period.

(4) For the purposes of this Order, an installation is an FA installation for the 2026-2030 allocation period from—

- (a) the date of publication of the allocation table for the 2026-2030 allocation period (including an updated allocation table) that first includes an entry for the installation; or
- (b) if earlier, the date on which the regulator gives notice of the final annual amount of allowances to be allocated in respect of the installation for any scheme year in the 2026-2030 allocation period under—
  - (i) article 34H(7) (installations: errors in applications for free allocation, etc.);  
[ paragraph 4(7) of Schedule 8A (former hospital or small emitters or ultra-small<sup>F19</sup>(ia) emitters);]
  - (ii) Article 18a(9) of the Free Allocation Regulation (new entrants);
  - (iii) Article 25(9) of that Regulation (mergers and splits).

(5) An installation ceases to be an FA installation for the 2026-2030 allocation period at the earliest of—

- (a) the end of the 2030 scheme year;
- (b) if the operator of the installation gives a renunciation notice under Article 24 of the Free Allocation Regulation on or after 1st January 2025 in respect of the installation as a whole, the end of the scheme year in which the renunciation notice is given;
- (c) the date on which, following the partial transfer under paragraph 9 of Schedule 6 of the greenhouse gas emissions permit of an installation that is a FA installation, the regulator gives notice to the transferring operator (within the meaning of that paragraph) under Article 25(9)(b) of the Free Allocation Regulation that the installation is not an FA installation for the 2026-2030 allocation period;
- (d) if the installation's permit is surrendered under paragraph 11(1) of Schedule 6 or revoked under paragraph 12(1) of that Schedule, the end of the scheme year in which the installation ceases operation;
- (e) if the installation's permit is surrendered under paragraph 11(2) of Schedule 6 or revoked under paragraph 12(3) of that Schedule, the end of the scheme year in which the surrender or revocation takes effect;
- (f) the date on which, following the inclusion of an entry for the installation in the allocation table for the 2026-2030 allocation period in error, the regulator gives notice to the operator under article 34H(7)(c) that the installation is not an FA installation for the 2026-2030 allocation period.]

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| <p><b>F17</b> Art. 4A inserted (31.12.2020) by <a href="#">The Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020 (S.I. 2020/1557)</a>, arts. 2(1), <b>6</b></p> <p><b>F18</b> Art. 4A(2)(b)(ia) inserted (7.2.2022) by <a href="#">The Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021 (S.I. 2021/1455)</a>, arts. 2, <b>6(2)</b></p> <p><b>F19</b> Art. 4A(4)(b)(ia) inserted (7.2.2022) by <a href="#">The Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021 (S.I. 2021/1455)</a>, arts. 2, <b>6(3)</b></p> |
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### Meaning of operator

5.—(1) In this Order, the “operator” of an installation is the person who has control over its operation.

(2) But where—

- (a) a regulated activity has not begun to be carried out at an installation, the operator of the installation is the person who will have control over its operation when a regulated activity is carried out at the installation;
- (b) a regulated activity is no longer carried out at an installation, the operator of the installation is the person who holds the permit for the installation or, if no permit authorises a regulated activity to be carried out at the installation, the person who had control over its operation immediately before regulated activities ceased to be carried out at the installation;
- (c) the holder of a permit for an installation ceases to have control over its operation, the operator of the installation is the permit holder.

### Commencement Information

- I5** Art. 5 in force at 12.11.2020, see art. 2(1)



### Meaning of aircraft operator

6.—(1) In this Order, a person is an aircraft operator in relation to a scheme year, where in respect of that year that person—

- (a) performs an aviation activity; and
- (b) is not exempt under article 7 or 8.

(2) For the purposes of paragraph (1)(a), an aviation activity is performed by the person who operates the aircraft at the time of the flight, or where that person is not known, the owner of that aircraft is deemed to be the person that performed the aviation activity.

#### Commencement Information

**I6** Art. 6 in force at 12.11.2020, see art. 2(1)

### Exempt commercial air transport operators

7.—(1) A commercial air transport operator is not an aircraft operator for the purposes of this Order in relation to a scheme year, where in respect of that year it operates—

- (a) less than 243 full-scope flights per period for 3 consecutive 4-month periods; or
- (b) full-scope flights with total annual emissions of less than 10,000 tonnes of carbon dioxide.

(2) In this article, “4-month period” means any of the following periods—

- (a) January to April;
- (b) May to August;
- (c) September to December.

(3) For the purposes of this article, a full-scope flight is taken to have occurred in the 4-month period that included its local time of departure.

#### Commencement Information

**I7** Art. 7 in force at 12.11.2020, see art. 2(1)

### Exempt non-commercial air transport operators

8. A non-commercial air transport operator is not an aircraft operator for the purposes of this Order in relation to a scheme year, where in respect of that year it operates full-scope flights with total annual emissions of less than 1,000 tonnes of carbon dioxide.

#### Commencement Information

**I8** Art. 8 in force at 12.11.2020, see art. 2(1)

### <sup>F20</sup> Meaning of registry administrator

8A.—(1) A reference in this Order to the “registry administrator” is a reference to—

- (a) the chief inspector;
- (b) the Environment Agency;
- (c) NRW;

- (d) the Secretary of State; and
- (e) SEPA.

(2) Functions conferred or imposed by this Order on the “registry administrator” may be exercised—

- (a) by all of the persons referred to in paragraph (1) jointly; or
- (b) by one of the persons referred to in paragraph (1) (or by more than one of the persons referred to in paragraph (1) jointly) on behalf of the other persons referred to in paragraph (1) with their agreement.]

**F20** Art. 8A inserted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), arts. 2(1), 7

### Meaning of regulator

9.—(1) Each of the following is a “regulator” for the purposes of this Order—

- (a) the chief inspector;
- (b) the Environment Agency <sup>M16</sup>;
- (c) NRW;
- (d) the Secretary of State;
- (e) SEPA.

(2) In this Order, “regulator” means—

- (a) in relation to an installation, the regulator determined in accordance with article 10;
- (b) in relation to an aircraft operator, the regulator determined in accordance with articles 11 to 13.

[<sup>F21</sup>(2A) Articles 11 to 13 apply for the purpose of determining the regulator of a person other than an aircraft operator in relation to—

- (a) monitoring and reporting of the person's aviation emissions;
- (b) free allocation to the person under Chapter 2 of Part 4A (aviation free allocation);
- (c) the opening, operation or closure of the person's aircraft operator holding account,

as if references to “aircraft operator” were to the person.]

(3) Each regulator is an administrator of the UK ETS for the purposes of paragraph 21 of Schedule 2 to CCA 2008.

**F21** Art. 9(2A) inserted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), arts. 2(1), 8(2)

### Commencement Information

**I9** Art. 9 in force at 12.11.2020, see art. 2(1)

### Marginal Citations

**M16** The Environment Agency was established by section 1 of the [Environment Act 1995 \(c. 25\)](#).

### Meaning of regulator: installations

10.—(1) This article applies for the purposes of article 9.

(2) The regulator, in relation to an installation set out in column 1 of table A, is the regulator set out in the corresponding entry in column 2.

**Table A**

<b>Column 1</b> <b>Installation</b>	<b>Column 2</b> <b>Regulator</b>
Installation in—	Environment Agency
(a) England;	
(b) the territorial sea adjacent to England, except where the installation is used for a purpose referred to in paragraph (3)	
Installation in—	Chief inspector
(a) Northern Ireland;	
(b) controlled waters adjacent to Northern Ireland;	
(c) the territorial sea (other than controlled waters) adjacent to Northern Ireland, except where the installation is used for a purpose referred to in paragraph (3)(a)	
Installation in—	SEPA
(a) Scotland;	
(b) controlled waters adjacent to Scotland;	
(c) the territorial sea (other than controlled waters) adjacent to Scotland, except where the installation is used for a purpose referred to in paragraph (3)(a)	
Installation in—	NRW
(a) Wales;	
(b) the territorial sea adjacent to Wales	
Installation in—	Secretary of State
(a) the territorial sea adjacent to England, where the installation is used for a purpose referred to in paragraph (3);	
(b) the territorial sea (other than controlled waters) adjacent to Northern Ireland and Scotland, where the installation is used for a purpose referred to in paragraph (3)(a);	
(c) the UK sector of the continental shelf	

(3) The purposes are—

- (a) a purpose connected with the exploration for, or exploitation of, petroleum (within the meaning of section 1 of the Petroleum Act 1998 <sup>M17</sup>);
- (b) a purpose connected with an activity referred to in section 2(3) of the Energy Act 2008 <sup>M18</sup> (unloading and storage of combustible gas);
- (c) a purpose connected with an activity referred to in section 17(2) of that Act (storage of carbon dioxide).

(4) In this article—

“controlled waters” means the part of the territorial sea that is between the landward limit of the territorial sea and the line that is 3 nautical miles seaward of the landward limit of the territorial sea;

“territorial sea” means the territorial sea of the United Kingdom;

“territorial sea adjacent to England” means the part of the territorial sea that is not adjacent to Northern Ireland, Scotland or Wales.

(5) In this article, a reference to England, Northern Ireland, Scotland or Wales includes a reference to waters adjacent to England or, as the case may be, Northern Ireland, Scotland or Wales that are landward of the landward limit of the territorial sea.

#### Commencement Information

**I10** Art. 10 in force at 12.11.2020, see art. 2(1)

#### Marginal Citations

**M17** 1998 c. 17.

**M18** 2008 c. 32.

### Meaning of regulator: aircraft operators

**11.**—(1) This article applies for the purposes of article 9.

(2) Subject to articles 12 and 13 the regulator of an aircraft operator is—

- (a) the Environment Agency, where the aircraft operator —
  - (i) has its registered office or place of residence in England; or
  - (ii) does not have a registered office or a place of residence in the United Kingdom;
- (b) NRW, where the aircraft operator has its registered office or place of residence in Wales;
- (c) SEPA, where the aircraft operator has its registered office or place of residence in Scotland;
- (d) the chief inspector, where the aircraft operator has its registered office or place of residence in Northern Ireland.

#### Commencement Information

**I11** Art. 11 in force at 12.11.2020, see art. 2(1)

### Aircraft operator: change in regulator

**12.**—(1) This paragraph applies where—

- (a) an aircraft operator (“A”) does not have a registered office or a place of residence in the United Kingdom;
- (b) “B” is the regulator of A; and
- (c) a different regulator (“C”) is satisfied that the highest percentage of aviation emissions of A in the 2023 and 2024 scheme years is attributable to flights departing from aerodromes situated in the area of C.

(2) Where paragraph (1) applies, on or before 30th June 2025, C must give notice to—

- (a) A;

- (b) B; and
- (c) the UK ETS authority,

that C is the regulator of A from the beginning of the 2026-2030 allocation period.

(3) A notice under paragraph (2) must be accompanied by evidence demonstrating that the highest percentage of aviation emissions of A in the 2023 and 2024 scheme years is attributable to flights departing from aerodromes situated in the area of C.

- (4) In this article, “area” in relation to a regulator, means—
- (a) in respect of the Environment Agency, England;
  - (b) in respect of the NRW, Wales;
  - (c) in respect of the SEPA, Scotland;
  - (d) in respect of the chief inspector, Northern Ireland.

**Commencement Information**

**I12** Art. 12 in force at 12.11.2020, see art. 2(1)

**Aircraft operator: change in registered office**

13.—(1) Where—

- (a) an aircraft operator (“A”) with a registered office or a place of residence in the area of a regulator, in the course of the 2021-2025 allocation period, changes the address of its registered office or place of residence to the area of a different regulator (“R”); and
- (b) A's registered office or place of residence is in the area of R at the end of the 2021-2025 allocation period,

R is the regulator of A from the beginning of the 2026-2030 allocation period.

(2) Where—

- (a) an aircraft operator (“B”) which did not have a registered office or a place of residence in the United Kingdom at the beginning of the 2021-2025 allocation period acquires a registered office or a place of residence in the United Kingdom in the course of that period; and
- (b) at the end of the 2021-2025 allocation period that registered office or place of residence is in the area of a regulator (“S”) who is not the regulator of B in that allocation period,

S is the regulator of B from the beginning of the 2026-2030 allocation period.

(3) In this article “area” has the same meaning as in article 12.

**Commencement Information**

**I13** Art. 13 in force at 12.11.2020, see art. 2(1)

**Meaning of UK ETS authority, etc.**

14.—(1) A reference in this Order to the “UK ETS authority” is a reference to all of the national authorities<sup>M19</sup>.

- (2) Functions conferred or imposed by this Order on the “UK ETS authority” may be exercised—
- (a) by all of the national authorities jointly; or

(b) by one of the national authorities (or by more than one of the national authorities jointly) on behalf of the other national authorities with their agreement.

(3) Where this Order provides for a person to do anything in relation to the “UK ETS authority” (for example, to give a notice to the UK ETS authority), it is sufficient for the person to do it in relation to any of the national authorities.

(4) Each national authority is an administrator of the UK ETS for the purposes of paragraph 21 of Schedule 2 to CCA 2008.

[<sup>F22</sup>(5) In this article, a reference to this Order includes a reference to the Monitoring and Reporting Regulation 2018, the Verification Regulation 2018, the Free Allocation Regulation and the Activity Level Changes Regulation.]

**F22** Art. 14(5) inserted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), arts. 2(1), **9(2)**

**Commencement Information**

**I14** Art. 14 in force at 12.11.2020, see art. 2(1)

**Marginal Citations**

**M19** Section 95(1) of the Climate Change Act 2008 defines “national authority”.

**Applications, notices, etc.**

**15.**—(1) Part 1 of Schedule 3 (which makes provision in relation to applications, notices and reports submitted to a regulator) has effect.

(2) Part 2 of Schedule 3 (which makes provision in relation to notices given by a regulator, a national authority or the UK ETS authority) has effect.

**Commencement Information**

**I15** Art. 15 in force at 12.11.2020, see art. 2(1)

## PART 2

### Basic elements of the UK ETS

#### CHAPTER 1

##### Establishment of the UK ETS and requirement for review

#### UK Emissions Trading Scheme

**16.**—(1) This Order establishes a trading scheme, known as the “UK Emissions Trading Scheme” or “UK ETS”.

(2) The purpose of the UK ETS is to limit, or encourage the limitation of, the emission of greenhouse gases <sup>M20</sup> in the trading period from the carrying out of—

- (a) regulated activities by operators of installations; and
- (b) aviation activities by aircraft operators.

**Commencement Information**

**I16** Art. 16 in force at 12.11.2020, see art. 2(1)

**Marginal Citations**

**M20** Section 92(1) of the Climate Change Act 2008 defines “greenhouse gas”.

**Review of UK ETS**

- 17.—(1) The UK ETS authority must before each review date—
- (a) carry out a review of the operation of the UK ETS;
  - (b) publish a report setting out the conclusions of the review.
- (2) The review dates are 31st December 2023 and 31st December 2028.
- (3) The report must in each case—
- (a) review the operation of the UK ETS (including assessing the extent to which the purpose of the UK ETS is being achieved);
  - (b) make any recommendations that the UK ETS authority considers appropriate as to the future operation and purpose of the UK ETS.

**Commencement Information**

**I17** Art. 17 in force at 12.11.2020, see art. 2(1)

CHAPTER 2

Allowances and caps

**Allowances**

18.—(1) The UK ETS authority may [<sup>F23</sup>create allowances in the registry] for the purposes of the UK ETS.

(2) An allowance is an allowance to emit 1 tonne of carbon dioxide equivalent.

[<sup>F24</sup>(3) Allowances may be held only in accounts in the registry.]

**F23** Words in art. 18(1) substituted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), arts. 2(1), **10(2)**

**F24** Art. 18(3) inserted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), arts. 2(1), **10(3)**

**Commencement Information**

**I18** Art. 18 in force at 12.11.2020, see art. 2(1)

**Cap for trading period**

19. The number of allowances created in the trading period may not exceed the sum of—
- (a) 736,013,432 multiplied by the 2021-2025 hospital and small emitter reduction factor; and
  - (b) 630,152,247 multiplied by the 2026-2030 hospital and small emitter reduction factor.

### Commencement Information

**I19** Art. 19 in force at 12.11.2020, see art. 2(1)

### Cap for scheme years

- 20.**—<sup>F25</sup>(1) The number of allowances created in a scheme year may not exceed the sum of—
- (a) the base for the scheme year multiplied by—
    - (i) if the scheme year is in the 2021-2025 allocation period, the 2021-2025 hospital and small emitter reduction factor;
    - (ii) if the scheme year is in the 2026-2030 allocation period, the 2026-2030 hospital and small emitter reduction factor; and
  - (b) the balance of allowances in the new entrants' reserve on 1st January in the scheme year (see article 34G for the new entrants' reserve).]
- (2) Paragraph (1) is subject to any direction given by the UK ETS authority for the creation of allowances for allocation under regulations made by the Treasury under the Finance Act 2020<sup>M21</sup><sup>F26</sup> or for the creation of up to 40,984,970 allowances in the trading period for the purpose of free allocation in respect of installations].
- (3) But such a direction may not override article 19.

**F25** Art. 20(1) substituted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), arts. 2(1), **11(2)**

**F26** Words in art. 20(2) inserted (1.1.2023) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) \(No. 2\) Order 2022 \(S.I. 2022/1173\)](#), arts. 2, **5(2)**

### Commencement Information

**I20** Art. 20 in force at 12.11.2020, see art. 2(1)

### Marginal Citations

**M21** 2020 c. 14.

### Cap: hospital and small emitter reduction factors

- 21.**—(1) This article applies for the purposes of articles 19 and 20.
- (2) The 2021-2025 hospital and small emitter reduction factor is  $(RE_1 - SI_1)/RE_1$ , where—
- $RE_1$  is the total reportable emissions (within the meaning of GGETSR 2012) in 2016, 2017 and 2018 of all installations (within the meaning of GGETSR 2012) and all UK aircraft operators (within the meaning of GGETSR 2012);
- $SI_1$  is the total reportable emissions (within the meaning of GGETSR 2012) in 2016, 2017 and 2018 of all installations included in the hospital and small emitter list for 2021-2025.
- (3) The 2026-2030 hospital and small emitter reduction factor is  $(RE_2 - SI_2)/RE_2$ , where—
- $RE_2$  is the total reportable emissions and the total aviation emissions, expressed in tonnes, in the 2021, 2022 and 2023 scheme years of all installations and all aircraft operators;
- $SI_2$  is the total reportable emissions in the 2021, 2022 and 2023 scheme years of all installations included in the hospital and small emitter list for 2026-2030.



(4) In this article, a reference to reportable emissions or aviation emissions is a reference to reportable emissions or aviation emissions—

(a) verified [<sup>F27</sup>as satisfactory] in accordance with the Verification Regulation 2012 or the Verification Regulation 2018;

[<sup>F28</sup>(aa) determined under regulation 44 of GGETSR 2012 or article 45 of this Order;]

(b) where relevant, set out in an emissions report accompanied by the notice or declaration referred to in paragraph 3(8)(b)(ii) of Schedule 5 to GGETSR 2012 or paragraph 11(2)(b)(ii) of Schedule 7 to this Order; or

(c) where relevant, considered to be verified under regulation 35(7) of GGETSR 2012 or article 33(2) of this Order.

**F27** Words in art. 21(4)(a) inserted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), arts. 2(1), **12(2)(a)**

**F28** Art. 21(4)(aa) inserted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), arts. 2(1), **12(2)(b)**

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**Commencement Information**

**I21** Art. 21 in force at 12.11.2020, see art. 2(1)

**Cap: base for scheme years**

**22.** For the purposes of article 20, the base for a scheme year set out in column 1 of table B is the value set out in the corresponding entry in column 2.

**Table B**

<i>Column 1</i> <i>Scheme year</i>	<i>Column 2</i> <i>Base</i>
2021	155,671,581
2022	151,437,134
2023	147,202,686
2024	142,968,239
2025	138,733,792
2026	134,499,344
2027	130,264,897
2028	126,030,449
2029	121,796,002
2030	117,561,555

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**Commencement Information**

**I22** Art. 22 in force at 12.11.2020, see art. 2(1)

## Trading in allowances

23. Allowances may be traded, except where prohibited by other legislation.

### Commencement Information

**I23** Art. 23 in force at 12.11.2020, see art. 2(1)

## CHAPTER 3

### Monitoring, reporting and verification

## Monitoring and reporting of emissions

24. [<sup>F29</sup>The Monitoring and Reporting Regulation 2018] has effect for the purpose of the UK ETS, subject to the modifications in Schedule 4 and to Part 4 (see also paragraph 13 of Schedule 7 which makes further modifications in relation to hospitals and small emitters and paragraph 5 of Schedule 8 which makes further modifications in relation to ultra-small emitters).

**F29** Words in art. 24 substituted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), arts. 2(1), **13(2)**

### Commencement Information

**I24** Art. 24 in force at 12.11.2020, see art. 2(1)

## [<sup>F30</sup>Verification of data and accreditation of verifiers

25. The Verification Regulation 2018 has effect for the purpose of the UK ETS, subject to the modifications in Schedule 5 (see also paragraph 4 of Schedule 8 which makes further modifications in relation to ultra-small emitters).]

**F30** Art. 25 substituted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), arts. 2(1), **14**

### Commencement Information

**I25** Art. 25 in force at 31.12.2020 immediately after IP completion day, see art. 2(2)(b)

## [<sup>F31</sup>CHAPTER 4

### Registry

**F31** Pt. 2 Ch. 4 inserted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), arts. 2(1), **15**

## Registry

25A. Schedule 5A (registry) has effect.]

## PART 3

### Installations

#### **Installations: requirement for permit to carry out regulated activity**

**26.**—(1) No person may carry out a regulated activity at an installation in a scheme year unless the operator of the installation holds a greenhouse gas emissions permit or a hospital or small emitter permit for the installation that authorises the regulated activity to be carried out.

(2) Paragraph (1) does not apply to a regulated activity carried out at an installation in a scheme year for which the installation is an ultra-small emitter.

(3) Schedule 6 (which provides for applications for greenhouse gas emissions permits and generally for permits) has effect.

(4) Schedule 7 (which provides for hospitals and small emitters) has effect.

(5) Schedule 8 (which provides for ultra-small emitters) has effect.

#### **Commencement Information**

**I26** Art. 26 in force at 12.11.2020, see art. 2(1)

#### **Installations: requirement to surrender allowances**

**27.** Where the operator of an installation holds a greenhouse gas emissions permit, the operator must surrender allowances in accordance with the surrender condition of the permit for each scheme year (or part of a scheme year) that the permit is in force.

#### **Commencement Information**

**I27** Art. 27 in force at 12.11.2020, see art. 2(1)

#### **[<sup>F32</sup>Installations: information to be submitted before 2026-2030 allocation period where no application for free allocation, etc. is made**

**27A.**—(1) This article applies where the operator of an installation referred to in paragraph (2) does not make an application under any of the following—

- (a) paragraph 5 of Schedule 7 (hospital or small emitter status for 2026-2030 allocation period);
- (b) paragraph 3 of Schedule 8 (ultra-small emitter status for 2026-2030 allocation period);
- (c) Article 4 of the Free Allocation Regulation (free allocation in 2026-2030 allocation period).

(2) The installations are—

- (a) an installation for which a permit is issued on or before 30th June 2024;
- (b) an installation that is an ultra-small emitter for the 2024 scheme year;
- (c) an installation for which an application for a permit has been made but not yet determined.

(3) The operator must submit the following to the regulator—

- (a) details of the installation, including details of any permit in force;

- (b) activity information (that is to say, the information set out in section 1.3 of Annex 4 to the Free Allocation Regulation);
  - (c) details of eligibility for free allocation (that is to say, the information set out in section 1.4 of Annex 4 to the Free Allocation Regulation);
  - (d) a statement that the operator is not applying for free allocation in the 2026-2030 allocation period under Article 4 of the Free Allocation Regulation.
- (4) The information referred to in paragraph (3) must be submitted in the period beginning on 1st April 2024 and ending on 30th June 2024.
- (5) The regulator must send the information submitted by the operator to the UK ETS authority on or before 30th September 2024.]

**F32** Art. 27A inserted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), arts. 2(1), 16

#### Commencement Information

**I28** Art. 27A in force at 31.12.2020 immediately after IP completion day, see art. 2(2)(b)

## PART 4

### Aviation

#### Application for emissions monitoring plans

**28.**—(1) An aircraft operator must [<sup>F33</sup>, and any other person may,] apply to the regulator for a plan setting out how the [<sup>F34</sup>applicant’s] aviation emissions are to be monitored for the purposes of this Order (“an emissions monitoring plan”).

(2) [<sup>F35</sup>A person who] has previously been issued with an emissions monitoring plan or a GGETSR emissions plan may not make an application under paragraph (1) without the agreement of the regulator (but see article 29(3)).

(3) An application under paragraph (1) is the means by which [<sup>F36</sup>a monitoring plan is submitted] to the regulator for approval under Article 12 of the Monitoring and Reporting Regulation 2018 [<sup>F37</sup>; and where such an application is made by a person who is not an aircraft operator, Articles 12 and 13 of, and Annex 1 to, that Regulation have effect as if “aircraft operator” included such an applicant].

(4) An aircraft operator must comply with the requirement in paragraph (1) before the end of the period of 42 days commencing with the day it becomes an aircraft operator.

**F33** Words in art. 28(1) inserted (7.2.2022) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2021 \(S.I. 2021/1455\)](#), arts. 2, 7(2)(a)

**F34** Word in art. 28(1) substituted (7.2.2022) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2021 \(S.I. 2021/1455\)](#), arts. 2, 7(2)(b)

**F35** Words in art. 28(2) substituted (7.2.2022) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2021 \(S.I. 2021/1455\)](#), arts. 2, 7(3)

**F36** Words in art. 28(3) substituted (7.2.2022) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2021 \(S.I. 2021/1455\)](#), arts. 2, 7(4)(a)

**F37** Words in art. 28(3) inserted (7.2.2022) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2021 \(S.I. 2021/1455\)](#), arts. 2, 7(4)(b)

#### Commencement Information

**I29** Art. 28 in force at 12.11.2020, see [art. 2\(1\)](#)

#### Issue of emissions monitoring plans

**29.**—(1) If an aircraft operator [<sup>F38</sup>or other person] applies for an emissions monitoring plan in accordance with article 28(1) and (2), the regulator must issue the emissions monitoring plan unless—

- (a) the regulator is not satisfied that the application complies with the Monitoring and Reporting Regulation 2018; and
- (b) the [<sup>F39</sup>applicant] has not agreed to amendments of the application required to satisfy the regulator that the application does so comply.

(2) An emissions monitoring plan issued under paragraph (1) replaces any emissions monitoring plan previously issued to the [<sup>F40</sup>applicant].

(3) The regulator may issue an emissions monitoring plan to a person who was a UK administered operator for the purpose of GGETSR 2012 and held a GGETSR emissions plan.

(4) Subject to paragraph (5), an emissions monitoring plan issued under paragraph (3) must be in substantially the same terms as the GGETSR emissions plan.

(5) An emissions monitoring plan must contain any conditions that the regulator considers necessary to give proper effect to the Monitoring and Reporting Regulation 2018 and the Verification Regulation 2018.

**F38** Words in [art. 29\(1\)](#) inserted (7.2.2022) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2021 \(S.I. 2021/1455\)](#), arts. 2, [8\(2\)\(a\)](#)

**F39** Word in [art. 29\(1\)\(b\)](#) substituted (7.2.2022) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2021 \(S.I. 2021/1455\)](#), arts. 2, [8\(2\)\(b\)](#)

**F40** Word in [art. 29\(2\)](#) substituted (7.2.2022) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2021 \(S.I. 2021/1455\)](#), arts. 2, [8\(3\)](#)

#### Commencement Information

**I30** Art. 29 in force at 12.11.2020, see [art. 2\(1\)](#)

#### Refusal of application for emissions monitoring plans

**30.**—(1) If the regulator refuses an application for an emissions monitoring plan the regulator must give notice to the applicant.

(2) A notice under paragraph (1) must state—

- (a) the reasons for the decision; and
- (b) if amendments of the application are required in order for an emissions monitoring plan to be issued, the nature of those amendments.

(3) An aircraft operator who is given a notice under paragraph (1) must make a revised application to the regulator before the end of the period of 31 days beginning with the day that the notice was given.

(4) Article 29 and this article apply to a revised application [<sup>F41</sup>to which paragraph (5) applies] as they apply to the original application, but for the purposes of such a revised application, the references to the period of 2 months in paragraph 2 of Schedule 3 are to be read as references to a period of 24 days.

[<sup>F42</sup>(5) This paragraph applies to—

- (a) a revised application under paragraph (3);
- (b) where the regulator refuses an application for an emissions monitoring plan by a person who is not an aircraft operator, a revised application made by the person before the end of the period of 31 days beginning with the day on which the notice under paragraph (1) is given.]

**F41** Words in art. 30(4) substituted (7.2.2022) by The Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021 (S.I. 2021/1455), arts. 2, **9(2)**

**F42** Art. 30(5) inserted (7.2.2022) by The Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021 (S.I. 2021/1455), arts. 2, **9(3)**

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**Commencement Information**

**I31** Art. 30 in force at 12.11.2020, see [art. 2\(1\)](#)

**Variation of emissions monitoring plans**

**31.**—(1) An aircraft operator—

- (a) may apply to the regulator to vary its emissions monitoring plan;
- (b) must apply to the regulator to vary its emissions monitoring plan where required to do so by a condition of the emissions monitoring plan.

(2) A variation applied for under paragraph (1) is given effect by the regulator giving notice to the aircraft operator.

(3) Paragraphs (1) and (2) do not affect the operation of any condition of an emissions monitoring plan that allows an aircraft operator to make a variation without applying to the regulator.

(4) The regulator may, by giving notice to an aircraft operator, make any variation of the aircraft operator's emissions monitoring plan that the regulator considers necessary in consequence of a report made by the aircraft operator under Article 69(4) of the Monitoring and Reporting Regulation 2018.

(5) The regulator may, by giving notice to an aircraft operator, vary the aircraft operator's emissions monitoring plan where the aircraft operator has failed to comply with a requirement in the emissions monitoring plan to make or apply for such a variation.

(6) The regulator may, by giving notice to an aircraft operator, vary the aircraft operator's emissions monitoring plan by modifying, adding or removing a condition if the regulator considers it necessary to do so to give proper effect to the Monitoring and Reporting Regulation 2018 or the Verification Regulation 2018.

(7) In this article references to an aircraft operator include any person who has been issued with an emissions monitoring plan.

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**Commencement Information**

**I32** Art. 31 in force at 12.11.2020, see [art. 2\(1\)](#)

**Monitoring emissions and emissions monitoring plan conditions**

**32.**—(1) Each aircraft operator must monitor its aviation emissions in accordance with—

- (a) the Monitoring and Reporting Regulation 2018; and

- (b) its emissions monitoring plan, including any written procedures required by Article 12 of the Monitoring and Reporting Regulation 2018.
- (2) Each aircraft operator must comply with any condition included in its emissions monitoring plan under article 29(5) or 31(6).

#### Commencement Information

**I33** Art. 32 in force at 12.11.2020, see [art. 2\(1\)](#)

### Reporting aviation emissions

**33.**—(1) A person who is an aircraft operator in relation to a scheme year must prepare a report of its aviation emissions for that scheme year in accordance with the Monitoring and Reporting Regulation 2018; the report must be verified [<sup>F43</sup>as satisfactory] in accordance with the Verification Regulation 2018.

(2) The obligation for the report to be [<sup>F44</sup>verified as satisfactory in accordance] with the Verification Regulation 2018 does not apply, and the aviation emissions stated in the report are considered to be verified, where the person required to prepare the report in relation to a scheme year—

- (a) had emissions of carbon dioxide for that scheme year amounting to either—
- (i) less than 25,000 tonnes from full-scope flights; or
  - (ii) less than 3,000 tonnes from aviation activity; and
- (b) determined its emissions using the small emitters tool approved under Commission Regulation (EU) No 606/2010, the tool having been populated with data by Eurocontrol.

(3) The report prepared under paragraph (1) [<sup>F45</sup>(and the verification report)] must be submitted to the regulator on or before 31st March in the year following the scheme year to which it relates.

**F43** Words in [art. 33\(1\)](#) inserted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), arts. 2(1), [17\(2\)](#)

**F44** Words in [art. 33\(2\)](#) substituted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), arts. 2(1), [17\(3\)](#)

**F45** Words in [art. 33\(3\)](#) inserted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), arts. 2(1), [17\(4\)](#)

#### Commencement Information

**I34** Art. 33 in force at 12.11.2020, see [art. 2\(1\)](#)

### Surrender of allowances by aircraft operators

**34.**—(1) A person who is an aircraft operator in relation to a scheme year must surrender, on or before 30th April in the following year, an amount of allowances equal to its aviation emissions in that scheme year (expressed in tonnes).

(2) Where an aircraft operator's aviation emissions in a scheme year (the “non-compliance year”) exceeds the allowances surrendered on or before 30th April in the following year, the aircraft operator's aviation emissions in the relevant scheme year must be treated as being increased by the difference.

- (3) In paragraph (2), the relevant scheme year means—
- (a) the scheme year following the non-compliance year; or

- (b) if the failure to comply with paragraph (1) results from an error in the verified emissions report submitted by the aircraft operator, the scheme year in which the error is discovered.

**Commencement Information**

**I35** Art. 34 in force at 12.11.2020, see [art. 2\(1\)](#)

**[<sup>F46</sup>PART 4A**

**Free Allocation**

**F46** Pt. 4A inserted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), arts. 2(1), **18**

**CHAPTER 1**

**Installations**

**Allocation tables**

**34A.**—(1) The UK ETS authority must compile a table (an “allocation table”) for each allocation period as soon as reasonably practicable after approval under Article 16b of the Free Allocation Regulation of the final annual number of allowances to be allocated in respect of installations—

- (a) in the case of the allocation table for the 2021-2025 allocation period, in respect of which a deemed application for free allocation in the 2021-2025 allocation period (as defined in Article 2(19) of that Regulation) is made;
  - (b) in the case of the allocation table for the 2026-2030 allocation period, in respect of which an application for free allocation in the 2026-2030 allocation period is made under Article 4 of that Regulation.
- (2) The allocation table for the 2021-2025 allocation period must contain an entry for each relevant installation.
- (3) For the purposes of paragraph (2), an installation is a “relevant” installation if—
- (a) a deemed application for free allocation in the 2021-2025 allocation period (as defined in Article 2(19) of the Free Allocation Regulation) is made in respect of the installation that the UK ETS authority subsequently informs the regulator is valid; or
  - (b) an application for free allocation in the 2021-2025 allocation period is made in respect of the installation under Article 5(1)(a) of the Free Allocation Regulation that the UK ETS authority subsequently informs the regulator is valid.
- (4) But an installation referred to in paragraph (3)(a) is not a “relevant” installation if—
- (a) the installation is included in the hospital and small emitter list for 2021-2025 or the ultra-small emitter list for 2021-2025;
  - (b) the installation ceases operation (within the meaning of GGETSR 2012) on or before 31st December 2020; or
  - (c) the installation's permit (within the meaning of GGETSR 2012) is revoked under regulation 14 of GGETSR 2012 on or before that date.
- (5) The allocation table for the 2026-2030 allocation period must contain an entry for each relevant installation.



- (6) For the purposes of paragraph (5), an installation is a “relevant” installation if—
- (a) an application for free allocation in the 2026-2030 allocation period is made in respect of the installation under Article 4 of the Free Allocation Regulation that the UK ETS authority subsequently informs the regulator is valid; or
  - (b) an application for free allocation in the 2026-2030 allocation period is made in respect of the installation under Article 5(1)(b) of the Free Allocation Regulation that the UK ETS authority subsequently informs the regulator is valid.
- (7) But an installation referred to in paragraph (6)(a) is not a “relevant” installation if—
- (a) the installation is included in the hospital and small emitter list for 2026-2030 or the ultra-small emitter list for 2026-2030;
  - (b) the installation ceases operation on or before 31st December 2025; or
  - (c) the installation's permit is revoked under paragraph 12 of Schedule 6 on or before that date.
- (8) The entry for an installation must set out—
- (a) the installation identifier used in the registry;
  - (b) for each scheme year in the allocation period, the final annual number of allowances to be allocated in respect of the installation for the scheme year, in 3 columns as follows (see article 34B)—
    - (i) column A (standard free allocation);
    - (ii) column B (new entrants' reserve);
    - (iii) column C (total).

### **Allocation tables: supplementary**

**34B.**—(1) This article applies for the purposes of article 34A(8)(b).

(2) Where the final annual number of allowances to be allocated in respect of an installation is approved under Article 16b of the Free Allocation Regulation, that number must be included in column A.

(3) Where the final annual number of allowances to be allocated in respect of an installation is approved under Article 18a of that Regulation [<sup>F47</sup>or under paragraph 4 of Schedule 8A to this Order], that number must be included in column B.

[<sup>F48</sup>(3A) Where the final annual number of allowances to be allocated in respect of an installation is approved under article 20(5) of the Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2023 (free allocation for 2024 and 2025 scheme years: lime and malt extract), any increase in the number previously approved must be added to the amount included in column A or, if the installation is a new entrant (as defined in point (22) of Article 2(1) of the Free Allocation Regulation), to the amount included in column B.]

(4) Paragraphs (5) and (6) apply where a calculation (a “relevant calculation”) of the final annual number of allowances to be allocated in respect of the installation for a scheme year is approved by the UK ETS authority under either or both of the following—

- (a) Article 24(3)(a)(ii) of the Free Allocation Regulation (renunciation other than in respect of whole installation);
- (b) Article 6a of the Activity Level Changes Regulation.

(5) If the effect of the relevant calculation is a final annual number of allowances to be allocated in respect of the installation for the scheme year that is greater than the number that would otherwise

be set out in the entry for the installation for the scheme year, the net increase must be added to the amount that would otherwise be included in column B.

(6) If the effect of the relevant calculation is a final annual number of allowances to be allocated in respect of the installation for the scheme year that is less than the number that would otherwise be set out in the entry for the installation for the scheme year, the net decrease must be deducted first from any amount that would otherwise be included in column B, before being deducted from any amount that would otherwise be included in column A.

(7) The total final annual number of allowances to be allocated in respect of the installation for the scheme year (that is to say, the sum of columns A and B) must be included in column C.

- F47** Words in art. 34B(3) inserted (7.2.2022) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2021 \(S.I. 2021/1455\)](#), arts. 2, **10(2)**
- F48** Art. 34B(3A) inserted (1.1.2024) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2023 \(S.I. 2023/850\)](#), arts. 2, **5(2)**

### Allocation tables: updates

**34C.**—(1) The UK ETS authority must update an allocation table to take account of any approval of the UK ETS authority under—

- (a) Article 18a of the Free Allocation Regulation (new entrants);
- (b) Article 6a of the Activity Level Changes Regulation (activity level changes);
- (c) Article 24 of the Free Allocation Regulation (renunciation);
- (d) Article 25 of that Regulation (mergers and splits);
- (e) Article 26 of that Regulation (cessation);
- (f) article 34H of this Order (installations: errors in applications for free allocation, etc.).
- [ paragraph 4 of Schedule 8A to this Order (former hospital or small emitters and ultra-<sup>F49</sup>(g) small emitters).]
- [ Article 5c(7) of the Activity Level Changes Regulation (activity level changes: average <sup>F50</sup>(h) activity level omitting 2020 data);
- (i) article 20(5) of the Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2023 (free allocation for 2024 and 2025 scheme years: lime and malt extract).]
- [ Article 2b(6) of the Free Allocation Regulation (electricity generators that state they will <sup>F51</sup>(j) not produce electricity for sale for consumption outside the installation but subsequently do so).]

(2) To avoid doubt, the UK ETS authority may update an allocation table under paragraph (1) so as to increase or reduce the final annual number of allowances to be allocated in respect of an installation for a scheme year after allowances have already been allocated in respect of the installation for the scheme year under article 34E. (See article 34S in relation to the return of allowances where the number of allowances to be allocated in respect of an installation for a scheme year is reduced after allowances for the scheme year have been allocated, for example, because of a decrease in activity levels.)

- F49** Art. 34C(1)(g) inserted (7.2.2022) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2021 \(S.I. 2021/1455\)](#), arts. 2, **11(2)**
- F50** Art. 34C(1)(h)(i) inserted (1.1.2024) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2023 \(S.I. 2023/850\)](#), arts. 2, **6(2)**

**F51** Art. 34C(1)(j) 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), 5(2)

#### **Allocation tables: publication, etc.**

**34D.**—(1) The UK ETS authority must notify the registry administrator of an allocation table as soon as reasonably practicable after it is compiled and of an updated allocation table as soon as reasonably practicable after it is updated.

(2) The UK ETS authority must publish the allocation table for the 2021-2025 allocation period as soon as reasonably practicable after it is compiled and in any event before 30th June 2021.

(3) The UK ETS authority must publish the allocation table for the 2026-2030 allocation period as soon as reasonably practicable after it is compiled and in any event before 1st January 2026.

(4) The UK ETS authority must publish an updated allocation table as soon as reasonably practicable after the allocation table is updated.

(5) Paragraphs (2) to (4) are subject to article 75C (national security).

#### **Allocation of allowances**

**34E.**—(1) The registry administrator must allocate allowances in respect of an installation in accordance with the allocation table by transferring allowances to the operator holding account for the installation.

(2) Allowances—

(a) for the 2021 scheme year must be allocated as soon as reasonably practicable after the allocation table for the 2021-2025 allocation period is published;

(b) for any other scheme year must be allocated on or before 28th February in that year.

(3) Where, after allowances for a scheme year have been allocated in respect of an installation in accordance with paragraph (2), an update to the allocation table results in an increase in the final annual number of allowances to be allocated in respect of the installation for the scheme year, the increased number of allowances must be allocated as soon as reasonably practicable.

(4) This article is subject to—

(a) article 34F (no allocation unless monitoring methodology plan approved);

(b) article 34G(2) (new entrants' reserve);

(c) article 34W (notice to withhold allowances).

#### **No allocation unless monitoring methodology plan approved**

**34F.**—(1) Where a monitoring methodology plan has not been approved in relation to an installation under Article 8 of the Free Allocation Regulation, the regulator may, by notice to the registry administrator, require the registry administrator to withhold allowances that would otherwise have been allocated in respect of the installation under article 34E.

(2) Where a notice under paragraph (1) is given, no allowances may be allocated in respect of the installation set out in the notice until the regulator gives a further notice to the registry administrator, which must be given as soon as reasonably practicable after a monitoring methodology plan is approved.

#### **New entrants' reserve**

**34G.**—(1) The new entrants' reserve is a reserve of 30,249,066 allowances for the trading period.

(2) The number of allowances set out in column B of an allocation table must be allocated from the new entrants' reserve until the new entrants' reserve is exhausted, after which no allocation may be made for a scheme year in respect of allowances set out in that column.

(3) Where an allocation table or an updated allocation table requires an allocation to be made from the new entrants' reserve in respect of more than one installation, allowances must be allocated in accordance with paragraphs (4) and (5) (until the new entrants' reserve is exhausted).

[<sup>F52</sup>(4) Allowances must first be allocated in respect of sub-installations of installations in respect of which the historical activity level of the sub-installation has been determined, in chronological order of the date (and, where relevant, time)—

(a) where the historical activity level was determined under Article 15 of the Free Allocation Regulation, of the approval by the UK ETS authority of the final annual number of allowances to be allocated in respect of the installation under paragraph 4 of Schedule 8A (free allocation for former hospital or small emitters and ultra-small emitters);

(b) where the historical activity level was determined under [<sup>F53</sup>paragraph 4(2) of Schedule 8A,] Article 17(1) of the Free Allocation Regulation or Article 3a(2) of the Activity Level Changes Regulation, on which the operator submitted sufficient information to enable the historical activity level of the sub-installation to be determined.]

(5) Allowances must next be allocated in respect of sub-installations of installations in respect of which the historical activity level of the sub-installation has not been so determined, in chronological order of the date (and, where relevant, time) on which the operator submitted sufficient information to enable the activity level of the sub-installation to be determined for the purposes of Article 18(2) of the Free Allocation Regulation or under Article 3a(3) of the Activity Level Changes Regulation.

(6) Where allowances to which a person is not entitled (see article 34S) are allocated from the new entrants' reserve, for the purposes of this article, those allowances must be treated as not having been allocated from the new entrants' reserve, to the extent that an equal number of allowances are transferred or returned in accordance with a notice under article 34U or 34V.

(7) For the purposes of this article, each regulator must—

(a) keep such records as the regulator considers appropriate to enable the chronological order referred to in paragraph (4) or (5) to be determined;

(b) provide any information required by the UK ETS authority or the registry administrator to enable allowances to be allocated in accordance with this article.

(8) In this article, “historical activity level” and “sub-installation” have the same meanings as in the Free Allocation Regulation.

**F52** Art. 34G(4) substituted (7.2.2022) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2021 \(S.I. 2021/1455\)](#), arts. 2, **12(2)**

**F53** Words in art. 34G(4)(b) inserted (1.1.2024) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2023 \(S.I. 2023/850\)](#), arts. 2, **7(2)**

### **Installations: errors in applications for free allocation, etc.**

**34H.**—[<sup>F54</sup>(1) This article applies where the regulator considers that, as a result of a relevant error—

(a) either—

(i) the final annual number of allowances set out in an allocation table to be allocated in respect of an installation for a scheme year; or

- (ii) the number of allowances allocated in accordance with an allocation table under article 34E in respect of an installation for a scheme year,
    - is materially greater, or materially less, than the number that would otherwise have been set out in the table but for the relevant error; or
  - (b) there has been a failure to include an entry for an installation in an allocation table.]
- (2) In this article, “relevant error” means—
  - (a) an error in an application for free allocation made in respect of an installation under Article 4 or 5 of the Free Allocation Regulation (including a deemed application for free allocation in the 2021-2025 allocation period as defined in Article 2(19) of that Regulation);
  - (b) an error in an [<sup>F55</sup>activity level or other report] submitted by the operator of an installation under the Activity Level Changes Regulation;
  - (c) an error of the regulator or the UK ETS authority in the exercise of functions under this Order (including under this article), the Free Allocation Regulation or the Activity Level Changes Regulation.
- (3) The regulator may do any of the following—
  - (a) determine the historical activity level of a sub-installation of the installation that the regulator considers would have been determined for the purposes of the UK ETS but for the relevant error;
  - (b) calculate the preliminary annual number of allowances to be allocated in respect of a sub-installation of the installation for the scheme year that the regulator considers would have been calculated for the purposes of the UK ETS but for the relevant error;
  - (c) calculate the final annual number of allowances to be allocated in respect of a sub-installation of the installation for the scheme year that the regulator considers would have been calculated for the purposes of the UK ETS but for the relevant error.
- (4) For the purposes of paragraph (3), the regulator may make a conservative estimate of the value of any relevant parameter; and if the regulator does so, the regulator must give notice of the value to the operator.
- (5) Where the regulator does any of the things referred to in paragraph (3), the regulator must send to the UK ETS authority—
  - (a) details of the relevant error;
  - (b) any determination or calculation referred to in paragraph (3);
  - (c) the regulator's recalculation of the final annual number of allowances to be allocated in respect of the installation of which the sub-installation is part for the scheme year, taking account of the determination or calculation referred to in paragraph (3).
- (6) If the UK ETS authority considers [<sup>F56</sup>that there is a relevant error and, as a result of the relevant error, the circumstances referred to in paragraph (1)(a) or (b) apply in relation to the installation], the UK ETS authority must—
  - (a) approve the final annual number of allowances to be allocated in respect of the installation for the scheme year, making any corrections to the historical activity level, preliminary annual number of allowances or final annual number of allowances determined or calculated by the regulator that the UK ETS authority considers appropriate; and
  - (b) inform the regulator accordingly.
- (7) The regulator must give notice to the operator of the installation—
  - (a) of the relevant error;
  - (b) of the final annual number of allowances approved;

(c) where the relevant error was the error of including an entry for the installation in an allocation table for an allocation period, that the installation is not an FA installation for the allocation period.

(8) In this article, “historical activity level” and “sub-installation” have the same meanings as in the Free Allocation Regulation.

**F54** Art. 34H(1) substituted (7.2.2022) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2021 \(S.I. 2021/1455\)](#), arts. 2, **13(2)**

**F55** Words in art. 34H(2)(b) substituted (1.1.2023) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) \(No. 2\) Order 2022 \(S.I. 2022/1173\)](#), arts. 2, **6(2)**

**F56** Words in art. 34H(6) substituted (7.2.2022) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2021 \(S.I. 2021/1455\)](#), arts. 2, **13(3)**

**[<sup>F57</sup>Free allocation for former hospital or small emitters and ultra-small emitters**

**34HA.** Schedule 8A (free allocation for former hospital or small emitters and ultra-small emitters) has effect.]

**F57** Art. 34HA inserted (7.2.2022) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2021 \(S.I. 2021/1455\)](#), arts. 2, **14**

## CHAPTER 2

### Aviation

#### Interpretation

**34I.—(1)** In this Chapter—

“Annex 1 activities” means activities listed under “Aviation” in Annex 1 to the Directive;

“attributable” must be construed in accordance with article 34J(4);

“aviation free allocation entitlement” must be construed in accordance with article 34K;

“business reorganisation” must be construed in accordance with paragraph (2);

“historical aviation activity level” has the meaning given in article 34J;

“special reserve application” means an application for a free allocation of allowances under the EU ETS from the special reserve referred to in Article 3f of the Directive;

“tonne-kilometre” has the meaning given in Article 3(3) of the Monitoring and Reporting Regulation 2018;

“transferor”, “transferee” and “relevant transferee” must be construed in accordance with paragraph (2).

(2) For the purposes of this Chapter—

(a) where a part of a person's business responsible for performing an aviation activity has been transferred to another person, the person has been subject to a “business reorganisation” that affects the aviation activity; and, in relation to the aviation activity, the first person is the “transferor” and the second person is a “transferee”;

(b) where there has been a business reorganisation affecting an aviation activity, a transferee is the “relevant transferee” in relation to that aviation activity where the transferee has not been subject to a further business reorganisation affecting the aviation activity.

## Meaning of historical aviation activity level and attributable

- 34J.**—(1) A person's historical aviation activity level is—
- (a) the number of tonne-kilometres of aviation activity performed by the person in 2010;
  - (b) in the case of a person who fell within Article 3f(1)(a) of the Directive and made a successful special reserve application, the number of tonne-kilometres of aviation activity performed by the person in 2014; or
  - (c) in the case of a person who fell within Article 3f(1)(b) of the Directive and made a successful special reserve application, the sum of—
    - (i) the number of tonne-kilometres of aviation activity performed by the person in 2010; and
    - (ii) the person's aviation activity ratio multiplied by the difference between [<sup>F58</sup>the number of tonne-kilometres of Annex 1 activities performed by the person in 2014] and the person's threshold figure.

- (2) In this article, a person's—

<sup>F59</sup> ...

<sup>F59</sup> ...

[<sup>F60</sup>“aviation activity ratio” means the number of tonne-kilometres of aviation activity performed by the person in 2014 divided by the number of tonne-kilometres of Annex 1 activities performed by the person in 2014;]

“threshold figure” means the number of tonne-kilometres of Annex 1 activities performed by the person in 2010 multiplied by 1.93877776.

(3) A tonne-kilometre of aviation activity or Annex 1 activities performed by a person in 2014 is not to be counted in a total for the purposes of this article if it would have been excluded by the words following point (b) in Article 3f(1) of the Directive (exclusion where activity a continuation of activity performed by another) from forming the basis of an application for free allocation of allowances under the EU ETS.

(4) A person's historical aviation activity level is “attributable” to a person (“A”) for the purposes of this Chapter if and to the extent that—

- (a) there has been no business reorganisation affecting aviation activity relevant to the historical aviation activity level and A is the person who performed that aviation activity; or
- (b) there has been a business reorganisation affecting aviation activity relevant to the historical aviation activity level and in relation to that aviation activity A is the relevant transferee.

**F58** Words in art. 34J(1)(c)(ii) substituted (7.2.2022) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2021 \(S.I. 2021/1455\)](#), arts. 2, **15(2)**

**F59** Words in art. 34J(2) omitted (7.2.2022) by virtue of [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2021 \(S.I. 2021/1455\)](#), arts. 2, **15(3)(a)**

**F60** Words in art. 34J(2) substituted (7.2.2022) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2021 \(S.I. 2021/1455\)](#), arts. 2, **15(3)(b)**

## Aviation: entitlement to free allocation in 2021-2025 allocation period

**34K.** A person is only entitled to a free allocation of allowances under this Chapter for scheme years—

- (a) in the 2021-2025 allocation period; [<sup>F61</sup>and]

- (b) in relation to which the person is an aircraft [<sup>F62</sup>operator,]~~[<sup>F62</sup>operator; and]~~  
 [ in relation to allowances allocated for the 2024 or 2025 scheme year, to the extent that  
<sup>F63</sup>(c) the number of allowances does not exceed the person’s aviation emissions for the scheme year,]

and references in this Chapter to a person’s “aviation free allocation entitlement” must be construed accordingly.

- F61** Word in [art. 34K\(a\)](#) omitted (E.W.S.) (1.1.2024 immediately after S.I. 2023/850 comes into force) by virtue of [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) \(No. 2\) Order 2023 \(S.I. 2023/1387\)](#), arts. 2(1), **6(2)**
- F62** Words in [art. 34K\(b\)](#) 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), **6(3)**
- F63** [Art. 34K\(c\)](#) 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), **6(4)**

### Application for aviation free allocation entitlement

**34L.**—(1) A person (the “applicant”) may apply for an aviation free allocation entitlement in reliance on the historical aviation activity level of one or more persons being attributable to the applicant immediately before 1st January 2021.

(2) Where an applicant can rely on a person’s historical aviation activity level within article 34J(1)(a) or (c), the applicant may choose which to rely on but may not rely on both.

(3) An application under paragraph (1) must include—

(a) for each person on whose historical aviation activity level the applicant relies, a statement as to whether it is the person’s historical aviation activity level within article 34J(1)(a), (b) or (c);

(b) verified tonne-kilometre data as follows—

(i) where the applicant relies on a person’s historical aviation activity level within article 34J(1)(a), verified tonne-kilometre data for the person’s Annex 1 activities performed in 2010;

(ii) where the applicant relies on a person’s historical aviation activity level within article 34J(1)(b), verified tonne-kilometre data for the person’s Annex 1 activities performed in 2014;

(iii) where the applicant relies on a person’s historical aviation activity level within article 34J(1)(c), verified tonne-kilometre data for the person’s Annex 1 activities performed in 2010 and 2014;

(c) if there has been no business reorganisation affecting an aviation activity included in the verified tonne-kilometre data, a statement of that fact;

(d) if there has been a business reorganisation affecting an aviation activity included in the verified tonne-kilometre data, evidence of that business reorganisation;

(e) where the application relies on a person’s historical aviation activity level within article 34J(1)(b) or (c), the other information that was included in the person’s special reserve application and evidence that the application was successful.

(4) In this article, “verified tonne-kilometre data” means—



- (a) a tonne-kilometre data report containing the information set out in section 3 of Annex 10 to Commission Regulation (EU) 2018/2066 (as it has effect in EU law), together with a verification report in relation to it containing the information set out in Article 27 of Commission Implementing Regulation (EU) 2018/2067 (as it has effect in EU law); or
  - (b) where paragraph (5) applies, the items submitted to the regulator under that paragraph.
- (5) This paragraph applies where—
- (a) the applicant submits to the regulator the same items as the applicant submitted for the purpose of an application for free allocation of allowances under the EU ETS;
  - (b) the previously submitted data included in the items referred to in sub-paragraph (a) was produced and verified in accordance with whichever of the following applied in relation to that previous submission—
    - (i) Commission Decision [2007/589/EC](#) of 18 July 2007 establishing guidelines for the monitoring and reporting of greenhouse gas emissions pursuant to Directive [2003/87/EC](#) of the European Parliament and of the Council;
    - (ii) the Monitoring and Reporting Regulation 2012 and the Verification Regulation 2012; and
  - (c) the applicant submits to the regulator a statement from the competent authority to which the data was submitted for the purpose of the application referred to in sub-paragraph (a) confirming that the data was not altered before the free allocation was calculated.
- (6) [<sup>F64</sup>An application][<sup>F64</sup>Unless paragraph (7) applies, an application] under this article must be submitted to the regulator on or before 31st March 2021.
- [<sup>F65</sup>(7) A person who did not submit an application under this article on or before 31st March 2021 but who may be entitled to a free allocation of allowances on the basis of historical aviation activity level due to aviation activity within paragraph 1(1)(c) of Schedule 1 may submit an application under this article for a free allocation of allowances on or before 31st March 2023.
- (8) An application made under paragraph (7) may not be made on the basis of historical aviation activity level due to any aviation activity other than aviation activity within paragraph 1(1)(c) of Schedule 1.]

- F64** Words in [art. 34L\(6\)](#) substituted (E.W.S.) (15.12.2022) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) \(No. 3\) Order 2022 \(S.I. 2022/1336\)](#), arts. 1(2)(b), **4(1)(a)**
- F65** [Art. 34L\(7\)\(8\)](#) inserted (E.W.S.) (15.12.2022) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) \(No. 3\) Order 2022 \(S.I. 2022/1336\)](#), arts. 1(2)(b), **4(1)(b)**

### Processing of applications and calculation of aviation free allocation entitlement

**34M.**—(1) Where an application is made in accordance with article 34L, the regulator must submit to the UK ETS authority—

- (a) the application and any related information the regulator holds; and
  - [ a calculation of the applicant's aviation free allocation—
- <sup>F66</sup>(b) (i) for each scheme year in the 2021-2025 allocation period, or
- (ii) where the application is made in accordance with article 34L(7), for the 2023, 2024 and 2025 scheme years in that allocation period,
- applying paragraphs (2) to (6);]

(2) The number of allowances that make up an applicant's aviation free allocation entitlement for each scheme year in the 2021-2025 allocation period is 0.000642186914222035 multiplied by the applicant's historical aviation activity figure multiplied by the reduction factor for the scheme year.

(3) The applicant's "historical aviation activity figure" is the sum of all persons' historical aviation activity levels that are—

- (a) attributable to the applicant immediately before 1st January 2021 [<sup>F67</sup>in relation to flights departing from Great Britain and arriving in an aerodrome in Switzerland before that date]; and
- (b) relied on for the purposes of the application.

(4) In determining whether and to what extent a person's historical aviation activity level is attributable to the applicant, it is permissible to have regard to whether the person's historical aviation activity level is relied on for the purposes of any other application under article 34L and, if so, to the information included in that application.

(5) For the purpose of this article, the reduction factor for a scheme year set out in column 1 of table B1 is the value set out in the corresponding entry in column 2.

**Table B1**

<i>Column 1 Scheme year</i>	<i>Column 2 Reduction factor</i>
2021	0.978
2022	0.956
2023	0.934
2024	0.912
2025	0.89

(6) The result of each calculation referred to in paragraph (2) must be expressed as the nearest integer, taking 0.5 as nearest to the previous integer.

[<sup>F68</sup>(6A) The regulator must recalculate the aviation free allocation entitlement for the 2023, 2024 and 2025 scheme years in relation to each person who had made an application under article 34L ("A") before article 34L(7) came into force, to take into account any historical aviation activity level attributable to A due to aviation activity within paragraph 1(1)(c) of Schedule 1 immediately before 1st January 2021.

(6B) The regulator may, by notice submitted to A, request A to produce such information specified in the notice, within the reasonable period so specified, as may be necessary to enable the regulator to make the recalculation required under paragraph (6A).

(6C) The regulator must, as soon as reasonably practicable and in any event before 30th June 2023, submit the recalculation made under paragraph (6A) to the UK ETS authority, with—

- (a) sufficient information to identify A; and
- (b) any other information related to the recalculation which the regulator holds.

(6D) Paragraph (6C) does not apply if A fails, without reasonable excuse, to provide any information requested under paragraph (6B) within the period specified in the notice, or such later period as may be agreed with the regulator.]

(7) The UK ETS authority must—

- (a) approve the applicant's aviation free allocation entitlement [<sup>F69</sup>or an increase in that entitlement following recalculation under paragraph (6A)], making any corrections to the calculation referred to in paragraph (1)(b) [<sup>F70</sup>or the recalculation referred to in paragraph (6A)] that the UK ETS authority considers appropriate;

(b) inform the regulator accordingly.

- |            |   |
|------------|---|
| <b>F66</b> | Art. 34M(1)(b) substituted (E.W.S.) (15.12.2022) by <a href="#">The Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 3) Order 2022 (S.I. 2022/1336)</a> , arts. 1(2)(b), <b>4(2)(a)</b>           |
| <b>F67</b> | Words in art. 34M(3)(a) inserted (E.W.S.) (15.12.2022) by <a href="#">The Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 3) Order 2022 (S.I. 2022/1336)</a> , arts. 1(2)(b), <b>4(2)(b)</b>     |
| <b>F68</b> | Art. 34M(6A)-(6D) inserted (E.W.S.) (15.12.2022) by <a href="#">The Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 3) Order 2022 (S.I. 2022/1336)</a> , arts. 1(2)(b), <b>4(2)(c)</b>           |
| <b>F69</b> | Words in art. 34M(7)(a) inserted (E.W.S.) (15.12.2022) by <a href="#">The Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 3) Order 2022 (S.I. 2022/1336)</a> , arts. 1(2)(b), <b>4(2)(d)(i)</b>  |
| <b>F70</b> | Words in art. 34M(7)(a) inserted (E.W.S.) (15.12.2022) by <a href="#">The Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 3) Order 2022 (S.I. 2022/1336)</a> , arts. 1(2)(b), <b>4(2)(d)(ii)</b> |

### Aviation allocation table for 2021-2025 allocation period

**34N.**—(1) The UK ETS authority must compile an aviation allocation table for the 2021-2025 allocation period as soon as reasonably practicable after 31st March 2021.

(2) The aviation allocation table must contain an entry for each person with an aviation free allocation entitlement, as approved by the UK ETS authority under article 34M.

(3) The person's entry must set out—

- (a) the person's full name and Eurocontrol Central Route Charges Office identification number;
- (b) the person's aviation free allocation entitlement for each scheme year in the 2021-2025 allocation period.

[  
**F71**(4) The UK ETS authority must update the aviation allocation table to take account of any approval of the UK ETS authority under—

(a) article 34M(7)—

- (i) of the applicant's aviation free allocation entitlement following an application made in reliance on article 34L(7);
- (ii) of an increase in a person's aviation free allocation following a recalculation by the regulator under article 34M(6A); or

(b) article 34Q (transfers of allocations) or article 34R (errors in aviation allocation table).]

(5) To avoid doubt, the UK ETS authority may update the aviation allocation table under paragraph (4) so as to increase or reduce the number of allowances to be allocated to a person for a scheme year after allowances have already been allocated to the person for the scheme year under article 34O. (See article 34T in relation to the return of allowances where the number of allowances to be allocated to a person for a scheme year is reduced after allowances for the scheme year have been allocated.)

(6) The UK ETS authority must notify the registry administrator of the aviation allocation table as soon as reasonably practicable after it is compiled and of an updated aviation allocation table as soon as reasonably practicable after it is updated.

(7) The UK ETS authority must publish the aviation allocation table as soon as reasonably practicable after it is compiled and must publish an updated aviation allocation table as soon as reasonably practicable after it is updated.

(8) Paragraph (7) is subject to article 75C (national security).

- F71** Art. 34N(4) substituted (E.W.S.) (15.12.2022) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) \(No. 3\) Order 2022 \(S.I. 2022/1336\)](#), arts. 1(2)(b), **4(3)**
- F72** Words in art. 34N(4) inserted (7.2.2022) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2021 \(S.I. 2021/1455\)](#), arts. 2, **16(2)**

### **Aviation: allocation of allowances for 2021-2025 allocation period**

**34O.**—(1) The registry administrator must allocate allowances in accordance with this article.

(2) Subject to paragraphs (3) to (8), allowances must be allocated in accordance with the aviation allocation table—

- (a) for the 2021 scheme year, as soon as reasonably practicable after the aviation allocation table is published;
- (b) for any other scheme year, on or before 28th February in that year.

(3) Allowances must not be allocated to a person unless and until the person has an aircraft operator holding account; they must be allocated by transferring them to that account.

(4) The regulator may, by notice to the registry administrator, require the registry administrator to withhold allowances that would otherwise have been allocated to a person for the 2022 scheme year or a subsequent scheme year if, in relation to the year before, the person was not an aircraft operator.

(5) If allowances for a scheme year are withheld from a person in accordance with paragraph (4) but the person becomes an aircraft operator in relation to that scheme year—

- (a) the regulator must as soon as reasonably practicable, by further notice to the registry administrator, withdraw the notice under paragraph (4); and
- (b) the allowances must be allocated as soon as reasonably practicable after the registry administrator receives the further notice.

(6) Where, after allowances for a scheme year have been allocated to a person, an update to the aviation allocation table results in an increase in the number of allowances to be allocated to the person for the scheme year, the increased number of allowances must be allocated as soon as reasonably practicable.

(7) Where a number of allowances (“N”) has been allocated in accordance with this article for a scheme year in relation to which the person to whom they were allocated was not an aircraft operator, the regulator may give notice to the registry administrator requiring the registry administrator to deduct allowances from any allocation to be made to the person under this article until the sum of—

- (a) the allowances so deducted; and
- (b) allowances allocated for that scheme year that have been returned in accordance with a notice given under article 34U or 34V because the person was not an aircraft operator in relation to that scheme year,

is equal to N.

(8) Allowances may also be withheld under article 34W (notice to withhold allowances).

### **Permanent cessation of aviation activity**

**34P.**—(1) This paragraph applies if the regulator is satisfied that—

- (a) a person has ceased to perform aviation activity; and
- (b) there is no realistic prospect that the person will resume aviation activity.

(2) Where paragraph (1) applies—

- (a) the regulator must inform the UK ETS authority; and

- (b) the UK ETS authority must update the aviation allocation table to record that the person has permanently ceased to perform aviation activity.

### **Transfers of aviation free allocation entitlement**

**34Q.**—(1) This article applies where a person with an aviation free allocation entitlement has been subject to a business reorganisation affecting aviation activity that was relevant to the approval of the UK ETS authority under article 34M.

(2) The relevant transferee in relation to the aviation activity may apply to the regulator for a transfer of some or all the transferor's aviation free allocation entitlement.

(3) An application under paragraph (2) must—

- (a) include evidence of the business reorganisation;
- (b) identify what part of the aviation free allocation entitlement (expressed as a whole number of allowances) should be transferred to the applicant, justified by reference to the business reorganisation;
- (c) include confirmation that each person who is a transferor or transferee in relation to aviation activity affected by the business reorganisation is aware of the application.

(4) Where an application is made in accordance with paragraph (3), the regulator must submit to the UK ETS authority—

- (a) the application and any related information the regulator holds; and
- (b) a calculation as to what part of the entitlement to free allocation (expressed as a whole number of allowances) should be transferred to the applicant, applying paragraphs (5) and (6).

(5) The aviation free allocation entitlement to be transferred is what would have been the transferee's aviation free allocation entitlement under article 34M in respect of aviation activity affected by the business reorganisation had the business reorganisation taken place before 1st January 2021, except that—

- (a) for each complete scheme year before the business reorganisation took place, the aviation free allocation entitlement to be transferred is zero;
- (b) for the scheme year in which the business reorganisation took place, what would have been the transferee's aviation free allocation entitlement is to be calculated as if article 34M(6) did not apply, then adjusted on a pro rata basis according to when the business reorganisation took place, with the result expressed as the nearest integer, taking 0.5 as nearest to the previous integer.

(6) In determining what part of the entitlement to free allocation should be transferred to the applicant, it is permissible to have regard to any application under this article and any representations made by a person who, in relation to aviation activity affected by the business reorganisation, is a transferor or transferee.

(7) The UK ETS authority must—

- (a) approve the transfer of some or all of the transferor's free allocation entitlement to the transferee with effect from a specified date, making any corrections to the calculation referred to in paragraph (4)(b) that the UK ETS authority considers appropriate; and
- (b) inform the regulator accordingly.

(8) The regulator must give notice to the applicant, and any person who has made representations for the purposes of paragraph (6), of the outcome of the application.

### Errors in aviation allocation table

**34R.**—<sup>F73</sup>(1) This article applies where the regulator considers that, as a result of a relevant error—

- (a) the number of allowances set out in the aviation allocation table as a person’s aviation free allocation entitlement for a scheme year is materially greater, or materially less, than the number that would otherwise have been set out in the table but for the relevant error; or
- (b) there has been a failure to include an entry for a person with an aviation free allocation entitlement in the aviation allocation table.]

(2) In this article, “relevant error” means—

- (a) an error in an application under article 34L or 34Q;
- (b) an error of the regulator or the UK ETS authority in the exercise of functions under this Order (including under this article).

(3) The regulator must calculate the number of allowances that, in the regulator's opinion, make up the person's correct aviation free allocation entitlement for the scheme year.

(4) The regulator must send to the UK ETS authority—

- (a) details of the relevant error;
- (b) the calculation referred to in paragraph (3).

(5) If the UK ETS authority considers that <sup>F74</sup>there is a relevant error and, as a result of the relevant error, the circumstances referred to in paragraph (1)(a) or (b) apply in relation to the person], the UK ETS authority must—

- (a) approve the person's aviation free allocation entitlement for the scheme year, making any corrections to the calculation referred to in paragraph (3) that the UK ETS authority considers appropriate; and
- (b) inform the regulator accordingly.

(6) The regulator must give notice to the person of—

- (a) the relevant error;
- (b) the person's aviation free allocation entitlement for the scheme year as approved by the UK ETS authority under paragraph (5).

**F73** Art. 34R(1) substituted (7.2.2022) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2021 \(S.I. 2021/1455\)](#), arts. 2, **17(2)**

**F74** Words in art. 34R(5) substituted (7.2.2022) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2021 \(S.I. 2021/1455\)](#), arts. 2, **17(3)**

## CHAPTER 3

### Common provisions

#### Return of allowances: installations

**34S.**—(1) This article applies where—

- (a) allowances are allocated under article 34E to a person in respect of an installation for a scheme year in accordance with an allocation table; and
- (b) the final annual number of allowances set out in the allocation table to be allocated in respect of the installation for the scheme year is subsequently reduced in consequence of

an update to the allocation table to take account of any approval of the UK ETS authority under a provision referred to in article 34C(1)(b) to (f) [<sup>F75</sup>or (j)].

(2) The regulator may give a notice under article 34U or 34V (or both).

(3) For the purposes of this Chapter, the person to whom the allowances are allocated is “not entitled” to any allowances which would not have been allocated in respect of the installation if the allocation table had been updated before the allocation of allowances referred to in paragraph (1)(a).

**F75** Words in art. 34S(1)(b) 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), 7(2)

### Return of allowances: aviation

**34T.**—(1) This article applies where—

(a) allowances are allocated under article 34O to a person for a scheme year in accordance with the aviation allocation table; and

(b) [<sup>F76</sup>either][<sup>F76</sup>any of the following applies] —

(i) the number of allowances set out in the aviation allocation table to be allocated to that person for the scheme year is subsequently reduced in consequence of an update to the aviation allocation table; [<sup>F77</sup>or]

(ii) the person was not an aircraft operator in relation to the scheme year.

[ in relation to allowances allocated for the 2024 or 2025 scheme year, the number of <sup>F78</sup>(iii) allowances allocated to the person for the scheme year exceeds the person’s aviation emissions for the scheme year.]

(2) The regulator may give a notice under article 34U or 34V (or both).

(3) For the purposes of this Chapter, the person to whom the allowances are allocated is “not entitled” to any allowances which—

(a) would not have been allocated if the aviation allocation table had been updated before the allocation of allowances referred to in paragraph (1)(a); [<sup>F79</sup>or]

(b) are allocated for a scheme year in relation to which the person is not an aircraft operator [<sup>F80</sup>; or]

[<sup>F81</sup>(c) in relation to allowances allocated for the 2024 or 2025 scheme year, exceed the person’s aviation emissions for the scheme year for which the allowances are allocated.]

**F76** Words in art. 34T(1)(b) 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), 8(2)(a)

**F77** Word in art. 34T(1)(b)(i) omitted (E.W.S.) (1.1.2024 immediately after S.I. 2023/850 comes into force) by virtue of [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) \(No. 2\) Order 2023](#) (S.I. 2023/1387), arts. 2(1), 8(2)(b)

**F78** Art. 34T(1)(b)(iii) 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), 8(2)(c)

**F79** Word in art. 34T(3)(a) omitted (E.W.S.) (1.1.2024 immediately after S.I. 2023/850 comes into force) by virtue of [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) \(No. 2\) Order 2023](#) (S.I. 2023/1387), arts. 2(1), 8(3)(a)

- F80** Word in [art. 34T\(3\)\(b\)](#) 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), **8(3)(b)**
- F81** [Art. 34T\(3\)\(c\)](#) 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), **8(3)(c)**

### **Return of allowances: notice to registry administrator**

**34U.**—(1) A notice under this article is a notice to the registry administrator requiring the registry administrator to transfer allowances equal to the number of allowances to which a person is not entitled from the person's operator holding account or aircraft operator holding account to a central account.

- (2) The notice must set out—
- (a) the number of allowances to which the person is not entitled;
  - (b) the reason why the person is not entitled to the allowances;
  - (c) the operator and installation from whose operator holding account, or the person from whose aircraft operator holding account, the transfer must be made.
- (3) The registry administrator—
- (a) must comply with the notice to the extent that there are sufficient allowances in the person's account;
  - (b) may suspend other transfers from the account until the notice is complied with.
- (4) Paragraph (3)(a) does not apply until the period for bringing an appeal against the notice under article 70 has expired or, if an appeal is brought, until the appeal is determined or withdrawn.
- (5) Where the regulator gives a notice under this article to the registry administrator, the regulator must also give a copy of the notice to the person who is not entitled to the allowances.

### **Return of allowances: notice to operator, etc.**

**34V.**—(1) A notice under this article is a notice to a person requiring the person to return allowances equal to the number of allowances to which the person is not entitled.

- (2) The notice must set out—
- (a) the number of allowances to which the person is not entitled;
  - (b) the reason why the person is not entitled to the allowances;
  - (c) the process by which the allowances must be returned;
  - (d) the date by which the allowances must be returned.
- (3) The person to whom the notice is given must comply with the notice.
- (4) Where a notice is given under this article to a transferring operator in respect of allowances to which the transferring operator is not entitled that were allocated before the transfer of a greenhouse gas emissions permit under paragraph 9 of Schedule 6 takes effect, the notice may provide for the transferring operator to transfer allowances to the new operator and for the process by which the allowances must be returned by the new operator; and in such a case the notice must be given to the new operator as well as the transferring operator and both must comply with the notice.
- (5) In paragraph (4), “new operator” and “transferring operator” have the meanings given in paragraph 7(5) of Schedule 6.



### 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;
- <sup>F82</sup>(ga) [ in relation to allowances that would otherwise have been allocated in respect of the 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;]
- <sup>F83</sup>(gb) [ 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;]
- (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 <sup>F84</sup>paragraph (1)(a) to (ga)] <sup>F84</sup>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.]

- F82** 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)**
- F83** 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)**
- F84** 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)**

## PART 5

### Charging

#### Charges

**35.—**(1) The regulator [<sup>F85</sup>or the registry administrator] may charge an applicant, operator, aircraft operator or any other person an amount as a means of recovering costs incurred by the regulator [<sup>F85</sup>or the registry administrator] in performing activities in accordance with or by virtue of this Order.

(2) The activities referred to in paragraph (1) include—

- (a) giving advice in relation to an application under or by virtue of this Order or any other advice in relation to the operation of the UK ETS;
  - (b) considering an application under or by virtue of this Order;
  - (c) issuing, varying, transferring, cancelling, surrendering or revoking a permit;
  - (d) issuing or varying an emissions monitoring plan;
  - (e) giving any notice or other document provided for by or under this Order;
  - (f) receiving any notice or other document provided for by or under this Order;
  - (g) monitoring compliance with this Order;
  - (h) making a determination of emissions or aviation emissions under article 45.
- [<sup>F86</sup>(i) estimating the value of a parameter under article 34H(4) of this Order or Article 3(4) of the Activity Level Changes Regulation;
- (j) administering an account in the registry.]

(3) A charge under paragraph (1) may include an annual or other periodic charge to an operator or aircraft operator that does not relate to any specific activity.

(4) The regulator [<sup>F87</sup>or the registry administrator] may apply different charges for different categories of person in relation to the same activity.

(5) Payment of a charge is not received until the regulator [<sup>F88</sup>or, as the case may be, the registry administrator] has cleared funds for the full amount due and a charge, if unpaid, may be recovered by the regulator [<sup>F88</sup>or, as the case may be, the registry administrator] as a civil debt.

(6) The regulator [<sup>F89</sup>or the registry administrator] may require a charge to be paid before it carries out the activity to which the charge relates.

(7) If the regulator [<sup>F90</sup>or the registry administrator] does not require a charge to be paid in accordance with paragraph (6), it is payable on demand.

(8) [<sup>F91</sup>Neither the regulator nor the registry administrator is] required to reimburse a charge where—

- (a) an activity is not completed; or
- (b) the person liable to pay the charge does not remain within the scheme for all of the period in relation to which the charge is payable or has been calculated.

[<sup>F92</sup>(9) In this article, a reference to this Order includes a reference to the Monitoring and Reporting Regulation 2018, the Verification Regulation 2018, the Free Allocation Regulation and the Activity Level Changes Regulation.]

- F85** Words in art. 35(1) inserted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), arts. 2(1), **19(2)**
- F86** Art. 35(2)(i)(j) inserted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), arts. 2(1), **19(3)**
- F87** Words in art. 35(4) inserted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), arts. 2(1), **19(4)**
- F88** Words in art. 35(5) inserted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), arts. 2(1), **19(5)**
- F89** Words in art. 35(6) inserted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), arts. 2(1), **19(6)**
- F90** Words in art. 35(7) inserted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), arts. 2(1), **19(7)**
- F91** Words in art. 35(8) substituted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), arts. 2(1), **19(8)**
- F92** Art. 35(9) inserted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), arts. 2(1), **19(9)**

#### **Commencement Information**

- I36** Art. 35 in force at 12.11.2020, see art. 2(1)

#### **[<sup>F93</sup>Charging scheme: regulators**

**36.—**(1) The regulator must publish a document (a “charging scheme”) setting out the charges payable in accordance with article 35(1) or how they will be calculated.

- (2) Before publishing a charging scheme, the regulator must—
  - (a) bring the proposals to the attention of persons likely to be affected by them;

- (b) specify the period within which representations or objections to the proposals may be made.
- (3) A charging scheme may not be published unless it has been approved by the appropriate national authority.
- (4) Where a proposed charging scheme is submitted for approval under paragraph (3), the appropriate national authority—
- (a) must consider any representations or objections made under paragraph (2)(b);
  - (b) may make such modifications to the proposals as the appropriate national authority considers appropriate.
- (5) If the regulator proposes to revise a charging scheme in a material way, paragraphs (2) to (4) apply to the revised charging scheme.
- (6) Paragraphs (2) to (5) do not apply in relation to a charging scheme published by the Secretary of State.
- (7) In this article, “appropriate national authority” means—
- (a) where the regulator is the Environment Agency, the Secretary of State;
  - (b) where the regulator is the chief inspector, the Department of Agriculture, Environment and Rural Affairs.
  - (c) where the regulator is SEPA, the Scottish Ministers;
  - (d) where the regulator is NRW, the Welsh Ministers.]

**F93** Arts. 36, 36A substituted for art. 36 (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), arts. 2(1), **20**

**Commencement Information**

**I37** Art. 36 in force at 12.11.2020, see art. 2(1)

**[<sup>F93</sup>Charging scheme: registry administrator**

- 36A.**—(1) The registry administrator must publish a document (a “charging scheme”) setting out the charges payable in accordance with article 35(1) or how they will be calculated.
- (2) Before publishing a charging scheme, the registry administrator must—
- (a) bring the proposals to the attention of persons likely to be affected by them;
  - (b) specify the period within which representations or objections to the proposals may be made.
- (3) A charging scheme may not be published unless it has been approved by the UK ETS authority.
- (4) Where a proposed charging scheme is submitted for approval under paragraph (3), the UK ETS authority—
- (a) must consider any representations or objections made under paragraph (2)(b);
  - (b) may make such modifications to the proposals as the UK ETS authority considers appropriate.
- (5) If the registry administrator proposes to revise a charging scheme in a material way, paragraphs (2) to (4) apply to the revised charging scheme.]

**F93** Arts. 36, 36A substituted for art. 36 (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), arts. 2(1), **20**

## Remittance of charges

<sup>F94</sup>37.—(1) The regulator must pay any charge received in accordance with a charging scheme under article 36 to the appropriate national authority (as defined in paragraph (7) of that article).

(2) Paragraph (1) does not apply to a charge received by the Secretary of State.

(3) The registry administrator must pay any charge received in accordance with a charging scheme under article 36A to the UK ETS authority.]

**F94** Art. 37 substituted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), arts. 2(1), 21

### Commencement Information

**I38** Art. 37 in force at 12.11.2020, see art. 2(1)

## PART 6

### Monitoring compliance

#### Authorised persons

38.—(1) The regulator may authorise a person to exercise, on behalf of the regulator and in accordance with the terms of the authorisation, the regulator's powers set out in this Part.

(2) In this Part, “authorised person” means a person authorised under—

- (a) paragraph (1); or
- (b) section 108(1) of the Environment Act 1995 <sup>M22</sup>.

### Commencement Information

**I39** Art. 38 in force at 12.11.2020, see [art. 2\(1\)](#)

### Marginal Citations

**M22** 1995 c. 25; [section 108\(1\)](#) was relevantly amended by section 46(2)(a) of the [Regulatory Reform \(Scotland\) Act 2014 \(asp 3\)](#).

#### Inspections

39.—(1) The regulator [<sup>F95</sup>or an authorised person] may, at a reasonable time, inspect any premises and any thing in or on those premises in order to monitor compliance with this Order [<sup>F96</sup>, the Monitoring and Reporting Regulation 2018, the Verification Regulation 2018, the Free Allocation Regulation or the Activity Level Changes Regulation].

(2) Reasonable prior notice must be given before exercising the powers in this article.

(3) A person in control of the premises to which the regulator or authorised person reasonably requires access must allow the regulator or authorised person to have such access.

(4) The regulator or authorised person may, when inspecting premises—

- (a) make any such examination and investigation as may be necessary;
- (b) install or maintain monitoring equipment or other apparatus;
- (c) request the production of any record;

- (d) take measurements, photographs, recordings or copies of any thing;
  - (e) take samples of any articles or substances found in, or on, the premises and of the air, water or land in, on, or in the vicinity of, those premises;
  - (f) request any person at the premises to provide facilities or assistance to the extent that is within that person's control.
- (5) Except to the extent agreed by the person in control of a place or premises, the power referred to in paragraph (1) does not apply to—
- (a) a prohibited place [<sup>F97</sup>within the meaning of Part 1 of the National Security Act 2023]; or
  - (b) any other premises to which the Crown restricts access on the ground of national security.

- F95** Words in art. 39(1) inserted (14.4.2022) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2022 \(S.I. 2022/454\)](#), arts. 2, **5(2)**
- F96** Words in art. 39(1) inserted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), arts. 2(1), **22(2)**
- F97** Words in art. 39(5)(a) substituted (20.12.2023) by [The National Security Act 2023 \(Consequential Amendments of Subordinate Legislation\) Regulations 2023 \(S.I. 2023/1267\)](#), reg. 1(2), **Sch. para. 59**

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**Commencement Information**

- I40** Art. 39 in force at 12.11.2020, see [art. 2\(1\)](#)

**Powers of entry, etc.**

- 40.**—(1) The regulator or an authorised person may—
- (a) enter any premises with a warrant issued in accordance with article 41, together with any equipment or material as may be required;
  - (b) when entering premises by virtue of sub-paragraph (a)—
    - (i) be accompanied by an authorised person and, if considered appropriate, a constable;
    - (ii) direct that any part of the premises be left undisturbed for so long as may be necessary;
  - (c) require any person believed to be able to give information relevant to an examination or investigation—
    - (i) to attend at a place and time specified by the regulator or authorised person;
    - (ii) to answer questions (in the absence of any person other than those whom the regulator or authorised person allows to be present and a person nominated by the person being asked questions);
    - (iii) to sign a declaration of truth of the answers given by that person;
  - (d) require the production of—
    - (i) records required to be kept under this Order [<sup>F98</sup>, the Monitoring and Reporting Regulation 2018, the Verification Regulation 2018, the Free Allocation Regulation or the Activity Level Changes Regulation];
    - (ii) other records which the regulator or authorised person considers it necessary to see for the purpose of an examination or investigation;
    - (iii) entries in a record referred to in this sub-paragraph;
  - (e) inspect and take copies of the records and entries referred to in sub-paragraph (d).
- (2) The powers in paragraph (1) may only be exercised where the regulator or an authorised person reasonably believes there has been a failure to comply with the requirements of this Order

[<sup>F99</sup>, the Monitoring and Reporting Regulation 2018, the Verification Regulation 2018, the Free Allocation Regulation or the Activity Level Changes Regulation].

(3) Except to the extent agreed by the person in control of a place or premises, the powers referred to in paragraph (1) do not apply in relation to—

- (a) a prohibited place [<sup>F100</sup>within the meaning of Part 1 of the National Security Act 2023]; or
- (b) any other premises to which the Crown restricts access on the ground of national security.

(4) It is an offence for a person—

- (a) to fail to comply with a requirement imposed pursuant to this article; <sup>F101</sup> ...
- (b) to prevent any other person from—
  - (i) appearing before the regulator or an authorised person; or
  - (ii) answering a question to which the regulator or authorised person requires an [<sup>F102</sup>answer; or]

[<sup>F103</sup>(c) intentionally to obstruct the regulator, or an authorised person, in the exercise of a power referred to in paragraph (1).]

(5) A person guilty of an offence under paragraph (4) is liable—

- (a) on summary conviction in England and Wales, to a fine;
- (b) on summary conviction in Scotland or in Northern Ireland, to a fine not exceeding the statutory maximum;
- (c) on conviction on indictment, to a fine.

**F98** Words in art. 40(1)(d)(i) inserted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), arts. 2(1), **23(2)**

**F99** Words in art. 40(2) inserted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), arts. 2(1), **23(3)**

**F100** Words in art. 40(3)(a) substituted (20.12.2023) by [The National Security Act 2023 \(Consequential Amendments of Subordinate Legislation\) Regulations 2023 \(S.I. 2023/1267\)](#), reg. 1(2), **Sch. para. 59**

**F101** Word in art. 40(4)(a) omitted (14.4.2022) by virtue of [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2022 \(S.I. 2022/454\)](#), arts. 2, **6(2)(a)**

**F102** Words in art. 40(4)(b)(ii) substituted (14.4.2022) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2022 \(S.I. 2022/454\)](#), arts. 2, **6(2)(b)**

**F103** Art. 40(4)(c) inserted (14.4.2022) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2022 \(S.I. 2022/454\)](#), arts. 2, **6(2)(c)**

#### Commencement Information

**I41** Art. 40 in force at 12.11.2020, see [art. 2\(1\)](#)

#### Warrants

**41.—(1)** A judge may issue a warrant in relation to any premises for the purpose of article 40(1) (a) where satisfied that—

- (a) there are reasonable grounds for the exercise of the power in that sub-paragraph; and
- (b) one or more of the conditions in paragraph (2) are fulfilled in relation to the premises.

(2) The conditions referred to in paragraph (1)(b) are that—

- (a) the exercise of the power by consent in relation to the premises has been refused;
- (b) a refusal of consent to the exercise of the power is reasonably expected;

- (c) the premises are unoccupied;
  - (d) the occupier is temporarily absent from the premises and the case is one of urgency; or
  - (e) a request for admission to the premises would defeat the purpose of the entry.
- (3) A warrant in accordance with this article continues to have effect until the purpose for which it was issued has been fulfilled.
- (4) In paragraph (1), “judge” means—
- (a) in England or Wales, a justice of the peace;
  - (b) in Northern Ireland, a lay magistrate;
  - (c) in Scotland, a justice of the peace or sheriff.

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**Commencement Information**

**I42** Art. 41 in force at 12.11.2020, see [art. 2\(1\)](#)

**Admissible evidence**

**42.**—(1) An answer given by a person in compliance with article 40(1)(c)(ii) is admissible in evidence—

- (a) in England, Wales and Northern Ireland, against that person in any proceedings;
- (b) in Scotland, against that person in criminal proceedings.

(2) In criminal proceedings in which the person referred to in paragraph (1) is charged with an offence, no evidence relating to the person's answer may be adduced and no question relating to it may be asked by, or on behalf of, the prosecution unless evidence relating to it has been adduced by, or on behalf of, the person.

(3) Paragraph (2) does not apply to an offence under—

- (a) section 5 of the Perjury Act 1911 <sup>M23</sup>;
- (b) section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995 <sup>M24</sup>; or
- (c) article 10 of the Perjury (Northern Ireland) Order 1979 <sup>M25</sup>.

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**Commencement Information**

**I43** Art. 42 in force at 12.11.2020, see [art. 2\(1\)](#)

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**Marginal Citations**

**M23** 1911 c. 6.

**M24** 1995 c. 39; section 44(2) was amended by section 200(2)(b) of the [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#).

**M25** 1979 No. 1714 (N.I. 19).

**Legal professional privilege**

**43.** Nothing in this Part requires any person to produce a document which that person would be entitled to withhold the production of on grounds of legal professional privilege.



### Commencement Information

**I44** Art. 43 in force at 12.11.2020, see [art. 2\(1\)](#)

## PART 7

### Enforcement

#### CHAPTER 1

#### Enforcement notices and determination of emissions by regulator

#### Enforcement notices

**44.**—(1) Where the regulator considers that a person has contravened, is contravening or is likely to contravene a relevant requirement, the regulator may give notice (an “enforcement notice”) to the person.

(2) In paragraph (1), “relevant requirement” means—

(a) a requirement imposed on the person by or under—

(i) this Order [<sup>F104</sup>, except for Schedule 5A];

(ii) the Monitoring and Reporting Regulation 2018;

[<sup>F105</sup>(iii) the Verification Regulation 2018;

(iv) the Free Allocation Regulation;

(v) the Activity Level Changes Regulation.]

(b) a condition of a permit;

(c) a condition of an emissions monitoring plan.

[<sup>F106</sup>(2A) Where the registry administrator considers that a person has contravened, is contravening or is likely to contravene a requirement imposed on the person by or under Schedule 5A, the registry administrator may give notice (an “enforcement notice”) to the person.]

(3) An enforcement notice must set out—

(a) the relevant requirement that the regulator [<sup>F107</sup>, or the requirement imposed by or under Schedule 5A that the registry administrator,] considers has been contravened, is being contravened or is likely to be contravened;

(b) details of the contravention or likely contravention;

(c) the steps that must be taken to remedy the contravention or to ensure that a contravention does not occur;

(d) the period within which the steps must be taken;

(e) information about rights of appeal.

(4) The person to whom the enforcement notice is given must comply with the requirements of the notice within the period set out in the notice.

(5) The regulator [<sup>F108</sup>or the registry administrator] may withdraw an enforcement notice at any time by giving notice of the withdrawal to the person to whom the enforcement notice is given.

**F104** Words in art. 44(2)(a)(i) inserted (14.4.2022) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2022 \(S.I. 2022/454\)](#), arts. 2, 7(2)(a), 14

- F105** Art. 44(2)(a)(iii)-(v) inserted (14.4.2022) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2022 \(S.I. 2022/454\)](#), arts. 2, **7(2)(b)**, 14
- F106** Art. 44(2A) inserted (14.4.2022) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2022 \(S.I. 2022/454\)](#), arts. 2, **7(3)**, 14
- F107** Words in art. 44(3)(a) inserted (14.4.2022) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2022 \(S.I. 2022/454\)](#), arts. 2, **7(4)**, 14
- F108** Words in art. 44(5) inserted (14.4.2022) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2022 \(S.I. 2022/454\)](#), arts. 2, **7(5)**, 14

**Commencement Information**

- I45** Art. 44 in force at 12.11.2020, see [art. 2\(1\)](#)

**Determination of reportable emissions or aviation emissions by regulator**

**45.**—(1) The regulator must make a determination of emissions of an installation or an aircraft operator in either of the following circumstances—

- (a) if the operator of the installation fails to submit a report of the installation's reportable emissions in accordance with a condition of a permit included under paragraph 4(2)(b) of Schedule 6 or paragraph 11(2)(b) of Schedule 7;
- (b) if the aircraft operator fails to submit a report of aviation emissions in accordance with article 33.

(2) Where a verifier states in a verification report under the Verification Regulation 2018 that there are non-material misstatements in the annual emissions report of the operator of an installation or of an aircraft operator that have not been corrected by the operator or the aircraft operator before the verification report is issued—

- (a) the regulator must—
  - (i) assess the misstatements;
  - (ii) if the regulator considers it appropriate, make a determination of emissions of the installation or the aircraft operator; and
  - (iii) give notice to the operator or the aircraft operator as to whether or not corrections are required to the annual emissions report and, if corrections are required, set out the corrections in the notice; and
- (b) the operator or the aircraft operator must make the information referred to in subparagraph (a)(iii) available to the verifier.

(3) The regulator may make a determination of emissions of an installation or of an aircraft operator in any of the following circumstances—

- <sup>F109</sup>(a) .....
- (b) if the operator of the installation fails to submit a report in accordance with paragraph 11(4)(b) of Schedule 6;
- (c) if the operator of the installation fails to submit a report in accordance with paragraph 12(5)(b) of Schedule 6;
- (d) if the regulator considers that the determination of emissions is necessary for the purpose of imposing, or considering whether to impose, a civil penalty under article 47.

<sup>F110</sup>(4) .....

(5) A regulator who makes a determination of emissions must give notice of the determination to the operator, the aircraft operator or the person on whom the civil penalty may be imposed.

(6) A notice of a determination of emissions determines for the purposes of this Order (including for calculating a civil penalty under article 47) the installation's reportable emissions or the aviation operator's aviation emissions for the period to which the determination relates.

(7) Where, after making a determination of emissions (including a rectified determination of emissions, or a further rectified determination of emissions, made under this paragraph), the regulator considers that there is an error in the determination, the regulator must—

- (a) withdraw any notice of the determination given under paragraph (5);
- (b) make a rectified determination of the emissions; and
- (c) give notice of the rectified determination in accordance with paragraph (5),

and paragraph (6) applies to a notice of the rectified determination as it does to the notice of the previous determination.

(8) For the purposes of this article, emissions must be determined on the basis of a set of assumptions designed to ensure that no under-estimation occurs.

**F109** Art. 45(3)(a) omitted (1.1.2023) by virtue of [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) \(No. 2\) Order 2022 \(S.I. 2022/1173\)](#), arts. 2, **8(2)**

**F110** Art. 45(4) omitted (1.1.2023) by virtue of [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) \(No. 2\) Order 2022 \(S.I. 2022/1173\)](#), arts. 2, **8(3)**

#### **Commencement Information**

**I46** Art. 45 in force at 12.11.2020, see [art. 2\(1\)](#)

## CHAPTER 2

### Civil penalties

#### **Carbon price**

**46.—(1)** This article applies for the purpose of determining the price (the “carbon price”) per tonne of carbon dioxide equivalent for a scheme year.

(2) The carbon price for the 2021 scheme year is the sum of the relevant amount for each auction of allowances held in the period beginning on 1st January 2021 and ending on 11th November 2021 under regulations made by the Treasury under the Finance Act 2020 divided by the sum of the allowances sold at all those auctions.

(3) In paragraph (2), the relevant amount for an auction is the auction clearing price (that is to say, the price per allowance that, in accordance with the auction rules, each successful bidder must pay, irrespective of the original bid) multiplied by the number of allowances sold at the auction.

(4) The carbon price for the 2022 scheme year or any subsequent scheme year (the “relevant scheme year”) is the average end of day settlement price, calculated over the relevant period, of the December futures contract for the relevant scheme year, as traded on the relevant carbon market exchange.

(5) For the purposes of paragraph (4), the “average” end of day settlement price is calculated by dividing the sum of the end of day settlement price for each day in the relevant period for which an end of day settlement price is published by the number of days in the relevant period for which an end of day settlement price is published.

(6) In paragraphs (4) and (5)—

“end of day settlement price”, in relation to a futures contract, means the end of day settlement price per tonne of carbon dioxide equivalent published by the carbon market exchange on which the futures contract is traded;

“futures contract” means a futures contract for allowances;

“relevant carbon market exchange”, in relation to a relevant scheme year, means the largest carbon market exchange as determined by volume of sales in the relevant period of the December futures contract for the relevant scheme year traded on the exchange;

“relevant period” means—

- (a) in relation to the carbon price for the 2022 scheme year, the period beginning on 1st January 2021 and ending on 11th November 2021;
- (b) in relation to the carbon price for the 2023 scheme year and any subsequent scheme year, the 12-month period ending on 11th November in the year preceding the relevant scheme year.

(7) The UK ETS authority must publish the carbon price for the 2021 scheme year on or before 30th November 2021.

(8) The UK ETS authority must publish the carbon price for subsequent scheme years on or before 30th November in the year preceding the scheme year.

#### Commencement Information

**I47** Art. 46 in force at 12.11.2020, see [art. 2\(1\)](#)

#### Penalty notices

**47.**—(1) Where the regulator considers that a person is liable to a civil penalty under any of articles 50 to 68 the regulator may impose a civil penalty on the person.

(2) But where the regulator considers that a person is liable to a civil penalty under any of the following, the regulator must impose a civil penalty on the person—

- (a) article 52 (failure to surrender allowances), but only if the person is liable to the excess emissions penalty referred to in article 52(2);
- (b) article 54 (hospitals and small emitters: exceeding emissions target), except where paragraph (3) of that article applies;
- (c) article 59 (ultra-small emitters: reportable emissions exceeding maximum amount).

(3) A civil penalty is imposed on a person by giving a notice (a “penalty notice”) to the person.

(4) Where the civil penalty to which the person is liable consists of a non-escalating penalty only (or where the civil penalty consists of both a non-escalating penalty and a daily penalty, but the regulator decides not to impose a daily penalty), the penalty notice must set out—

- (a) the grounds for liability;
- (b) the amount of the non-escalating penalty (and, where relevant, how the amount is calculated);
- (c) the date by which the non-escalating penalty must be paid (the “due date”), which must not be less than 28 days after the day on which the notice is given;
- (d) the person to whom payment must be made (which must be either the regulator or the appropriate national authority);
- (e) how payment may be made;
- (f) information about rights of appeal.

(5) Where the civil penalty to which the person is liable consists of both a non-escalating penalty and a daily penalty and the regulator considers that the regulator may wish to impose a daily penalty,

the regulator must, before giving a penalty notice to the person, first give a notice (an “initial notice”) to the person.

(6) The initial notice must set out—

- (a) the grounds for liability;
- (b) the maximum amount of the non-escalating penalty that may be imposed;
- (c) that the daily penalty that may be imposed begins to accrue on the day on which the initial notice is given;
- (d) the maximum daily rate of the daily penalty and the maximum amount [<sup>F111</sup>(if any)] of the daily penalty that may be imposed.

(7) Where, after an initial notice is given to a person, the regulator considers that the total amount of the daily penalty to which the person is liable can be calculated (including where the daily penalty reaches its maximum amount), the regulator may give a penalty notice to the person.

[<sup>F112</sup>(7A) A penalty notice imposing a civil penalty that consists of a daily penalty under article 64A(2)(b) (for which there is no maximum) may be given at such intervals as the regulator considers appropriate.]

(8) The penalty notice must set out—

- (a) the grounds for liability;
- (b) the amount of the civil penalty (including how the amount is calculated), which may include—
  - (i) a non-escalating penalty; and
  - (ii) a daily penalty;
- (c) the date by which the civil penalty must be paid (the “due date”), which must not be less than 28 days after the day on which the notice is given;
- (d) the person to whom payment must be made (which must be either the regulator or the appropriate national authority);
- (e) how payment may be made;
- (f) information about rights of appeal.

(9) The person to whom a penalty notice is given must pay the civil penalty set out in the notice to the person set out in the notice on or before the due date.

(10) A civil penalty imposed by a penalty notice is recoverable by the regulator as a civil debt.

(11) The regulator must, as soon as reasonably practicable—

- (a) inform the appropriate national authority of a penalty notice given by the regulator;
- (b) pay all sums received or recovered under a penalty notice to the appropriate national authority.

(12) In this article and article 48—

“appropriate national authority” means—

- (a) in the case of a penalty notice given by the chief inspector, the Department of Agriculture, Environment and Rural Affairs;
- (b) in the case of a penalty notice given by SEPA, the Scottish Ministers;
- (c) in the case of a penalty notice given by NRW, the Welsh Ministers;
- (d) in any other case, the Secretary of State;

“daily penalty” means a daily penalty set out in articles 51(3)(b), 55(2)(b), 61(2)(b), 62(2)(b), 63(2)(b), 64(2)(b), [<sup>F113</sup>64A(2)(b),] 65(2)(b) or 66(2)(b);

“non-escalating penalty” means a civil penalty under articles 50 to 68 that is not a daily penalty.  
 (13) This article is subject to article 48.

- F111** Words in [art. 47\(6\)\(d\)](#) inserted (14.4.2022) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2022 \(S.I. 2022/454\)](#), arts. 2, **8(2)**
- F112** [Art. 47\(7A\)](#) inserted (14.4.2022) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2022 \(S.I. 2022/454\)](#), arts. 2, **8(3)**
- F113** Word in [art. 47\(12\)](#) inserted (14.4.2022) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2022 \(S.I. 2022/454\)](#), arts. 2, **8(4)**

#### Commencement Information

**I48** Art. 47 in force at 12.11.2020, see [art. 2\(1\)](#)

#### Penalty notices: supplementary

**48.**—(1) Subject to paragraph (3), a penalty notice imposing a civil penalty under any of articles 50 to 68 (the “relevant provision”) may set out—

- (a) a non-escalating penalty of an amount lower than the amount referred to in the relevant provision;
- (b) where the civil penalty consists of both a non-escalating penalty and a daily penalty—
  - (i) a daily penalty based on a daily rate of an amount lower than the amount referred to in the relevant provision; or
  - (ii) no daily penalty.

(2) Subject to paragraphs (3) and (4), the regulator may, by giving notice to the person to whom a penalty notice is given—

- (a) extend the due date for payment set out in the penalty notice;
- (b) amend the penalty notice by substituting a lower non-escalating penalty or a daily penalty based on a lower daily rate;
- (c) withdraw the penalty notice.

(3) Paragraphs (1) and (2) do not apply to—

- (a) a penalty notice imposing the excess emissions penalty referred to in article 52;
- (b) a penalty notice imposing a civil penalty under article 54, except where paragraph (3) of that article applies;
- (c) a penalty notice imposing a civil penalty under article 59.

(4) But the regulator may withdraw a penalty notice referred to in paragraph (3) if there is an error in the notice (including an error in the basis on which the civil penalty imposed by the notice is calculated).

#### Commencement Information

**I49** Art. 48 in force at 12.11.2020, see [art. 2\(1\)](#)

#### Regulator must publish names of persons subject to civil penalty under article 52

**49.**—(1) The regulator must publish the name of every person on whom the excess emissions penalty referred to in article 52 is imposed as soon as reasonably practicable after—

- (a) the expiry of the period for bringing an appeal against the penalty notice imposing the penalty; or
  - (b) if an appeal is brought, the determination or withdrawal of the appeal.
- (2) But paragraph (1) does not apply if, following an appeal, the person is found not to be liable to a civil penalty.
- [<sup>F114</sup>(3) This article is subject to article 75C (national security).]

**F114** Art. 49(3) inserted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), arts. 2(1), 25(2)

**Commencement Information**

**I50** Art. 49 in force at 12.11.2020, see [art. 2\(1\)](#)

**Installations: carrying out regulated activity without permit contrary to article 26**

**50.**—(1) Where a regulated activity that is not authorised by a permit is carried out at an installation in a scheme year, contrary to article 26, the operator of the installation is (after the end of the scheme year) liable to a civil penalty.

(2) Subject to paragraph (3), the civil penalty is  $CA + (RE \times CP)$ , where—

CA is an estimate of the costs avoided by the operator in the scheme year as a result of carrying out the regulated activity without the authorisation of a permit;

RE is an estimate of the installation's reportable emissions in the part of the scheme year during which a regulated activity that was not authorised by a permit was carried out;

CP is the carbon price for the scheme year.

(3) When setting the amount of the civil penalty to be imposed, the regulator may increase the amount calculated under paragraph (2) by a factor designed to ensure that the amount of the civil penalty exceeds the value of any economic benefit that the operator has obtained as a result of failing to comply with article 26.

(4) The regulator must—

- (a) estimate CA and RE under paragraph (2); and
- (b) exercise the regulator's functions under paragraph (3),

in accordance with a direction given by the relevant national authority under section 52 of CCA 2008.

(5) This article is subject to paragraph 7(6)(b) of Schedule 8.

**Commencement Information**

**I51** Art. 50 in force at 12.11.2020, see [art. 2\(1\)](#)

**Installations: failure to comply with conditions of permit, etc.**

**51.**—(1) The operator of an installation is liable to the civil penalty referred to in paragraph (3) where the operator fails to comply (or to comply on time) with—

- (a) a condition of a greenhouse gas emissions permit;
- (b) a condition of a hospital or small emitter permit;
- (c) a requirement of a surrender notice set out in paragraph 11(4)(b)(i) or (ii) of Schedule 6;
- (d) a requirement of a revocation notice set out in paragraph 12(5)(b)(i) or (ii) of that Schedule.

(2) But an operator is not liable to the civil penalty referred to in paragraph (3) where the failure to comply with a condition of a permit gives rise to liability for a civil penalty under—

- (a) article 52;
  - (b) article 56.
- (3) The civil penalty is—
- (a) £20,000; and
  - (b) a daily penalty at a daily rate of £500 for each day that the operator fails to comply with the condition or requirement, beginning with the day on which the initial notice is given, up to a maximum of £45,000.

#### Commencement Information

**I52** Art. 51 in force at 12.11.2020, see [art. 2\(1\)](#)

#### Failure to surrender allowances

**52.**—(1) Subject to paragraphs (4) to (9), the operator of an installation or an aircraft operator is liable to the civil penalty (the “excess emissions penalty”) referred to in paragraph (2) where—

- (a) in the case of the operator, the operator fails to surrender sufficient allowances, contrary to—
    - (i) article 27;
    - (ii) the requirement of a surrender notice set out in paragraph 11(4)(b)(iii) of Schedule 6;
    - (iii) the requirement of a revocation notice set out in paragraph 12(5)(b)(iii) of that Schedule;
  - (b) in the case of the aircraft operator, the aircraft operator fails to surrender sufficient allowances, contrary to article 34.
- (2) The excess emissions penalty is £100 multiplied by the inflation factor for each allowance that the operator or the aircraft operator fails to surrender.
- (3) For the purpose of calculating the excess emissions penalty—
- (a) under paragraph (1)(a)(i), a deemed increase in the installation's reportable emissions under paragraph 4(4) of Schedule 6 must be disregarded;
  - [<sup>F115</sup>(aa) under paragraph (1)(a)(ii), paragraph 11(4)(b)(iii)(bb) of Schedule 6 must be disregarded;
  - (ab) under paragraph (1)(a)(iii), paragraph 12(5)(b)(iii)(bb) of Schedule 6 must be disregarded;]
  - (b) under paragraph (1)(b), a deemed increase in an aircraft operator's aviation emissions under article 34(2) must be disregarded.
- (4) This paragraph applies where—
- (a) the regulator becomes aware that an installation's reportable emissions (as determined by the regulator under article 45) in a scheme year exceed the installation's verified reportable emissions for that year; and
  - (b) the operator of the installation failed to surrender allowances equal to the difference—
    - (i) on or before 30th April in the year following the scheme year referred to in subparagraph (a); or
    - (ii) where the end date set out in a surrender notice under paragraph 11 of Schedule 6 or a revocation notice under paragraph 12 of that Schedule falls in the scheme year



referred to in sub-paragraph (a), on or before the date set out in the notice for the surrender of allowances.

(5) In paragraph (4), “verified reportable emissions” means reportable emissions—

- (a) verified in accordance with a condition of a permit included under paragraph 4(2)(b) of Schedule 6 (including for the purpose of complying with the requirements of a surrender notice under paragraph 11, or a revocation notice under paragraph 12, of that Schedule); or
- (b) previously determined by the regulator under article 45.

(6) Where paragraph (4) applies, the operator is liable to the civil penalty referred to in paragraph (10) (and not the excess emissions penalty) in respect of the failure to surrender allowances referred to in paragraph (4)(b).

(7) This paragraph applies where the regulator becomes aware that—

- (a) an aircraft operator's aviation emissions (as determined by the regulator under article 45) in a scheme year exceed the aircraft operator's verified aviation emissions for that year; and
- (b) the aircraft operator failed to surrender allowances equal to the difference on or before 30th April in the year following the scheme year referred to in sub-paragraph (a).

(8) In paragraph (7), “verified aviation emissions” means aviation emissions—

- (a) verified under article 33(1);
- (b) considered verified under article 33(2); or
- (c) previously determined by the regulator under article 45.

(9) Where paragraph (7) applies, the aircraft operator is liable to the civil penalty referred to in paragraph (10) (and not the excess emissions penalty) in respect of the failure to surrender allowances referred to in paragraph (7)(b).

(10) The civil penalty is £20 multiplied by the inflation factor for each allowance that the operator or the aircraft operator failed to surrender.

(11) For the purposes of this article, the inflation factor is  $(CPI_2 - CPI_1) / CPI_1$  or 1, whichever is greater, where—

$CPI_2$  is the consumer prices index for the most recent March for which the consumer prices index is published when the penalty notice is given;

$CPI_1$  is the consumer prices index for March 2021.

(12) In paragraph (11), “consumer prices index” means—

- (a) the all items consumer prices index published by the Statistics Board <sup>M26</sup>, or
- (b) if that index is not published for a month, any substituted index or index figures published for that month by the Statistics Board.

**F115** Art. 52(3)(aa)(ab) inserted (14.4.2022) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2022 \(S.I. 2022/454\)](#), arts. 2, **9(2)**

#### **Commencement Information**

**I53** Art. 52 in force at 12.11.2020, see [art. 2\(1\)](#)

#### **Marginal Citations**

**M26** The Statistics Board was established by section 1 of the [Statistics and Registration Service Act 2007](#) (c. 18).

### **Installations: failure to transfer or surrender allowances where underreporting discovered after transfer**

**53.**—(1) A person is liable to a civil penalty where the person fails—

- (a) to effect a transfer (or to effect a transfer on time) of allowances, contrary to paragraph 10(3) of Schedule 6 (transfer of permits: underreporting discovered after transfer);
- (b) to surrender (or to surrender on time) allowances, contrary to paragraph 10(4) of that Schedule.

(2) The civil penalty is £20 multiplied by the inflation factor for each allowance that the person failed to transfer or surrender.

(3) In this article, “inflation factor” has the meaning given in article 52(11).

#### **Commencement Information**

**I54** Art. 53 in force at 12.11.2020, see [art. 2\(1\)](#)

### **Hospitals and small emitters: exceeding emissions target**

**54.**—(1) Where an installation's reportable emissions in a scheme year for which the installation is a hospital or small emitter exceed the installation's emissions target for that year, contrary to paragraph 19 of Schedule 7, the operator of the installation is liable to a civil penalty.

(2) The civil penalty is  $(RE-ET) \times CP$ , where—

RE is the installation's reportable emissions in the scheme year;

ET is the installation's emissions target for the scheme year;

CP is the carbon price for the scheme year.

(3) For the purposes of article 47(2)(b), this paragraph applies where the regulator considers that the installation's emissions target for the scheme year was incorrectly calculated.

(4) In this article, “emissions target” has the meaning given in paragraph 1 of Schedule 7.

#### **Commencement Information**

**I55** Art. 54 in force at 12.11.2020, see [art. 2\(1\)](#)

### **Hospitals and small emitters: failure to pay civil penalty for exceeding emissions target**

**55.**—(1) Where the operator of an installation fails to pay a civil penalty (the “first penalty”) under article 54 on or before the due date set out in the penalty notice imposing the first penalty, the operator is liable to a further civil penalty.

(2) The further civil penalty is—

(a) 10% of the first penalty; and

(b) a daily penalty at a daily rate of £150 for each day that the operator fails to pay the first penalty beginning with the day on which the initial notice is given, up to a maximum of £13,500.

#### **Commencement Information**

**I56** Art. 55 in force at 12.11.2020, see [art. 2\(1\)](#)

### Hospitals and small emitters: under-reporting of emissions

56.—(1) The operator of an installation is liable to a civil penalty where the installation has unreported emissions in a scheme year for which the installation is a hospital or small emitter, that is to say reportable emissions in the scheme year that—

- (a) are not reported in the emissions report submitted for the scheme year under paragraph 11(2)(b) of Schedule 7; but
  - (b) are determined by the regulator under article 45.
- (2) The civil penalty is £5,000 + (UE x CP), where—
- UE is the unreported emissions in the scheme year (in tonnes of carbon dioxide equivalent);
  - CP is the carbon price for the scheme year.

#### Commencement Information

I57 Art. 56 in force at 12.11.2020, see [art. 2\(1\)](#)

### Hospitals and small emitters: failure to notify when ceasing to meet criteria

57.—(1) This article applies where—

- (a) either—
  - (i) a hospital-qualifying installation ceases to be an installation that primarily provides services to a hospital in a scheme year for which the installation is a hospital or small emitter; or
  - (ii) the reportable emissions of an installation (other than a hospital-qualifying installation) in a scheme year for which the installation is a hospital or small emitter exceed the maximum amount; and
- (b) the operator of the installation fails to comply (or to comply on time) with a requirement to give notice on or before 31st March in the following year (the “default year”) under a condition of a hospital or small emitter permit included under paragraph 11(3)(a) or (4) of Schedule 7.

(2) Where the operator fails to give notice on or before 31st March in the default year, but does give notice on or before 31st October in that year, the operator is liable to a civil penalty of £2,500.

(3) Where the operator fails to give notice on or before 31st October in the default year—

- (a) if there is no penalty year, the operator is liable to a civil penalty of £5,000;
- (b) if there is a penalty year, the operator is liable (after the end of the last penalty year) to a civil penalty of the sum of—
  - (i) £5,000; and
  - (ii) 2 x the avoided compliance costs for each penalty year.

(4) The avoided compliance costs, for each penalty year, are  $[^{F116}((RE - FA) \times CP) - PP]$ , where—

RE is the installation's reportable emissions (determined as if the modification made to Article 38(2) of the Monitoring and Reporting Regulation 2018 by  $[^{F117}$ paragraph 13(4)(a)(i)] of Schedule 7 did not apply) in the penalty year;

$[^{F118}$ FA is—

- (a) where—

- (i) an application in respect of the installation was made under the Free Allocation Regulation for free allocation in the same allocation period as the penalty year is in; and
- (ii) the UK ETS authority informed the regulator under Article 15a(4) of that Regulation that the application was valid,

the number of tonnes of carbon dioxide equivalent represented by the final annual number of allowances that would have been allocated under Part 4A in respect of the installation for the penalty year if the installation had not been a hospital or small emitter for the penalty year, disregarding any adjustment to free allocation that might have been made under the Activity Level Changes Regulation;

- (b) in any other case, zero;]

CP is the carbon price for the penalty year;

PP is, where a penalty notice imposing a civil penalty under article 54 in respect of the penalty year has previously been given to the operator, the amount of the civil penalty.

- (5) In this article—

“hospital-qualifying installation” has the meaning given in paragraph 1 of Schedule 7;

“maximum amount” has the meaning given in that paragraph;

“penalty year” means a scheme year for which the installation—

- (a) is a hospital or small emitter; but
- (b) would not have been a hospital or small emitter if, by reason of the matters referred to in paragraph (1)(a)(i) or (ii), the regulator had, in the default year, given a conversion notice as required by paragraph 23(1) to (3) of Schedule 7 to the operator of the installation.

**F116** Words in art. 57(4) substituted (7.2.2022) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2021 \(S.I. 2021/1455\)](#), arts. 2, **18(2)(a)**

**F117** Words in art. 57(4) substituted (1.1.2023) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) \(No. 2\) Order 2022 \(S.I. 2022/1173\)](#), arts. 2, **9(2)**

**F118** Words in art. 57(4) inserted (7.2.2022) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2021 \(S.I. 2021/1455\)](#), arts. 2, **18(2)(b)**

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**Commencement Information**

**I58** Art. 57 in force at 12.11.2020, see [art. 2\(1\)](#)

**Installations: failure to apply to surrender permit**

**58.** The operator of an installation is liable to a civil penalty of £5,000 where the operator fails to apply (or to apply on time) to surrender a permit, contrary to paragraph 11(1) of Schedule 6.

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**Commencement Information**

**I59** Art. 58 in force at 12.11.2020, see [art. 2\(1\)](#)

**Ultra-small emitters: reportable emissions exceeding maximum amount**

**59.—(1)** Subject to paragraph (3), where an installation's reportable emissions in a scheme year for which the installation is an ultra-small emitter exceed the maximum amount, the operator of the installation is liable to a civil penalty.

- (2) The civil penalty is  $(RE - \text{maximum amount}) \times CP$ , where—  
RE is the installation's reportable emissions in the scheme year;  
CP is the carbon price for the scheme year.
- (3) A civil penalty under this article may be imposed only in respect of—
  - (a) the first scheme year in an allocation period in which the installation's reportable emissions exceed the maximum amount; and
  - (b) if the following scheme year is in the same allocation period, that scheme year.
- (4) In this article, “maximum amount” has the meaning given in paragraph 1 of Schedule 8.

#### Commencement Information

**I60** Art. 59 in force at 12.11.2020, see [art. 2\(1\)](#)

#### Ultra-small emitters: failure to notify where reportable emissions exceed maximum amount

- 60.**—(1) Where—
- (a) an installation's reportable emissions in a scheme year (the “excess year”) for which the installation is an ultra-small emitter exceed the maximum amount; and
  - (b) the operator of the installation fails to give notice to the regulator under paragraph 6 of Schedule 8 on or before 31st March in the following year (the “default year”) or at all,
- the operator is liable to a civil penalty.
- (2) The civil penalty is the sum of—
    - (a) £2,500; and
    - (b)  $[^{F119}CA + ((RE - FA) \times CP)]$  for each scheme year (or part of a scheme year) falling within the penalty period (if any), where—

CA is an estimate of the costs avoided by the operator in the scheme year (or part of the scheme year) as a result of carrying out a regulated activity without the authorisation of the relevant permit;

RE is an estimate of the installation's reportable emissions in the scheme year (or part of the scheme year) during which a regulated activity that was not authorised by a permit was carried out;

$[^{F120}FA$  is—

      - (a) where—
        - (i) an application in respect of the installation was made under the Free Allocation Regulation for free allocation in the same allocation period as the penalty year is in;
        - (ii) the UK ETS authority informed the regulator under Article 15a(4) of that Regulation that the application was valid; and
        - (iii) paragraph 7(5) of Schedule 8 does not apply (ultra-small emitter becoming hospital or small emitter),

the number of tonnes of carbon dioxide equivalent represented by the final annual number of allowances that would have been allocated under Part 4A in respect of the installation for the scheme year (or part of the scheme year) if the installation had not been included in the ultra-small emitter list for 2021-2025 or, as the case may be, the ultra-small emitter

list for 2026-2030, disregarding any adjustment to free allocation that might have been made under the Activity Level Changes Regulation;

the number of tonnes of carbon dioxide equivalent represented by the final annual number of allowances that would have been allocated under Part 4A in respect of the installation for the scheme year (or part of the scheme year) if the installation had not been included in the ultra-small emitter list for 2021-2025 or, as the case may be, the ultra-small emitter list for 2026-2030, disregarding any adjustment to free allocation that might have been made under the Activity Level Changes Regulation;

(b) in any other case, zero;]

CP is the carbon price for the scheme year.

[<sup>F121</sup>(2A) For the purpose of determining the value of FA under paragraph (2)(b) in a case where part of a scheme year falls within the penalty period, the final annual number of allowances that would have been allocated under Part 4A in respect of the installation for that part of the scheme year is the final annual number of allowances that would have been allocated in respect of an installation for the scheme year multiplied by D/Y, where—

D is the number of days in the scheme year in the penalty period;

Y is the number of days in the scheme year.]

(3) The penalty period is the period—

(a) beginning on 1st January in the year following the default year; and

(b) ending on the earlier of the following—

(i) the day before the day on which a permit for the installation comes into force; and

(ii) the last day of the same allocation period as the excess year is in.

(4) But there is no penalty period if—

(a) 1st January in the year following the default year is not in the same allocation period as the excess year; or

(b) a permit for the installation is in force on that date.

(5) When setting the amount of the civil penalty to be imposed, the regulator may increase the amount calculated under paragraph (2)(b) by a factor designed to ensure that the amount of the civil penalty exceeds the value of any economic benefit that the operator has obtained as a result of carrying out a regulated activity that was not authorised by the relevant permit.

(6) The regulator must—

(a) estimate CA and RE under paragraph (2); and

(b) exercise the regulator's functions under paragraph (5),

in accordance with a direction given by the relevant national authority under section 52 of CCA 2008.

(7) In this article—

“maximum amount” has the meaning given in paragraph 1 of Schedule 8;

“relevant permit” means—

(a) where a hospital or small emitter permit for the installation comes into force before the last day of the same allocation period as the excess year is in, a hospital or small emitter permit;

(b) in any other case, a greenhouse gas emissions permit.

- F119** Words in art. 60(2)(b) substituted (7.2.2022) by The Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021 (S.I. 2021/1455), arts. 2, **19(2)(a)**
- F120** Words in art. 60(2)(b) inserted (7.2.2022) by The Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021 (S.I. 2021/1455), arts. 2, **19(2)(b)**
- F121** Art. 60(2A) inserted (7.2.2022) by The Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021 (S.I. 2021/1455), arts. 2, **19(3)**

**Commencement Information**

- I61** Art. 60 in force at 12.11.2020, see **art. 2(1)**

**Aviation: failure to apply or make revised application for emissions monitoring plan**

- 61.**—(1) An aircraft operator is liable to a civil penalty where the aircraft operator fails—
- (a) to apply (or to apply on time) to the regulator for an emissions monitoring plan, contrary to article 28; or
  - (b) to make a revised application (or to make a revised application on time) for an emissions monitoring plan, where required to do so under article 30(3).
- (2) The civil penalty is—
- (a) £20,000; and
  - (b) a daily penalty at a daily rate of £500 for each day that the application is not submitted or, as the case may be, the revised application is not submitted, beginning with the day on which the initial notice is given, up to a maximum of £45,000.

**Commencement Information**

- I62** Art. 61 in force at 12.11.2020, see **art. 2(1)**

**Aviation: failure to comply with condition of emissions monitoring plan**

- 62.**—(1) An aircraft operator is liable to a civil penalty where the aircraft operator fails to comply (or to comply on time) with a condition of an emissions monitoring plan, contrary to article 32(2).
- (2) The civil penalty is—
- (a) £20,000; and
  - (b) a daily penalty at a daily rate of £500 for each day that the person fails to comply with the condition, beginning with the day on which the initial notice is given, up to a maximum of £45,000.

**Commencement Information**

- I63** Art. 62 in force at 12.11.2020, see **art. 2(1)**

**Aviation: failure to monitor aviation emissions**

- 63.**—(1) An aircraft operator is liable to a civil penalty where the aircraft operator fails to monitor aviation emissions in accordance with article 32(1).
- (2) The civil penalty is—
- (a) £20,000; and

- (b) a daily penalty at a daily rate of £500 for each day that the person fails to monitor aviation emissions in accordance with article 32(1), beginning with the day on which the initial notice is given, up to a maximum of £45,000.

**Commencement Information**

**I64** Art. 63 in force at 12.11.2020, see [art. 2\(1\)](#)

**Aviation: failure to report aviation emissions**

**64.**—(1) An aircraft operator is liable to a civil penalty where the aircraft operator fails to submit (or to submit on time) a verified report of aviation emissions to the regulator, contrary to article 33(1).

(2) The civil penalty is—

- (a) £20,000; and  
 (b) a daily penalty at a daily rate of £500 for each day that the report is not submitted, beginning with the day on which the initial notice is given, up to a maximum of £45,000.

**Commencement Information**

**I65** Art. 64 in force at 12.11.2020, see [art. 2\(1\)](#)

**[<sup>F122</sup>Failure to comply with notice to return allowances**

**64A.**—(1) A person is liable to a civil penalty where the person fails to comply (or to comply on time) with the requirements of a notice (the “notice to return allowances”) given under article 34V.

(2) The civil penalty is—

- (a) £20,000; and  
 (b) a daily penalty at a daily rate of £1,000 for each day that the person fails to comply with the requirements of the notice to return allowances, beginning with the day on which the initial notice is given.]

**F122** [Art. 64A](#) inserted (14.4.2022) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2022 \(S.I. 2022/454\)](#), arts. 2, **10**

**Failure to comply with enforcement notice <sup>F123</sup>.....**

**65.**—(1) A person is liable to a civil penalty where the person fails to comply (or to comply on time) with the requirements of an enforcement notice given <sup>F124</sup>... under article 44.

(2) The civil penalty is—

- (a) £20,000; and  
 (b) a daily penalty at a daily rate of £1,000 for each day that the person fails to comply with the requirements of the notice, beginning with the day on which the initial notice is given, up to a maximum of £45,000.

**F123** Words in art. 65 heading omitted (14.4.2022) by virtue of [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2022 \(S.I. 2022/454\)](#), arts. 2, **11(2)**, 14



**F124** Words in art. 65(1) omitted (14.4.2022) by virtue of [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2022 \(S.I. 2022/454\)](#), arts. 2, **11(3)**, 14

**Commencement Information**

**I66** Art. 65 in force at 12.11.2020, see [art. 2\(1\)](#)

**Failure to comply with information notice**

**66.**—(1) A person is liable to a civil penalty where the person fails to comply (or to comply on time) with the requirements of a notice (the “information notice”) given under article 75.

(2) The civil penalty is—

- (a) £5,000; and
- (b) a daily penalty at a daily rate of £500 for each day that the person fails to comply with the requirements of the information notice, beginning with the day on which the initial notice is given, up to a maximum of £45,000.

**Commencement Information**

**I67** Art. 66 in force at 12.11.2020, see [art. 2\(1\)](#)

**Providing false or misleading information, etc.**

**67.** A person is liable to a civil penalty of £50,000 where the person provides false or misleading information, or makes a statement that is false or misleading in a material respect, where the information is provided, or the statement is made—

- (a) in an application under this Order;
- (b) in compliance with a notice given to the person under this Order;
- (c) in a notice that the person is required to give under this Order;
- (d) in compliance with a condition of a permit or an emissions monitoring plan;
- (e) in a report of aviation emissions under article 33.

**Commencement Information**

**I68** Art. 67 in force at 12.11.2020, see [art. 2\(1\)](#)

**Inspection: refusal to allow access to premises**

**68.** A person in control of premises is liable to a civil penalty of £50,000 where the person does not allow the regulator or authorised person (within the meaning of Part 6) access to the premises contrary to article 39(3).

**Commencement Information**

**I69** Art. 68 in force at 12.11.2020, see [art. 2\(1\)](#)

## PART 8

### Appeals

#### Interpretation

69. In this Part—

“appeal body” has the meaning given in article 71;

“decision” includes a deemed refusal under this Order;

“notice” includes—

- (a) in the case of a notice determining an application for a permit or the transfer of a permit, the provisions of any permit attached to the notice; and
- (b) in the case of a notice determining an application for an emissions monitoring plan, the conditions included in the plan issued by the notice.

#### Commencement Information

I70 Art. 69 in force at 12.11.2020, see [art. 2\(1\)](#)

#### Right of appeal

70.—(1) Subject to paragraph (3), the following may appeal to the appeal body—

(a) a person who is aggrieved by a decision of the regulator [<sup>F125</sup>or the registry administrator] determining an application made by the person under this Order;

[<sup>F126</sup>(b) a person who is aggrieved by a notice given—

(i) to the person under a provision referred to in paragraph (2);

(ii) to the registry administrator—

(aa) under article 34U in respect of the transfer of allowances from the person's operator holding account or aircraft operator holding account;

(bb) under article 34W(1) in respect of the withholding of allowances that would otherwise have been allocated in respect of an installation of which the person is the operator under article 34E or to the person under article 34O.]

(2) Those provisions are—

(a) article 30(1) (refusal of application for an emissions monitoring plan);

(b) article 31(4), (5) or (6) (variation of an emissions monitoring plan);

[<sup>F127</sup>(ba) article 34H(4) (notice of regulator's estimate of value of parameter);

(bb) article 34V (return of allowances: notice to operator, etc.);]

(c) [<sup>F128</sup>article 44(1) or (2A)] (enforcement notices);

(d) article 45(5) (determination of reportable emissions by regulator);

(e) article 47(3) or (7) (penalty notices);

(f) article 75(1) (information notices);

(g) paragraph 1(12) of Schedule 3 (application to be treated as being withdrawn);

[<sup>F129</sup>(ga) paragraph 11(5) of Schedule 5A (notice suspending operator holding account);

(gb) paragraph 12(4) of Schedule 5A (notice suspending operator holding account on transfer);

- (gc) paragraph 13(4) of Schedule 5A (notice suspending aircraft operator holding account);
- (gd) paragraph 14(4)(b) of Schedule 5A (notice refusing to open trading account);
- (ge) paragraph 16(7)(b) of Schedule 5A (notice refusing to appoint authorised representative);
- (gf) paragraph 17(4)(b) of Schedule 5A (notice refusing to change account permission);
- (gg) paragraph 18(2) of Schedule 5A (notice suspending access to registry of authorised representative);
- (gh) paragraph 19(2) of Schedule 5A (notice removing authorised representative);
- (gi) paragraph 25(3) of Schedule 5A (notice suspending account);
- (gj) paragraph 29(4) of Schedule 5A (notice closing trading account);]
- (h) paragraph 6(4) or (5) of Schedule 6 (variation of permits);
- (i) paragraph 10(2) of Schedule 6 (transfer of permits: underreporting discovered after transfer);
- (j) paragraph 12(4) of Schedule 6 (revocation of permits);
- (k) paragraph 23(1) or (2) of Schedule 7 (conversion notices);
- (l) paragraph 7(2) of Schedule 8 (end of ultra-small emitter status);
- (m) paragraph 1(3)(b) or (4)(b) of Schedule 11 (permits under GGETSR 2012).
- [<sup>F130</sup>(n) Article 8(6)(b) of the Free Allocation Regulation (notice rejecting monitoring methodology plan);
- (o) Article 3(5) of the Activity Level Changes Regulation (notice of regulator's estimate of value of parameter in activity level report).]
- [<sup>F131</sup>(p) Article 12(4)(b) of the Monitoring and Reporting Regulation 2018 (notice rejecting monitoring plan).]
- (3) An appeal under paragraph (1) may not be made to the extent that the decision implements—
  - (a) a direction given under—
    - (i) section 40 of the Environment Act 1995 <sup>M27</sup>;
    - (ii) section 52 of CCA 2008;
    - (iii) article 11 of the Natural Resources Body for Wales (Establishment) Order 2012 <sup>M28</sup>;
    - (iv) regulation 40 of the Pollution Prevention and Control (Industrial Emissions) Regulations (Northern Ireland) 2013 <sup>M29</sup>;
  - (b) a direction given by an appeal body under this Order.
- [<sup>F132</sup>(4) To avoid doubt, no appeal may be brought under paragraph (1)(a) in respect of—
  - (a) a calculation of the regulator under article 34M(1)(b) or 34Q(5)(b);
  - (b) a preliminary assessment of the regulator under paragraph 5(3) of Schedule 7 or paragraph 3(3) of Schedule 8.]

**F125** Words in art. 70(1)(a) inserted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), arts. 2(1), **27(2)(a)**

**F126** Art. 70(1)(b) substituted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), arts. 2(1), **27(2)(b)**

**F127** Art. 70(2)(ba)(bb) inserted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), arts. 2(1), **27(3)(a)**

**F128** Words in art. 70(2)(c) substituted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), arts. 2(1), **27(3)(b)**

- F129** Art. 70(2)(ga)-(gj) inserted (31.12.2020) by The Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020 (S.I. 2020/1557), arts. 2(1), **27(3)(c)**
- F130** Art. 70(2)(n)(o) inserted (31.12.2020) by The Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020 (S.I. 2020/1557), arts. 2(1), **27(3)(d)**
- F131** Art. 70(2)(p) inserted (7.2.2022) by The Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021 (S.I. 2021/1455), arts. 2, **20(2)**
- F132** Art. 70(4) substituted (31.12.2020) by The Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020 (S.I. 2020/1557), arts. 2(1), **27(4)**

#### Commencement Information

- I71** Art. 70 in force at 12.11.2020, see art. 2(1)

#### Marginal Citations

- M27** Section 40 was amended by S.I. 2011/1043 and 2013/755 and amended prospectively by S.I. 2019/458 with effect from IP completion day.
- M28** S.I. 2012/1903 (W. 230).
- M29** S.R. (NI) 2013 No. 160.

### Appeal body

- 71.**—(1) In an appeal against a decision of SEPA, the appeal body is the Scottish Land Court <sup>M30</sup>.
- (2) In an appeal against a decision of the chief inspector, the appeal body is the Planning Appeals Commission <sup>M31</sup>.
- (3) In an appeal against any other decision, the appeal body is the First-tier Tribunal <sup>M32</sup>.
- [<sup>F133</sup>(4) For the purposes of determining the appeal body to which an appeal against a decision or notice of the registry administrator must be made, the decision or notice must be treated as the decision or notice of the person (or if more than one, any one of them) exercising the functions of the registry administrator in accordance with article 8A(2) to make the decision or give the notice, as set out in the decision or notice.]

- F133** Art. 71(4) inserted (31.12.2020) by The Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020 (S.I. 2020/1557), arts. 2(1), **28(2)**

#### Commencement Information

- I72** Art. 71 in force at 12.11.2020, see art. 2(1)

#### Marginal Citations

- M30** The Scottish Land Court was established by section 3 of the Small Landholders (Scotland) Act 1911 (c. 49) and continued in being under section 1 of the Scottish Land Court Act 1993 (c. 45).
- M31** The Planning Appeals Commission was continued by section 203(1) of the Planning Act (Northern Ireland) 2011 (c. 25).
- M32** The First-tier Tribunal was established by section 3(1) of the Tribunals, Courts and Enforcement Act 2007 (c. 15).

### Effect of appeals

- 72.**—(1) Subject to [<sup>F134</sup>paragraphs (2) to (6)], the bringing of an appeal under article 70 (right of appeal) suspends the effect of the decision or notice pending the final determination or withdrawal of the appeal.
- (2) The bringing of an appeal does not suspend the effect of—

- (a) a decision refusing an application;
  - (b) a deemed refusal;
  - (c) a notice under—
    - (i) article 31(4), (5) or (6) (variation of an emissions monitoring plan);
    - [<sup>F135</sup>(ia) article 34W(1) (notice to withhold allowances);]
    - (ii) [<sup>F136</sup>article 44(1) or (2A)] (enforcement notices);
    - [<sup>F137</sup>(ia) paragraph 11(5) of Schedule 5A (notice suspending operator holding account);
    - (ib) paragraph 12(4) of Schedule 5A (notice suspending operator holding account on transfer);
    - (ic) paragraph 13(4) of Schedule 5A (notice suspending aircraft operator holding account);
    - (id) paragraph 14(4)(b) of Schedule 5A (notice refusing to open trading account);
    - (ie) paragraph 16(7)(b) of Schedule 5A (notice refusing to appoint authorised representative);
    - (if) paragraph 17(4)(b) of Schedule 5A (notice refusing to change account permission);
    - (ig) paragraph 18(2) of Schedule 5A (notice suspending access to registry of authorised representative);
    - (ih) paragraph 19(2) of Schedule 5A (notice removing authorised representative);
    - (ii) paragraph 25(3) of Schedule 5A (notice suspending account);
    - (ij) paragraph 29(4) of Schedule 5A (notice closing trading account);]
    - (iii) paragraph 6(4) or (5) of Schedule 6 (variation of permits);
    - (iv) paragraph 23(1) or (2) of Schedule 7 (end of hospital or small emitter status);
    - (v) paragraph 7(2) of Schedule 8 (end of ultra-small emitter status).
    - [<sup>F138</sup>(vi) Article 8(6)(b) of the Free Allocation Regulation (notice rejecting monitoring methodology plan).]
    - [<sup>F139</sup>(vii) Article 12(4)(b) of the Monitoring and Reporting Regulation 2018 (notice rejecting monitoring plan).]
- (3) Where a permit has been granted or varied (following an application for a permit or for the transfer of a permit), the bringing of an appeal against the provisions of the permit or the terms of the variation does not suspend the effect of those provisions or terms.
- (4) Where an emissions monitoring plan has been issued following an application under article 28(1), the bringing of an appeal against the conditions included in the plan does not suspend the effect of those conditions.
- (5) The bringing of an appeal against a determination of reportable emissions or aviation emissions under article 45(5) suspends the effect of the decision only for the purpose of assessing whether there has been compliance with article 27 or 34 (surrender of allowances).
- [<sup>F140</sup>(6) The bringing of an appeal against a notice under article 34U (return of allowances: notice to registry administrator) does not affect the registry administrator's power under paragraph (3)(b) of that article (power to suspend transfers from account).]

**F134** Words in art. 72(1) substituted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), arts. 2(1), **29(2)**

**F135** Art. 72(2)(c)(ia) inserted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), arts. 2(1), **29(3)(a)**

- F136** Words in art. 72(2)(c)(ii) substituted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), arts. 2(1), **29(3)(b)**
- F137** Art. 72(2)(c)(ia)-(iij) inserted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), arts. 2(1), **29(3)(c)**
- F138** Art. 72(2)(c)(vi) inserted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), arts. 2(1), **29(3)(d)**
- F139** Art. 72(2)(c)(vii) inserted (7.2.2022) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2021 \(S.I. 2021/1455\)](#), arts. 2, **21(2)**
- F140** Art. 72(6) inserted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), arts. 2(1), **29(4)**

#### Commencement Information

- I73** Art. 72 in force at 12.11.2020, see [art. 2\(1\)](#)

### Determination of appeals

**73.**—(1) In determining an appeal under article 70, the appeal body may—

- (a) affirm the decision;
- (b) quash the decision or vary any of its terms;
- (c) substitute a deemed refusal with a decision of the appeal body;
- (d) give directions as to the exercise of the regulator's [<sup>F141</sup>or the registry administrator's] functions under this Order.

(2) The appeal body may not make a determination that would result in a decision which could not otherwise have been made under this Order.

- F141** Words in art. 73(1)(d) inserted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), arts. 2(1), **30(2)**

#### Commencement Information

- I74** Art. 73 in force at 12.11.2020, see [art. 2\(1\)](#)

### Procedure for appeals

**74.**—(1) Schedule 9 (which makes provision in relation to appeals to the Scottish Land Court) has effect.

(2) Schedule 10 (which makes provision in relation to appeals to the Planning Appeals Commission) has effect.

#### Commencement Information

- I75** Art. 74 in force at 12.11.2020, see [art. 2\(1\)](#)

## PART 9

### Miscellaneous

#### Information notices

**75.**—(1) The UK ETS authority, a national authority [<sup>F142</sup>, a regulator or the registry administrator] may, by giving a notice (an “information notice”) to a person, require the person to provide information for purposes connected with the exercise of functions under—

- (a) this Order;
- (b) the Monitoring and Reporting Regulation 2018;
- (c) the Verification Regulation 2018.

[<sup>F143</sup>(d) the Free Allocation Regulation;

- (e) the Activity Level Changes Regulation.]

(2) The information notice must set out—

- (a) the information to be provided;
- (b) the form in which the information must be provided;
- (c) the period within which or the time when the information must be provided;
- (d) the place where the information must be provided.

(3) The information that a person may be required to provide includes information that, although it is not in the person's possession or it would not otherwise come into the person's possession, is information that it is reasonable to require the person to obtain or compile for the purpose of complying with the information notice.

**F142** Words in art. 75(1) substituted (14.4.2022) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2022 \(S.I. 2022/454\)](#), arts. 2, **12(2)(a)**, 14

**F143** Art. 75(1)(d)(e) inserted (14.4.2022) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2022 \(S.I. 2022/454\)](#), arts. 2, **12(2)(b)**, 14

#### Commencement Information

**I76** Art. 75 in force at 12.11.2020, see [art. 2\(1\)](#)

#### [<sup>F144</sup>National authority may require regulator, etc. to provide information

**75A.**—(1) The UK ETS authority or the relevant national authority may, by notice to a regulator or the registry administrator, require the regulator or registry administrator to provide any information that the UK ETS authority or relevant national authority considers necessary or expedient for the exercise of the authority's functions.

(2) The regulator or the registry administrator must comply with a notice under paragraph (1) so far as reasonably practicable.

**F144** Arts. 75A-75C inserted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), arts. 2(1), **32**

#### Restriction on disclosing information

**75B.**—(1) This article applies to the following persons—

- (a) the UK ETS authority;
- (b) a national authority;
- (c) a regulator;
- (d) the registry administrator.

(2) A person to whom this article applies must not disclose information held or obtained under UK ETS legislation to another person.

(3) But paragraph (2) does not apply to the disclosure of information by the person in any of the following circumstances—

- (a) if the disclosure is required by law;
- (b) if the disclosure is necessary or expedient—
  - (i) for the exercise of the person's functions under UK ETS legislation;
  - (ii) for the purpose of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties;
  - (iii) in the case of a disclosure by a national authority—
    - (aa) for the purpose of monitoring and evaluating the effectiveness of the UK ETS;
    - (bb) for the purpose of preparing and publishing national energy and emissions statistics or the national inventory referred to in Article 4(1)(a) of the United Nations Framework Convention on Climate Change;
  - (iv) in the case of a disclosure by the Environment Agency, for the exercise of the Environment Agency's functions under the Emissions Performance Standard Regulations 2015;
  - (v) in the case of a disclosure by the chief inspector, for the exercise of the chief inspector's functions under the Emissions Performance Standard Monitoring and Enforcement Regulations (Northern Ireland) 2016;
  - (vi) in the case of a disclosure by NRW, for the exercise of NRW's functions under the Emissions Performance Standard (Enforcement) (Wales) Regulations 2015;
- (c) if the disclosure is made with the consent of the person from or on behalf of whom the information was obtained;
- (d) if the disclosure is to another person to whom this article applies;

[ in the case of a disclosure by the UK ETS authority, if the disclosure is permitted under <sup>F145</sup>(e) article 75BA (power to publish UK ETS information).]

(4) In this article, “UK ETS legislation” means any of the following—

- (a) this Order;
- (b) the Monitoring and Reporting Regulation 2018;
- (c) the Verification Regulation 2018;
- (d) the Free Allocation Regulation;
- (e) the Activity Level Changes Regulation.

**F144** Arts. 75A-75C inserted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), arts. 2(1), **32**

**F145** Art. 75B(3)(e) inserted (1.1.2023) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) \(No. 2\) Order 2022 \(S.I. 2022/1173\)](#), arts. 2, **10(2)**



### **[<sup>F146</sup>Power to publish UK ETS information**

**75BA.**—(1) The UK ETS authority may publish information held or obtained under UK ETS legislation—

- (a) to ensure the effective operation of the UK ETS;
- (b) to inform the public about the operation of the UK ETS.

(2) But the UK ETS authority may not publish information under paragraph (1) that the UK ETS authority considers may be commercially sensitive unless the UK ETS authority considers that the publication of the information is proportionate to what is sought to be achieved by it.

(3) In this article, “UK ETS legislation” has the meaning given in article 75B(4).]

**F146** Art. 75BA inserted (1.1.2023) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) \(No. 2\) Order 2022 \(S.I. 2022/1173\)](#), arts. 2, 11

### **National security**

**75C.**—(1) The UK ETS authority may not publish any information under article 34D (allocation tables: publication, etc.) or 34N (aviation allocation table) [<sup>F147</sup>, paragraph 31 of Schedule 5A (information about accounts) or paragraph 22A of Schedule 7 (publication of emissions targets and reportable emissions)] if the publication of the information would be contrary to the interests of national security.

(2) The regulator may not publish any information under article 49 (publication of names of persons subject to civil penalty under article 52) if the publication of the information would be contrary to the interests of national security.

(3) The UK ETS authority and the regulator must exercise functions under this article, and the registry administrator must exercise functions under a relevant provision, in accordance with a direction given by the Secretary of State under section 52 of CCA 2008 as to what is or is not contrary to the interests of national security.

(4) Except where the regulator is the Secretary of State, the regulator must notify the Secretary of State of any information excluded from publication under paragraph (2).

(5) The registry administrator must notify the Secretary of State of any matter excluded from a notice under a relevant provision on the grounds that its inclusion in the notice would be contrary to the interests of national security.

(6) In this article, “relevant provision” means any of the following provisions of Schedule 5A—

- (a) paragraph 11(6) (operator holding accounts);
- (b) paragraph 12(5) (transfer of operator holding accounts);
- (c) paragraph 13(5) (aircraft operator holding accounts);
- (d) paragraph 14(5) (trading accounts);
- (e) paragraph 16(8) (appointment of authorised representatives);
- (f) paragraph 17(5) (change in account permission of authorised representatives);
- (g) paragraph 18(3) (suspension of access to registry of authorised representatives);
- (h) paragraph 19(3) (removal of authorised representatives);
- (i) paragraph 25(4) (suspension of accounts);
- (j) paragraph 29(5) (closure of trading accounts).]

**F144** Arts. 75A-75C inserted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), arts. 2(1), **32**

**F147** Words in art. 75C(1) inserted (1.1.2023) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) \(No. 2\) Order 2022 \(S.I. 2022/1173\)](#), arts. 2, **12(2)**

### **Crown application**

**76.**—(1) This Order applies to the Crown.

(2) Articles 39 and 40 and Part 2 of Schedule 3 make specific provision relevant to their application to the Crown.

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### **Commencement Information**

**I77** Art. 76 in force at 12.11.2020, see art. 2(1)

### **Transitional provisions**

**77.**—(1) Schedule 11 (which makes transitional provision for installations) has effect.

(2) An application for a GGETSR emissions plan under regulation 32A of GGETSR 2012 that has not been determined under GGETSR 2012 may be treated by the regulator as an application made under article 28.

(3) An application for the variation of a GGETSR emissions plan that has not been determined under GGETSR 2012 may be treated by the regulator as an application made under article 31.

[<sup>F148</sup>(4) The Monitoring and Reporting Regulation 2018 and the Verification Regulation 2018 are to be read as if references, however expressed, to a report submitted or information obtained under Commission Implementing Regulation 2018/2067 in relation to a year or other period before 2021 were to a report submitted or other information obtained under that Regulation as it had effect in EU law or under the Verification Regulation 2012.

(5) A person referred to in paragraph (6) may—

- (a) use information held or obtained for the purposes of the EU ETS in the exercise of the person's functions under UK ETS legislation;
- (b) disclose such information in the exercise of the person's functions under UK ETS legislation—
  - (i) to another person referred to in paragraph (6);
  - (ii) to any other person, if the disclosure is necessary or expedient for the exercise of the person's functions under UK ETS legislation.

(6) The persons are—

- (a) the Secretary of State;
- (b) the Environment Agency;
- (c) the chief inspector;
- (d) SEPA;
- (e) NRW.

(7) In this article, “UK ETS legislation” means any of the following—

- (a) this Order;
- (b) the Monitoring and Reporting Regulation 2018;

- (c) the Verification Regulation 2018;
- (d) the Free Allocation Regulation;
- (e) the Activity Level Changes Regulation.]

**F148** Art. 77(4)-(7) inserted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), arts. 2(1), **33(2)**

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**Commencement Information**

**I78** Art. 77 in force at 12.11.2020, see art. 2(1)

*Richard Tilbrook*  
Clerk of the Privy Council

**Changes to legislation:**

There are currently no known outstanding effects for the The Greenhouse Gas Emissions Trading Scheme Order 2020.