

STATUTORY INSTRUMENTS

2020 No. 1557

The Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020

PART 2

Greenhouse Gas Emissions Trading Scheme Order 2020 amended

Greenhouse Gas Emissions Trading Scheme Order 2020 amended

4. The Greenhouse Gas Emissions Trading Scheme Order 2020 ^{M1} is amended in accordance with this Part.

Commencement Information

II Art. 4 in force at 31.12.2020, see [art. 2\(1\)](#)

Marginal Citations

M1 [S.I. 2020/1265](#).

Article 4 amended (interpretation)

5.—(1) Article 4 is amended as follows.

(2) In paragraph (1)—

- (a) after the definition of “2026-2030 allocation period” insert—
““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;”;
- (b) after the definition of “aircraft operator” insert—
““aircraft operator holding account” means an aircraft operator holding account opened under paragraph 13(3) of Schedule 5A;”;
- (c) after the definition of “allocation period” insert—
““allocation table” means an allocation table for the 2021-2025 allocation period or the 2026-2030 allocation period referred to in article 34A;”;
- (d) after the definition of “aviation activity” insert—
““aviation allocation table” means the aviation allocation table for the 2021-2025 allocation period referred to in article 34N;”;
- (e) after the definition of “CCA 2008” insert—
““central account” has the meaning given in paragraph 9(2) of Schedule 5A;”;
- (f) after the definition of “excluded flights” insert—

“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.”;

- (g) after the definition of “flight” insert—
 “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.”;
- (h) in the definition of “Monitoring and Reporting Regulation 2018” after “of the Council” insert “ (disregarding any amendments adopted after 11th November 2020) and, except in article 24 and Schedule 4, it means that Regulation ”;
- (i) after the definition of “operator” insert—
 “operator holding account” means an operator holding account for an installation opened under paragraph 11(4) or 12(3) of Schedule 5A.”;
- (j) in the definition of “permit” after “Schedule 7)” insert “ and, in the case of a greenhouse gas emissions permit, any monitoring methodology plan (see paragraph 4(1)(hb) and (7) of Schedule 6) ”;
- (k) after the definition of “permit” insert—
 “registry” has the meaning given in paragraph 5(1) of Schedule 5A;
 “registry administrator” has the meaning given in article 8A.”;
- (l) in the definition of “surrender” for “in such a way that the allowance ceases to be available for any other purpose” substitute “ in accordance with article 27 or 34 ”;
- (m) in the definition of “Verification Regulation 2018” after “of the Council” insert “ (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 ”;
- (n) after the definition of “Verification Regulation 2018” insert—
 “verification report” has the same meaning as in the Verification Regulation 2018.”.

Commencement Information

I2 Art. 5 in force at 31.12.2020, see [art. 2\(1\)](#)

Article 4A inserted

6. After article 4 insert—

“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.);
 - (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.);
 - (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.”.

Commencement Information

I3 Art. 6 in force at 31.12.2020, see [art. 2\(1\)](#)

Article 8A inserted

7. After article 8 insert—

“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 ^{M2};
- (c) NRW ^{M3};
- (d) the Secretary of State; and
- (e) SEPA ^{M4}.

(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.”.

Commencement Information

I4 Art. 7 in force at 31.12.2020, see [art. 2\(1\)](#)

Marginal Citations

M2 The Environment Agency was established by section 1 of the [Environment Act 1995 \(c. 25\)](#).

M3 “NRW” is defined in article 4(1) of [S.I. 2020/1265](#) as the “Natural Resources Body for Wales”, which was established by article 3 of [S.I. 2012/1903](#) (W.230).

M4 “SEPA” is defined in article 4(1) of [S.I. 2020/1265](#) as the “Scottish Environment Protection Agency”, which was established by section 20 of the Environment Act 1995.

Article 9 amended (meaning of regulator)

8.—(1) Article 9 is amended as follows.

(2) After paragraph (2) insert—

“(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.”.

Commencement Information

I5 Art. 8 in force at 31.12.2020, see [art. 2\(1\)](#)

Article 14 amended (meaning of UK ETS authority, etc.)

9.—(1) Article 14 is amended as follows.

(2) After paragraph (4) insert—

“(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.”.

Commencement Information

I6 Art. 9 in force at 31.12.2020, see [art. 2\(1\)](#)

Article 18 amended (allowances)

10.—(1) Article 18 is amended as follows.

(2) In paragraph (1) for “direct that allowances be created” substitute “create allowances in the registry”.

(3) After paragraph (2) insert—

“(3) Allowances may be held only in accounts in the registry.”.

Commencement Information

I7 Art. 10 in force at 31.12.2020, see [art. 2\(1\)](#)

Article 20 amended (cap for scheme years)

11.—(1) Article 20 is amended as follows.

(2) For paragraph (1) substitute—

- “(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).”.

Commencement Information

I8 Art. 11 in force at 31.12.2020, see [art. 2\(1\)](#)

Article 21 amended (cap: hospital and small emitter reduction factors)

12.—(1) Article 21 is amended as follows.

(2) In paragraph (4)—

- (a) in sub-paragraph (a) after “verified” insert “ as satisfactory ”;
- (b) after sub-paragraph (a) insert—
 - “(aa) determined under regulation 44 of GGETSR 2012 or article 45 of this Order;”.

Commencement Information

I9 Art. 12 in force at 31.12.2020, see [art. 2\(1\)](#)

Article 24 amended (monitoring and reporting of emissions)

13.—(1) Article 24 is amended as follows.

(2) For “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” substitute “ The Monitoring and Reporting Regulation 2018 ”.

Commencement Information

I10 Art. 13 in force at 31.12.2020, see [art. 2\(1\)](#)

Article 25 substituted

14. For article 25 substitute—

“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).”.

Commencement Information

I11 Art. 14 in force at 31.12.2020, see [art. 2\(1\)](#)

Chapter 4 of Part 2 inserted

15. After article 25 insert—

“CHAPTER 4

Registry

Registry

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

Commencement Information

I12 Art. 15 in force at 31.12.2020, see [art. 2\(1\)](#)

Article 27A inserted

16. After article 27 insert—

“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.”.

Commencement Information

I13 Art. 16 in force at 31.12.2020, see [art. 2\(1\)](#)

Article 33 amended (reporting aviation emissions)

17.—(1) Article 33 is amended as follows.

(2) In paragraph (1) after “verified” insert “ as satisfactory ”.

(3) In paragraph (2) for “verified in accordance” substitute “ verified as satisfactory in accordance ”.

(4) In paragraph (3) after “under paragraph (1)” insert “ (and the verification report) ”.

Commencement Information

I14 Art. 17 in force at 31.12.2020, see [art. 2\(1\)](#)

Part 4A inserted

18. After Part 4 insert—

“PART 4A

Free Allocation

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, that number must be 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.

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.).

(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.)

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).

(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 under Article 17(1) of the Free Allocation Regulation or Article 3a(2) of the Activity Level Changes Regulation, in chronological order of the date (and, where relevant, time) 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.

Installations: errors in applications for free allocation, etc.

34H.—(1) This article applies where the regulator considers that, as a result of a relevant error—

- (a) 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
- (b) 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.

(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 activity level 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 that, as a result of the relevant error, 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 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, 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.

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 the person's 2010 to 2014 growth in Annex 1 activities and the person's threshold figure.

(2) In this article, a person's—

“2010 to 2014 growth in Annex 1 activities” means the difference between the number of tonne-kilometres of Annex 1 activities performed by the person in 2010 and the number of tonne-kilometres of Annex 1 activities performed by the person in 2014;

“2010 to 2014 growth in aviation activity” means—

- (a) if the number of tonne-kilometres of aviation activity performed by the person in 2014 is greater than the number of tonne-kilometres of aviation activity performed by the person in 2010, the difference;
- (b) if the number of tonne-kilometres of aviation activity performed by the person in 2014 is less than or equal to the number of tonne-kilometres of aviation activity performed by the person in 2010, zero;

“aviation activity ratio” means the person's 2010 to 2014 growth in aviation activity divided by the person's 2010 to 2014 growth in Annex 1 activities;

“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.

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; and
- (b) in relation to which the person is an aircraft operator,

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

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 subparagraph (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 ^{M5};
 - (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 subparagraph (a) confirming that the data was not altered before the free allocation was calculated.
- (6) An application under this article must be submitted to the regulator on or before 31st March 2021.

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
 - (b) a calculation of the applicant's aviation free allocation entitlement for each scheme year in the 2021-2025 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; 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.
- (7) The UK ETS authority must—
- (a) approve the applicant's aviation free allocation entitlement, making any corrections to the calculation referred to in paragraph (1)(b) that the UK ETS authority considers appropriate;
 - (b) inform the regulator accordingly.

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.

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

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.—(1) This article applies where the regulator considers that, but for a relevant error, the number of allowances set out in the aviation allocation table as a person's aviation free allocation entitlement for a scheme year would be materially greater or materially less.

(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 but for the relevant error, 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 greater or materially less, 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).

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).

(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).

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) either—
 - (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; or
 - (ii) the person was not an aircraft operator in relation to 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); or
- (b) are allocated for a scheme year in relation to which the person is not an aircraft operator.

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;
 - (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 paragraph (1)(a) to (g) 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.”.

Commencement Information

I15 Art. 18 in force at 31.12.2020, see [art. 2\(1\)](#)

Marginal Citations

M5 OJ No L 229, 31.8.2007, p. 1; this act was repealed by the Monitoring and Reporting Regulation 2012 (Article 76) so has no effect in relation to monitoring and reporting for years from 2013 onwards but

the version as last amended by Commission Decision 2009/339/EC was applicable in relation to the submission of tonne-kilometre data from 2010.

Article 35 amended (charges)

- 19.**—(1) Article 35 is amended as follows.
- (2) In paragraph (1) after “regulator” in both places insert “ or the registry administrator ”.
- (3) In paragraph (2) after sub-paragraph (h) insert—
- “(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.”.
- (4) In paragraph (4) after “regulator” insert “ or the registry administrator ”.
- (5) In paragraph (5) after “regulator” in both places insert “ or, as the case may be, the registry administrator ”.
- (6) In paragraph (6) after “regulator” insert “ or the registry administrator ”.
- (7) In paragraph (7) after “regulator” insert “ or the registry administrator ”.
- (8) In paragraph (8) for “The regulator is not” substitute “ Neither the regulator nor the registry administrator is ”.
- (9) After paragraph (8) insert—
- “(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.”.

Commencement Information

I16 Art. 19 in force at 31.12.2020, see [art. 2\(1\)](#)

Article 36 substituted and article 36A inserted

- 20.** For article 36 substitute—

“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.

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.”.

Commencement Information

I17 Art. 20 in force at 31.12.2020, see [art. 2\(1\)](#)

Article 37 substituted

21. For article 37 substitute—

“Remittance of charges

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.”.

Commencement Information

I18 Art. 21 in force at 31.12.2020, see [art. 2\(1\)](#)

Article 39 amended (inspections)

22.—(1) Article 39 is amended as follows.

(2) In paragraph (1) after “this Order” insert “, the Monitoring and Reporting Regulation 2018, the Verification Regulation 2018, the Free Allocation Regulation or the Activity Level Changes Regulation”.

Commencement Information

I19 Art. 22 in force at 31.12.2020, see [art. 2\(1\)](#)

Article 40 amended (powers of entry, etc.)

23.—(1) Article 40 is amended as follows.

(2) In paragraph (1)(d)(i) after “this Order” insert “, the Monitoring and Reporting Regulation 2018, the Verification Regulation 2018, the Free Allocation Regulation or the Activity Level Changes Regulation”.

(3) In paragraph (2) after “this Order” insert “, the Monitoring and Reporting Regulation 2018, the Verification Regulation 2018, the Free Allocation Regulation or the Activity Level Changes Regulation”.

Commencement Information

I20 Art. 23 in force at 31.12.2020, see [art. 2\(1\)](#)

Article 44 amended (enforcement notices)

F124.

Textual Amendments

F1 [Art. 24](#) omitted (14.4.2022) by virtue of [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2022 \(S.I. 2022/454\)](#), arts. 2, **14(2)**

Commencement Information

I21 Art. 24 in force at 31.12.2020, see [art. 2\(1\)](#)

Article 49 amended (regulator must publish names of persons subject to civil penalty under article 52)

25.—(1) Article 49 is amended as follows.

(2) After paragraph (2) insert—

“(3) This article is subject to article 75C (national security).”.

Commencement Information

I22 Art. 25 in force at 31.12.2020, see [art. 2\(1\)](#)

Article 65 amended (failure to comply with enforcement notice)

^{F2}**26.**

Textual Amendments

F2 Art. 26 omitted (14.4.2022) by virtue of [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2022 \(S.I. 2022/454\)](#), arts. 2, **14(2)**

Commencement Information

I23 Art. 26 in force at 31.12.2020, see [art. 2\(1\)](#)

Article 70 amended (right of appeal)

27.—(1) Article 70 is amended as follows.

(2) In paragraph (1)—

(a) in sub-paragraph (a) after “regulator” insert “ or the registry administrator ”;

(b) for sub-paragraph (b) substitute—

“(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.”.

(3) In paragraph (2)—

(a) after sub-paragraph (b) insert—

“(ba) article 34H(4) (notice of regulator's estimate of value of parameter);

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

(b) in sub-paragraph (c) for “article 44(1)” substitute “ article 44(1) or (2A) ”;

(c) after sub-paragraph (g) insert—

“(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);”;
- (d) after sub-paragraph (m) insert—
 - “(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).”.
- (4) For paragraph (4) substitute—
 - “(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.”.

Commencement Information

I24 Art. 27 in force at 31.12.2020, see [art. 2\(1\)](#)

Article 71 amended (appeal body)

28.—(1) Article 71 is amended as follows.

(2) After paragraph (3) insert—

“(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.”.

Commencement Information

I25 Art. 28 in force at 31.12.2020, see [art. 2\(1\)](#)

Article 72 amended (effect of appeals)

29.—(1) Article 72 is amended as follows.

(2) In paragraph (1) for “paragraphs (2) to (4)” substitute “ paragraphs (2) to (6) ”.

(3) In paragraph (2)(c)—

(a) after paragraph (i) insert—

“(ia) article 34W(1) (notice to withhold allowances);”;

- (b) in paragraph (ii) for “article 44(1)” substitute “ article 44(1) or (2A) ”;
- (c) after paragraph (ii) insert—
 - “(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);”;
- (d) after paragraph (v) insert—
 - “(vi) Article 8(6)(b) of the Free Allocation Regulation (notice rejecting monitoring methodology plan).”.
- (4) After paragraph (5) insert—
 - “(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).”.

Commencement Information

I26 Art. 29 in force at 31.12.2020, see [art. 2\(1\)](#)

Article 73 amended (determination of appeals)

30.—(1) Article 73 is amended as follows.

(2) In paragraph (1)(d) after “regulator’s” insert “or the registry administrator’s”.

Commencement Information

I27 Art. 30 in force at 31.12.2020, see [art. 2\(1\)](#)

Article 75 amended (information notices)

F31.

Textual Amendments

F3 [Art. 31](#) omitted (14.4.2022) by virtue of [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2022 \(S.I. 2022/454\)](#), arts. 2, **14(2)**

Commencement Information

I28 Art. 31 in force at 31.12.2020, see [art. 2\(1\)](#)

Articles 75A to 75C inserted

32. After article 75 insert—

“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.

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 ^{M6};
 - (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 ^{M7};
 - (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 ^{M8};

- (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^{M9};
 - (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.
- (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.

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) 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).”.

Commencement Information

I29 Art. 32 in force at 31.12.2020, see [art. 2\(1\)](#)

Marginal Citations

M6 Cm 2833. The Convention entered into force on 21st March 1994.

M7 [S.I. 2015/933](#), amended by [S.I. 2016/1108](#).

M8 [S.R. 2016 No. 28](#), amended by [S.R. 2018 No. 200](#).

M9 [S.I. 2015/1388](#) (W. 137).

Article 77 amended (transitional provisions)

33.—(1) Article 77 is amended as follows.

(2) After paragraph (3) insert—

“(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.”.

Commencement Information

I30 Art. 33 in force at 31.12.2020, see [art. 2\(1\)](#)

Schedule 3 amended (applications, notices, etc.)

34.—(1) Schedule 3 is amended as follows.

Paragraph 1 amended (submission of applications, notices, etc. to regulators)

(2) In paragraph 1—

(a) after sub-paragraph (1)(a) insert—

“(aa) the Monitoring and Reporting Regulation 2018;

(ab) the Verification Regulation 2018;

(ac) the Free Allocation Regulation;

(ad) the Activity Level Changes Regulation;”;

(b) in sub-paragraph (5) after “previous application made to the regulator” insert “ (including an application under GGETSR 2012) ”;

(c) in sub-paragraph (11) for “as the regulator may require” substitute “ as may be required ”.

Paragraph 2 amended (determination of applications by regulators)

(3) In paragraph 2(5), before sub-paragraph (a) insert—

“(za) article 34L (application for aviation free allocation entitlement);

(zb) article 34Q (application for transfer of aviation free allocation entitlement);”.

Heading to Part 2 amended

(4) In the heading to Part 2 for “or UK ETS authority” substitute “ , UK ETS authority or registry administrator ”.

Paragraph 3 amended (service of notices, etc.)

(5) In paragraph 3—

(a) after sub-paragraph (1)(c) insert—

“(d) the registry administrator.”;

(b) in sub-paragraph (3)(b) after “service of notices or directions” insert “ (including an address provided under GGETSR 2012) ”;

(c) after sub-paragraph (3) insert—

“(3A) A notice may be given by the registry administrator to a person who holds an account—

(a) in any of the ways set out in paragraph (3);

(b) by sending it by electronic means in the registry.”;

(d) after sub-paragraph (6) insert—

“(7) In this paragraph and paragraph 4, 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.”.

Commencement Information

I31 Art. 34 in force at 31.12.2020, see [art. 2\(1\)](#)

Schedule 4 amended (modifications to Monitoring and Reporting Regulation 2018)

35.—(1) Schedule 4 is amended as follows.

(2) In the heading for “Commission Regulation (EU) 2018/2066” substitute “ Monitoring and Reporting Regulation 2018 ”.

(3) In paragraph 1—

(a) for “Commission Implementing Regulation (EU) 2018/2066” substitute “ The Monitoring and Reporting Regulation 2018 ”;

(b) after paragraph (a) insert—

“(aa) for “greenhouse gas emissions permit” in each place there were substituted “ permit ”;”.

(4) For paragraph 4(e) substitute—

“(e) after point (5), there were inserted—

“(5a) ‘Implementing Regulation (EU) 2018/2067’ or ‘Commission Implementing Regulation (EU) 2018/2067’ means the Verification Regulation 2018 (as defined in the 2020 Order);

(5b) ‘monitoring plan’ in relation to an aircraft operator, except in Articles 11 to 13 of this Regulation, means the aircraft operator's emissions monitoring plan as defined in article 4 of the 2020 Order;”;

(5) In paragraph 11 before sub-paragraph (a) insert—

“(za) for paragraph 1 there were substituted—

“1. The operator or aircraft operator must notify the regulator of:

(a) any significant modification (within the meaning of paragraph 3) of the monitoring plan at least 14 days before making the modification or, where this is not possible, as soon as reasonably practicable; and

(b) any other modification of the monitoring plan on or before 31 December in the year in which the modification is made.”;

(6) After paragraph 31 insert—

“31A. Article 72(1) is to be read as if for the first subparagraph there were substituted—

“Total annual emissions of each of the greenhouse gases CO₂, N₂O and PFCs shall be reported as rounded tonnes of CO₂ or CO_{2(e)}. The total annual emissions of the installation shall be calculated as the sum of these three rounded values.”;

(7) Omit paragraph 33(c).

(8) After paragraph 38(a) insert—

“(aa) in section 8, in subsection B, in calculation method B (overvoltage method) for “FC_{2F6}” in both places there were substituted “ F_{C2F6} ”;”.

Commencement Information

I32 Art. 35 in force at 31.12.2020, see [art. 2\(1\)](#)

Schedule 5 substituted

36. For Schedule 5 substitute—

“SCHEDULE 5

Article 25

Modifications to Verification Regulation 2018

1. The Verification Regulation 2018 is to be read as if—
 - (a) for “.../...” in each place there were substituted “ 2019/331 ”;
 - (b) for “competent authority” in each place there were substituted “ regulator ”;
 - (c) Articles 56, 65 to 68, 74, 75, 78 and 79 were omitted;
 - (d) the words “This Regulation shall be binding in its entirety and directly applicable in all Member States”, immediately following Article 79, were omitted,and subject to the following additional modifications.
2. Article 1 is to be read as if—
 - (a) in the first subparagraph for “Directive [2003/87/EC](#)” there were substituted “ the 2020 Order, Delegated Regulation (EU) 2019/331 or Implementing Regulation (EU) 2019/1842 ”;
 - (b) the second subparagraph were omitted.
3. Article 2 is to be read as if for “2019, reported pursuant to Article 14 of Directive [2003/87/EC](#)” there were substituted “ 2021, reported pursuant to the 2020 Order and permits issued in accordance with it ”.
4. Article 3 is to be read as if—
 - (a) for the words before point (1) there were substituted—

“In this Regulation, references to Implementing Regulation (EU) 2018/2066 are to that Regulation as modified by the Greenhouse Gas Emissions Trading Scheme Order 2020 (“the modified MRR”) and expressions used in both the modified MRR and this Regulation have the same meaning in this Regulation as they do in the modified MRR; in addition the following definitions apply for the purposes of this Regulation.”;
 - (b) in point (2)—
 - (i) for “a national” there were substituted “ the national ”;
 - (ii) for “harmonised standards, within the meaning of point 9 of Article 2 of Regulation (EC) No [765/2008](#),” there were substituted “ EN ISO 14065:2013 ^{M10} ”;
 - (c) in point (3)—
 - (i) for “a national” there were substituted “ the national ”;
 - (ii) the words “or a natural person otherwise authorised, without prejudice to Article 5(2) of that Regulation,” were omitted;
 - (d) after point (3) there were inserted—

“(3a) ‘national accreditation body’ means the national accreditation body of the United Kingdom appointed in accordance with Article 4(1) of Regulation (EC) [765/2008](#)^{M11}.”;
 - (e) after point (4) there were inserted—

“(4a) ‘Delegated Regulation (EU) 2019/331’ means the Free Allocation Regulation (as defined in the 2020 Order);

(4b) ‘Implementing Regulation (EU) 2019/1842’ means the Activity Level Changes Regulation (as defined in the 2020 Order);”;

(f) after point (6) there were inserted—

“(6a) ‘annual activity level report’ means a report submitted by an operator pursuant to Article 3(3) of Implementing Regulation (EU) 2019/1842;”;

(g) for point (7) there were substituted—

“(7) ‘operator's or aircraft operator's report’ means the annual emission report to be submitted by the operator or aircraft operator pursuant to a permit issued in accordance with Schedule 6 or 7 to the 2020 Order or pursuant to article 33 of the 2020 Order, the baseline data report submitted by the operator pursuant to Article 4(2) of Delegated Regulation (EU) 2019/331, the new entrant data report submitted by the operator pursuant to Article 5(5) of that Regulation or the annual activity level report;”;

(h) in point (13)—

(i) in paragraph (a) “greenhouse gas emissions” were omitted;

(ii) for paragraph (c) there were substituted—

“(c) for the purposes of verifying the baseline data report submitted by the operator pursuant to Article 4(2)(a) of Delegated Regulation (EU) 2019/331, the new entrant data report submitted by the operator pursuant to Article 5(5) of that Regulation or the annual activity level report, any act or omission of an act by the operator that is contrary to the requirements in the monitoring methodology plan;”;

(i) in points (22) and (23) for “EU” in each place there were substituted “ UK ”;

(j) in point (22) for “an” in the first place it occurs there were substituted “ a ”;

(k) in point (26) for “a” in the second place it occurs there were substituted “ the ”;

(l) after point (27) there were inserted—

“(27a) ‘monitoring methodology plan’ has the same meaning as in Delegated Regulation (EU) 2019/331;”;

(m) after point (28) there were inserted—

“(28a) ‘baseline period’ has the same meaning as in Delegated Regulation (EU) 2019/331;”;

(n) after point (29) there were inserted—

“(30) ‘activity level reporting period’ means the applicable period preceding the submission of the annual activity level report pursuant to Article 3(1) of Implementing Regulation (EU) 2019/1842.”.

5. Article 4 is to be read as if—

(a) for the words from “the relevant harmonised standards” to “*European Union*” there were substituted “ EN ISO 14065:2013 ”;

(b) for “the applicable harmonised standards” there were substituted “ those standards ”.

6. Article 5 is to be read as if for “bodies” there were substituted “ body ”.

7. Article 6 is to be read as if for “or new entrant data report” there were substituted “ , new entrant data report or annual activity level report ”.
8. Article 7 is to be read as if—
- (a) in paragraph 3 for “competent authorities responsible for Directive [2003/87/EC](#)” there were substituted “ regulator ”;
 - (b) in paragraph 4—
 - (i) in point (a) for the words from “or in Annex IV” to the end there were substituted “ , in Annex IV to Delegated Regulation (EU) 2019/331 or in Article 3(2) of Implementing Regulation (EU) 2019/1842, as appropriate; ”;
 - (ii) in point (b) “greenhouse gas emissions” were omitted;
 - (iii) in point (c) for “or new entrant data report” there were substituted “ , new entrant data report or annual activity level report ”;
 - (c) in paragraph 5 for the words from “or with” to “that irregularity” there were substituted “ , Delegated Regulation (EU) 2019/331 or Implementing Regulation (EU) 2019/1842, that irregularity ”;
 - (d) in paragraph 6 for the second subparagraph there were substituted—

“If the monitoring methodology plan has not been approved by the regulator pursuant to Article 8 of Delegated Regulation (EU) 2019/331 or is incomplete, or if significant modifications referred to in Article 9(5) of that Regulation have been made which have not been approved by the regulator, the verifier must advise the operator to obtain the necessary approval from the regulator.”.
9. Article 10(1) is to be read as if—
- (a) in point (a) “greenhouse gas emissions” were omitted;
 - (b) in point (h) for “or new entrant data report” there were substituted “ , new entrant data report or annual activity level report ”;
 - (c) in point (i) for the words from “and annual” to the end there were substituted “ under Directive [2003/87/EC](#) and any previous allocation periods under the UK ETS, together with annual activity level reports of the previous years submitted to the competent authority for the purposes of Implementing Regulation (EU) 2019/1842 ”;
 - (d) after point (k) there were inserted—

“(ka) if the monitoring methodology plan was modified, a record of all modifications in accordance with Article 9 of Delegated Regulation (EU) 2019/331;”;
 - (e) in point (l) for “report referred to in Article 69(4)” there were substituted “ reports referred to in Article 69(1) and (4) ”;
 - (f) after point (l) there were inserted—

“(la) where applicable, information on how the operator has corrected nonconformities or addressed recommendations of improvements that were reported in the verification report concerning an annual activity level report from the previous year or a relevant baseline data report;”;
 - (g) in point (n) after “methodology plan” there were inserted “ as well as corrections of reported data ”;
 - (h) in point (p)—

- (i) for “Directive [2009/31/EC](#)” there were substituted “ the CCS licensing regime ”;
 - (ii) for “required by that Directive and the reports required by Article 14 of that Directive” there were substituted “ and reports required by that regime ”.
- 10.** Article 11(4) is to be read as if—
- (a) in point (b) the words from “or” to the end were omitted;
 - (b) after point (b) there were inserted—
 - “(ba) whether there have been any modifications to the monitoring methodology plan during the baseline period or the activity level reporting period, as appropriate;”;
 - (c) in point (c) for the words from “notified” to the end there were substituted “ notified to and, if required, approved by the regulator pursuant to Part 4 of or Schedule 6 to the 2020 Order ”;
 - (d) in point (d) for the words from “point (b)” to the end there were substituted “ point (ba) have been notified to and, if required, approved by the regulator pursuant to Schedule 6 to the 2020 Order ”.
- 11.** Article 13(1)(c) is to be read as if for “or new entrant data report” there were substituted “ , new entrant data report or annual activity level report ”.
- 12.** Article 16(2) is to be read as if—
- (a) in point (b) for “or new entrant data report” there were substituted “ , new entrant data report or annual activity level report ”;
 - (b) in point (c) for “or new entrant data report” there were substituted “ , new entrant data report or annual activity level report ”;
 - (c) in point (d) “listed in Annex I to Directive [2003/87/EC](#)” were omitted;
 - (d) after point (f) there were inserted—
 - “(fa) for the purposes of verifying an annual activity level report, the accuracy of the parameters listed in Article 16(5), 19, 20, 21 or 22 of Delegated Regulation (EU) 2019/331 as well as data required under paragraphs 1, 2 and 4 of Article 6 of Implementing Regulation (EU) 2019/1842;”.
- 13.** Article 17 is to be read as if—
- (a) in paragraph 3—
 - (i) in the words before point (a) for “or new entrant data report” there were substituted “ , new entrant data report or annual activity level report ”;
 - (ii) in point (d) for “delegated acts adopted pursuant to Article 10b(5) of Directive [2003/87/EC](#)” there were substituted “ Commission Delegated Decision (EU) 2019/708 ”;
 - (iii) at the end there were inserted—
 - “(e) whether the energy consumption has been correctly attributed to each sub-installation where applicable;
 - (f) whether the value of the parameters listed in Articles 16(5), 19, 20, 21 or 22 of Delegated Regulation (EU) 2019/331 is based on a correct application of that Regulation;

- (g) for the purposes of verifying an annual activity level report and a new entrant data report, the date of start of normal operation as referred to in Article 5(5) of Delegated Regulation (EU) 2019/331;
 - (h) for the purposes of verifying an annual activity level report whether the parameters listed in points 2.3 to 2.7 of Annex IV to Delegated Regulation (EU) 2019/331, as appropriate to the installation, have been monitored and reported in the correct way in accordance with the monitoring methodology plan.”;
- (b) in paragraph 4 after “is not counted” there were inserted “ as emitted ”;
 - (c) paragraph 5 were omitted.
- 14.** Article 18 is to be read as if for paragraph 3 there were substituted—
- “**3.** Where data gaps in baseline data reports, new entrant data reports or annual activity level reports have occurred, the verifier shall check whether methods are laid down in the monitoring methodology plan to deal with data gaps pursuant to Article 12 of Delegated Regulation (EU) 2019/331, whether those methods were appropriate for the specific situation and whether they have been applied correctly.
- Where no applicable data gap method is laid down in the monitoring methodology plan, the verifier shall check whether the approach used by the operator to compensate for the missing data is based on reasonable evidence and ensures that the data required by Annex IV to Delegated Regulation (EU) 2019/331 or Article 3(2) of Implementing Regulation (EU) 2019/1842 are not underestimated or overestimated.”.
- 15.** Article 21 is to be read as if—
- (a) in paragraph 4 for “or new entrant data report” there were substituted “ , new entrant data report or annual activity level report ”;
 - (b) in paragraph 5 for “or new entrant data report” there were substituted “ , new entrant data report or annual activity level report ”.
- 16.** Article 22 is to be read as if—
- (a) in paragraph 1—
 - (i) in the first subparagraph for the words from “or Delegated” to “as appropriate” there were substituted “ , Delegated Regulation (EU) 2019/331 or Implementing Regulation (EU) 2019/1842 as appropriate ”;
 - (ii) in the third subparagraph for the words from “or Delegated” to “has been identified” there were substituted “ , Delegated Regulation (EU) 2019/331 or Implementing Regulation (EU) 2019/1842 has been identified ”;
 - (b) in paragraph 2 for the words from “or Delegated” to “that have” there were substituted “ , Delegated Regulation (EU) 2019/331 or Implementing Regulation (EU) 2019/1842 that have ”;
 - (c) in paragraph 3 in the fourth subparagraph for the words from “or Delegated” to “in accordance” there were substituted “ , Delegated Regulation (EU) 2019/331 or Implementing Regulation (EU) 2019/1842 in accordance ”.
- 17.** Article 23(4) is to be read as if in the words before point (a) for “or new entrant data reports” there were substituted “ , new entrant data reports or annual activity level reports ”.
- 18.** Article 27 is to be read as if—

- (a) in paragraph 1 in the words before point (a) for “or new entrant data report” there were substituted “ , new entrant data report or annual activity level report ”;
- (b) in paragraph 3—
 - (i) for point (f) there were substituted—
 - “(f) in the case of verification of a baseline data report or new entrant data report, unless the monitoring methodology plan has already been approved by the regulator, the verifier’s confirmation that the monitoring methodology plan, so far as it is used as a basis for the report, is compliant with Delegated Regulation (EU) 2019/331;”;
 - (ii) in point (g) for “per activity referred to in Annex 1 to Directive [2003/87/EC](#) and per installation or aircraft operator” there were substituted “ per regulated activity and per installation or per aviation activity and per aircraft operator ”;
 - (iii) after point (h) there were inserted—
 - “(ha) where it concerns the verification of the annual activity level report, aggregated annual verified data for each year in the activity level reporting period for each sub-installation for its annual activity level;”;
 - (iv) in point (i) for “or baseline period” there were substituted “ , baseline period or activity level reporting period ”;
 - (v) for point (o) there were substituted—
 - “(o) any issues of non-compliance with Implementing Regulation (EU) 2018/2066, Delegated Regulation (EU) 2019/331 or Implementing Regulation (EU) 2019/1842 which have become apparent during the verification;”;
 - (vi) point (r) were omitted;
 - (vii) after point (s) there were inserted—
 - “(sa) where the verifier has observed relevant changes to the parameters listed in Article 16(5), 19, 20, 21 or 22 of Delegated Regulation (EU) 2019/331 or changes in the energy efficiency pursuant to paragraphs 1, 2 and 3 of Article 6 of Implementing Regulation 2019/1842, a description of those changes and related remarks;
 - (sb) where applicable, confirmation that the date of start of normal operation as referred to in Article 5(5) of Delegated Regulation (EU) 2019/331 has been checked;”;
 - (viii) in point (t) for “EU” in both places there were substituted “ UK ”;
- (c) in paragraph 4—
 - (i) in the words before point (a), for “or Delegated” to “in sufficient detail” there were substituted “ , Delegated Regulation (EU) 2019/331 or Implementing Regulation (EU) 2019/1842 in sufficient detail ”;
 - (ii) for point (a) there were substituted—
 - “(a) the size and nature of the misstatement, non-conformity or non-compliance with Implementing Regulation (EU) 2018/2066, Delegated Regulation (EU) 2019/331 or Implementing Regulation (EU) 2019/1842;”;

(iii) for point (d) there were substituted—

“(d) to which Article in Implementing Regulation (EU) 2018/2066, Delegated Regulation (EU) 2019/331 or Implementing Regulation (EU) 2019/1842 the non-compliance relates.”;

(d) paragraph 5 were omitted.

19. Article 28 is to be read as if point (e) were omitted.

20. Article 29 is to be read as if after paragraph 1 there were inserted—

“**1A.** For the purposes of the verification of the annual activity level report, the verifier shall assess whether the operator has corrected the non-conformities indicated in the verification report related to the corresponding baseline data report, the new entrant data report or the annual activity level report from the previous activity level reporting period.

If the operator has not corrected those non-conformities, the verifier shall consider whether the omission increases or may increase the risk of misstatements.

The verifier shall report in the verification report whether those non-conformities have been resolved by the operator.”.

21. Article 30(1)(e) is to be read as if for “and new entrant reports” there were substituted “, new entrant data reports and annual activity level reports ”.

22. Article 31 is to be read as if—

(a) in paragraph 1—

(i) for “a” in the first place it occurs there were substituted “ the ”;

(ii) in point (c) after “paragraph 3” there were inserted “, read with paragraph 3b, ”;

(b) in paragraph 3—

(i) in point (a) after “emission report” there were inserted “ or annual activity level report ”;

(ii) in point (b) at the beginning there were inserted “for the purposes of verifying the operator's emission report,”;

(iii) after point (b) there were inserted—

“(ba) for the purposes of verifying the operator's annual activity level report, if a verifier has not carried out a site visit during the verification of an annual activity level report or a baseline data report in the two activity level reporting periods immediately preceding the current activity level reporting period;”;

(iv) after point (c) there were inserted—

“(ca) if, during the activity level reporting period, there have been significant changes to the installation or its sub-installations which require significant modifications to the monitoring methodology plan, including those changes referred to in Article 9(5) of Delegated Regulation (EU) 2019/331;”;

(c) after paragraph 3 there were inserted—

3A. The reference in point (b) of paragraph 3 to reporting periods immediately preceding the current reporting period includes reporting periods for the purposes of Directive 2003/87/EC.

3B. In respect of installations within Article 32(5), points (b) and (ba) of paragraph 3 apply as if, in each of those points, for “two” there were substituted “four”.”;

(d) for paragraph 4 there were substituted—

“4. Points (c) and (ca) of paragraph 3 are not applicable where, during the reporting period, there have been only modifications of the default value as referred to in Article 15(3)(h) of Implementing Regulation (EU) 2018/2066 or Article 9(5)(c) of Delegated Regulation (EU) 2019/331.”.

23. Article 32 is to be read as if—

- (a) in point (1) after “verification” there were inserted “ of an operator's emission report ”;
- (b) in point (2) after “verification” there were inserted “ of an operator's emission report ”;
- (c) in point (3) after “verification” there were inserted “ of an operator's emission report ”;
- (d) after point (3) there were inserted—

“(3a) the verification of an operator's annual activity level report concerns a category A installation referred to in Article 19(2)(a) of Implementing Regulation (EU) 2018/2066, a category B installation referred to in Article 19(2)(b) of that Implementing Regulation or an installation with low emissions as referred to in Article 47(2) of that Implementing Regulation and:

- (a) that installation's only sub-installation is one to which a product benchmark pursuant to Article 10(2) of Delegated Regulation (EU) 2019/331 is applicable; and
- (b) the production data relevant for the product benchmark has been evaluated as part of an audit for financial accounting purposes and the operator provides evidence of that;

(3b) the verification of an operator's annual activity level report concerns a category A installation referred to in Article 19(2)(a) of Implementing Regulation (EU) 2018/2066, a category B installation referred to in Article 19(2)(b) of that Implementing Regulation or an installation with low emissions as referred to in Article 47(2) of that Implementing Regulation and:

- (a) the installation has no more than two sub-installations;
- (b) if the installation has two sub-installations, one contributes less than 5% to the installation's total final allocation of allowances; and
- (c) the verifier has sufficient data available to assess the split of sub-installations if relevant;

(3c) the verification of an operator's annual activity level report concerns a category A installation referred to in Article 19(2)(a) of Implementing Regulation (EU) 2018/2066, a category B installation referred to in Article 19(2)(b) of that Implementing Regulation or an installation with low emissions as referred to in Article 47(2) of that Implementing Regulation and:

- (a) the installation has only heat benchmark or district heating sub-installations; and
 - (b) the verifier has sufficient data available to assess the split of sub-installations if relevant;”;
 - (e) in point (4)—
 - (i) in the words before point (a) after “verification” there were inserted “ of the operator's emission report or annual activity level report ”;
 - (ii) in paragraph (c) after “2018/2066” there were inserted “ or Article 11 of Delegated Regulation (EU) 2019/331 ”;
 - (f) in point (5)—
 - (i) in the words before point (a) after “verification” there were inserted “ of the operator's emission report or annual activity level report ”;
 - (ii) in paragraph (b) after “2018/2066” there were inserted “ or Article 11 of Delegated Regulation (EU) 2019/331 ”;
 - (g) at the end there were inserted—

“Point (3b) may not be applied if the sub-installation contributing 95% or more to the installation's total final allocation of allowances is a sub-installation to which a product benchmark pursuant to Article 10(2) of Delegated Regulation (EU) 2019/331 is applicable, unless the production data relevant for the product benchmark has been evaluated as part of an audit for financial accounting purposes and the operator provides evidence of that.”.
24. The Verification Regulation 2018 is to be read as if after Article 34 there were inserted—

“Article 34a

Virtual site visits because of force majeure

Where serious, extraordinary and unforeseeable circumstances, outside the control of the operator or aircraft operator, prevent the verifier from carrying out a physical site visit in accordance with Article 21(1) and where these circumstances cannot, after using all reasonable efforts, be overcome, the verifier may decide, subject to the approval of the regulator in accordance with the second and third subparagraph of this Article, to carry out a virtual site visit. The verifier shall take measures to reduce the verification risk to an acceptable level and carry out a physical visit to the site of the installation or aircraft operator without undue delay. The decision to carry out a virtual site visit shall be based on the outcome of the risk analysis and after determining that the conditions for carrying out a virtual site visit are met. The verifier shall inform the operator or aircraft operator thereof without undue delay.

The operator or the aircraft operator shall submit an application to the regulator requesting the regulator to approve the verifier's decision to carry out a virtual site visit.

On an application submitted by the operator or aircraft operator concerned, the regulator shall decide whether to approve the verifier's decision to carry out a virtual site visit, taking into consideration all of the following elements:

- (a) evidence that it is not possible to carry out a physical site visit because of the force majeure circumstances;
 - (b) the information provided by the verifier on the outcome of the risk analysis;
 - (c) information on how the virtual site visit will be carried out;
 - (d) evidence that measures are taken to reduce the verification risk to an acceptable level.”.
- 25.** Article 36 is to be read as if—
- (a) in paragraphs 2(b) and 6 for “EU” in each place there were substituted “ UK ”;
 - (b) in paragraph 6 for “an” there were substituted “ a ”.
- 26.** Article 37 is to be read as if—
- (a) in paragraph 2 for “an” there were substituted “ a ”;
 - (b) in paragraphs 2 and 6 for “EU” in each place there were substituted “ UK ”;
 - (c) in paragraph 5—
 - (i) in the first subparagraph the second sentence were omitted;
 - (ii) in the second subparagraph for “and new entrant data reports” there were substituted “ , new entrant data reports or annual activity level reports ”.
- 27.** Article 38 is to be read as if—
- (a) for “EU ETS” in each place (including the heading) there were substituted “ UK ETS ”;
 - (b) in paragraph 1 in the words before point (a), for “An” there were substituted “ A ”;
 - (c) for paragraph 1(a) there were substituted—
 - “(a) knowledge of the 2020 Order, Implementing Regulation (EU) 2018/2066, Delegated Regulation (EU) 2019/331 and Implementing Regulation (EU) 2019/1842 in the case of verification of the baseline data report, new entrant data report or annual activity level report, this Regulation, relevant standards, and other relevant legislation and applicable guidelines;”;
 - (d) in paragraph 2—
 - (i) for “An” there were substituted “ A ”;
 - (ii) for “an” there were substituted “ a ”.
- 28.** Article 39(2) is to be read as if for “an EU” there were substituted “ a UK ”.
- 29.** Article 40 is to be read as if for “EU” in each place there were substituted “ UK ”.
- 30.** Article 41 is to be read as if “harmonised” were omitted in both places.
- 31.** Article 42 is to be read as if “harmonised” were omitted in both places.
- 32.** Article 43 is to be read as if—
- (a) in paragraph 1 at the end there were inserted “or under the trading scheme established by the 2020 Order”;
 - (b) in paragraphs 2, 5 and 6 “harmonised” were omitted in each place;
 - (c) after paragraph 6 there were inserted—
 - “**6A.** When verifying the same operator or aircraft operator as in the previous year, the verifier shall consider the risk to impartiality and take measures to reduce the risk to impartiality.”;

- (d) in paragraph 7 for “EU” in both places there were substituted “ UK ”;
- (e) at the end there were inserted—
 - “8. If the UK ETS lead auditor undertakes verifications of emissions or allocation data for an installation in respect of five consecutive years beginning with 2021 or a subsequent year, then the UK ETS lead auditor may not undertake such verifications for that installation in respect of any of the next three years.”.
- 33. Article 45 is to be read as if, in the words before point (a), for “each” there were substituted “ the ”.
- 34. Article 46(1) is to be read as if “harmonised” were omitted.
- 35. Article 47 is to be read as if—
 - (a) in paragraph 1 for “each” there were substituted “ the ”;
 - (b) in paragraph 2 “harmonised” were omitted.
- 36. Article 48 is to be read as if in each of paragraphs 1 and 2 “harmonised” were omitted.
- 37. Article 49 is to be read as if “harmonised” were omitted in both places.
- 38. Article 50 is to be read as if—
 - (a) in paragraph 3 “harmonised” were omitted;
 - (b) paragraph 5 were omitted.
- 39. Article 51(2) is to be read as if “harmonised” were omitted.
- 40. Article 52(2) is to be read as if “harmonised” were omitted.
- 41. Article 54(4) is to be read as if for “Member States” there were substituted “ The national accreditation body ”.
- 42. Article 55 is to be read as if—
 - (a) in paragraph 1 for the words from “national accreditation bodies” to the end there were substituted “ national accreditation body ”;
 - (b) paragraphs 2 to 5 were omitted;
 - (c) in paragraph 6 “harmonised” were omitted.
- 43. Article 57(4) is to be read as if “harmonised” were omitted.
- 44. Article 59(1) is to be read as if—
 - (a) in point (a) for “harmonised standard pursuant to Regulation (EC) No 765/2008” there were substituted “ standard ”;
 - (b) in point (b) for the words from “Directive 2003/87/EC” to “where” there were substituted “ the 2020 Order, Implementing Regulation (EU) 2018/2066, Delegated Regulation (EU) 2019/331 and Implementing Regulation 2019/1842 where ”.
- 45. Article 60(2)(a) is to be read as if for the words from “Directive 2003/87/EC” to “where” there were substituted “ the 2020 Order, Implementing Regulation (EU) 2018/2066, Delegated Regulation (EU) 2019/331 and Implementing Regulation 2019/1842 where ”.
- 46. Article 63(2) is to be read as if for “harmonised standard pursuant to Regulation (EC) No 765/2008” there were substituted “ standard ”.
- 47. Article 69 is to be read as if—

- (a) in paragraph 1—
 - (i) for “Member States” there were substituted “ The regulator ”;
 - (ii) the words from “in accordance with Article 74(1)” to the end were omitted;
 - (b) in paragraph 2 “in accordance with Article 74(2) of Implementing Regulation (EU) 2018/2066” were omitted.
- 48.** Article 70 is to be read as if—
- (a) in paragraph 1—
 - (i) for “Member State” there were substituted “ UK ETS authority ”;
 - (ii) for “their” there were substituted “ the ”;
 - (iii) “, or where applicable, the national authority entrusted with the certification of verifiers,” were omitted;
 - (b) in paragraph 2—
 - (i) for the words from “Where” to “competent authorities” there were substituted “ The Environment Agency or such other regulator as may be designated by the UK ETS authority from time to time is ”;
 - (ii) after “information” there were inserted “ for the purposes of this Chapter ”.
- 49.** Article 71 is to be read as if—
- (a) in paragraph 1 in the words before point (a)—
 - (i) “of each Member State” were omitted;
 - (ii) for “that” in the first place it occurs there were substituted “ the ”;
 - (iii) for “those Member States” there were substituted “ the United Kingdom ”;
 - (b) paragraph (1)(d) were omitted;
 - (c) in paragraph 3—
 - (i) in the words before point (a), for “that” in the second place it occurs there were substituted “ the ”;
 - (ii) in point (a) for “that” in the second place it occurs there were substituted “ the ”.
- 50.** Article 72 is to be read as if—
- (a) for “a national” there were substituted “ the national ”;
 - (b) for the words from “following parties” to the end there were substituted “ regulator ”.
- 51.** Article 73(1) is to be read as if—
- (a) for “of the Member State where the verifier is carrying out the verification” there were substituted “ of the operator of an installation or of an aircraft operator whose data is verified by a verifier ”;
 - (b) “which has accredited that verifier” were omitted.
- 52.** Article 76 is to be read as if—
- (a) in paragraph 1—
 - (i) for “National accreditation bodies, or where applicable national authorities referred to in Article 55(2),” there were substituted “ The national accreditation body ”;
 - (ii) “other national accreditation bodies,” were omitted;

- (iii) for “competent authorities” there were substituted “ regulators ”;
- (iv) the second subparagraph were omitted;
- (b) in paragraph 2(a) for “that” there were substituted “ the ”;
- (c) paragraph 2(b) were omitted.

53. Article 77(1)(b) is to be read as if for “or new entrant data reports” there were substituted “ , new entrant data reports or annual activity level reports ”.

54. Annex 1 is to be read as if—

- (a) in the words before the table the words from “pursuant to Annex I” to the end were omitted;
- (b) in the table—
 - (i) in the entry for group 10 for “Directive [2003/87/EC](#)” there were substituted “ the 2020 Order ”;
 - (ii) in the entries for groups 10 and 11 for “Directive [2009/31/EC](#)” in each place there were substituted “ the CCS licensing regime ”;
 - (iii) in the entry for group 98 for “Article 10a of Directive [2003/87/EC](#)” there were substituted “ Part 4A of the 2020 Order, Delegated Regulation (EU) 2019/331 or Implementing Regulation (EU) 2019/1842 ”;
 - (iv) the entry for group 99 were omitted.

55. Annex 2 is to be read as if for “the harmonised standard pursuant to Regulation (EC) No [765/2008](#)” there were substituted “ EN ISO 14065:2013 ”.

56. Annex 3 is to be read as if for “the harmonised standard pursuant to Regulation (EC) No [765/2008](#)” there were substituted “ EN ISO/IEC 17011:2017 ^{M12} ”.

Commencement Information

I33 Art. 36 in force at 31.12.2020, see [art. 2\(1\)](#)

Marginal Citations

- M10** ISO 14065:2013 specifies principles and requirements for bodies that undertake validation or verification of greenhouse gas (GHG) assertions. It can be accessed at <https://www.iso.org/standard/60168.html>. A copy may be inspected at the Department for Business, Energy and Industrial Strategy, 1 Victoria Street, London SW1H 0ET.
- M11** Regulation (EC) 765/2008 is amended prospectively by [S.I. 2019/696](#) with effect from IP completion day.
- M12** ISO/IEC 17011:2017 specifies requirements for the competence, consistent operation and impartiality of accreditation bodies assessing and accrediting conformity assessment bodies. It can be accessed at: <https://www.iso.org/standard/67198.html>. A copy may be inspected at the Department for Business, Energy and Industrial Strategy, 1 Victoria Street, London SW1H 0ET.

Schedule 5A inserted

37. After Schedule 5 insert—

“SCHEDULE 5A

Article 25A

Registry

PART 1

Preliminary

Interpretation**1.** In this Schedule—

“account permission” has the meaning given in paragraph 16(4);

“Auctioning Regulations” means regulations under section 96 of the Finance Act 2020^{M13},

“authorised representative” means an authorised representative appointed for an account under paragraph 16;

“operational authorised representative” has the meaning given in paragraph 16(11);

“serious offence” means—

- (a) an offence specified, or falling within a description specified, in Schedule 1 to the Serious Crime Act 2007^{M14};
- (b) an offence under the law of a country or territory outside the United Kingdom which, if committed in or as regards any part of the United Kingdom, would be an offence referred to in paragraph (a);
- (c) conduct which facilitates the commission by another person of an offence referred to in paragraph (a) or (b), whether the conduct takes place in the United Kingdom or elsewhere;

“working day” means any day other than—

- (a) Saturday, Sunday, Good Friday or Christmas Day;
- (b) a bank holiday in any part of the United Kingdom under the Banking and Financial Dealings Act 1971^{M15}.

Submission of applications, etc. to registry administrator

2.—(1) An application, notice, instruction or request to the registry administrator under this Order must be in writing and must be given to the registry administrator in any of the following ways—

- (a) by sending it to a postal or email address provided by the registry administrator for that purpose;
- (b) by sending it by electronic means in the registry;
- (c) by any other means permitted by the registry administrator.

(2) A charge that is required to be paid to the registry administrator must be paid by making payment to a postal address or an account provided by the registry administrator for that purpose.

Account holders: fit and proper person

3. When assessing for the purposes of this Schedule whether an account holder or prospective account holder is a fit and proper person to hold an account of a particular type, the registry administrator may take account of any information or factors that the registry administrator considers relevant, including in particular—

- (a) where the account holder or prospective account holder is an individual, whether the account holder or prospective account holder is under investigation for, or has been convicted in the preceding 5 years of, a serious offence;
- (b) where the account holder or prospective account holder is a body corporate, whether a person with significant control of the body corporate is under investigation for, or has been convicted in the preceding 5 years of, a serious offence;
- (c) whether the registry administrator considers that the account may be used in relation to the commission of an offence under the law of any part of the United Kingdom or a country or territory outside the United Kingdom.

Authorised representatives: fit and proper person

4. When assessing for the purposes of this Schedule whether an individual is a fit and proper person to be an authorised representative, the registry administrator may take account of any information or factors that the registry administrator considers relevant, including in particular—

- (a) whether the individual is under investigation for, or has been convicted in the preceding 5 years of, a serious offence;
- (b) whether the registry administrator considers that the individual may use the account in relation to the commission of an offence under the law of any part of the United Kingdom or a country or territory outside the United Kingdom;
- (c) whether the appointment of the individual as an authorised representative would create a conflict of interest.

PART 2

Establishment and operation of registry

Registry

5.—(1) The UK ETS authority must establish an electronic system (the “registry”) for the purposes of the UK ETS, in particular, to keep track of—

- (a) operators of installations and aircraft operators participating in the UK ETS;
- (b) allowances held by persons and the allocation and transfer of allowances;
- (c) reportable emissions of installations and aviation emissions of aircraft operators;
- (d) the surrender of allowances by operators and aircraft operators in accordance with articles 27 and 34.

(2) The UK ETS authority must ensure that the registry is established so as to allow for—

- (a) the following types of account in which allowances may be held—
 - (i) central accounts (see paragraph 9);
 - (ii) an auction delivery account (see paragraph 10);

- (iii) operator holding accounts for installations (see paragraph 11);
- (iv) aircraft operator holding accounts (see paragraph 13);
- (v) trading accounts (see paragraph 14);
- (b) individuals to be appointed as authorised representatives for accounts with access to the registry to perform actions in relation to accounts on behalf of account holders.

Operation of registry

6.—(1) The registry administrator must operate the registry and for that purpose may, in particular—

- (a) establish administrative arrangements and rules for the operation of the registry;
- (b) take such actions the registry administrator considers necessary to ensure the proper functioning and good administration of the registry;
- (c) perform actions in relation to accounts in accordance with instructions from account holders.

(2) In the operation of the registry, the registry administrator must, as soon as reasonably practicable and to the extent possible, comply with a notice or instruction given under this Order by the UK ETS authority or a regulator.

Suspension of registry due to security concerns

7.—(1) The UK ETS authority or the registry administrator may suspend access to the registry if the UK ETS authority or the registry administrator considers that—

- (a) a security breach has occurred; or
- (b) there is a significant risk that a security breach will occur.

(2) Where access to the registry is suspended, the UK ETS authority or, as the case may be, the registry administrator must, as soon as reasonably practicable after the suspension takes effect, inform—

- (a) each regulator;
- (b) if the UK ETS authority suspends access to the registry, the registry administrator;
- (c) if the registry administrator suspends access to the registry, the UK ETS authority.

(3) The UK ETS authority must, as soon as reasonably practicable and in any event within 2 working days beginning with the day (the “relevant day”) on which the UK ETS authority suspends access to the registry or is informed of a suspension under subparagraph (2)(c) or, if the relevant day is not a working day, within 2 working days beginning with the first working day after the relevant day consider whether the suspension should remain in place and—

- (a) if the UK ETS authority considers the suspension should remain in place, inform each regulator and the registry administrator that the suspension will remain in place; or
- (b) if the UK ETS authority considers the suspension should be lifted—
 - (i) lift the suspension or instruct the registry administrator to lift the suspension;
 - (ii) inform each regulator and, where the UK ETS authority lifts the suspension, the registry administrator that the suspension has been lifted.

(4) Where the suspension remains in place in accordance with sub-paragraph (3)(a), the UK ETS authority must, as soon as reasonably practicable after the UK ETS authority considers that the circumstances giving rise to the suspension no longer exist—

- (a) lift the suspension or instruct the registry administrator to lift the suspension;
- (b) inform each regulator and, where the UK ETS authority lifts the suspension, the registry administrator that the suspension has been lifted.

Suspension of registry for technical reasons

8.—(1) The UK ETS authority may suspend access to the registry for technical reasons.

(2) Where the suspension is unscheduled (for example, because a technical issue needs to be addressed immediately), the UK ETS authority must inform each regulator and the registry administrator as soon as reasonably practicable after the suspension takes effect.

(3) Where the suspension is scheduled, the UK ETS authority must inform each regulator and the registry administrator as soon as reasonably practicable and in any event at least 2 working days before the suspension takes effect.

(4) Where, after a suspension, the UK ETS authority considers that the reason for the suspension no longer exists, the UK ETS authority must as soon as reasonably practicable—

- (a) lift the suspension;
- (b) inform each regulator and the registry administrator that the suspension has been lifted.

PART 3

Accounts

CHAPTER 1

Opening accounts

Central accounts

9.—(1) The UK ETS authority may open accounts in the name of the UK ETS authority for the purposes of the UK ETS, in particular—

- (a) a total quantity account (for the creation of allowances under article 18);
 - (b) an allocation account (to hold allowances to be allocated under Part 4A);
 - (c) a new entrants' reserve account (to keep track of the new entrants' reserve referred to in article 34G);
 - (d) an auction account (to hold allowances to be auctioned under the Auctioning Regulations);
 - (e) a market stability mechanism account (to hold excess allowances unsold at auctions under the Auctioning Regulations);
 - (f) a deletion account (to hold allowances deleted under paragraph 23);
 - (g) a surrender account (to hold allowances surrendered under paragraph 24);
 - (h) one or more general holding accounts (to hold allowances transferred from accounts before closure under paragraph 30).
- (2) An account held by the UK ETS authority is a “central account”.

Auction delivery account

10.—(1) Where a recognised auction platform is appointed to auction allowances under the Auctioning Regulations, the UK ETS authority must, as soon as reasonably practicable, instruct the registry administrator to open an auction delivery account in the name of the recognised auction platform.

(2) The recognised auction platform must as soon as reasonably practicable after appointment under the Auctioning Regulations submit to the registry administrator—

- (a) the charge for opening the account set out in the charging scheme published under article 36A;
- (b) applications under paragraph 16 to appoint at least 2 individuals as operational authorised representatives for the account with account permissions such that they are together able to propose and approve all types of action in relation to the account.

(3) The registry administrator may, by notice to the UK ETS authority or the recognised auction platform, require the UK ETS authority or the recognised auction platform to provide, in the form specified in the notice, such information as the registry administrator considers necessary to open the account.

(4) As soon as reasonably practicable after receiving the charge required under sub-paragraph (2)(a) and any information required under sub-paragraph (3) and at least 2 operational authorised representatives with the account permissions referred to in sub-paragraph (2)(b) have been appointed for the account, the registry administrator must open the account.

(5) In this paragraph, “recognised auction platform” means a recognised investment exchange in relation to which a recognition order under the Recognised Auction Platform Regulations 2011^{M16} is in force.

(6) In sub-paragraph (5), “recognised investment exchange” means an investment exchange in relation to which a recognition order under section 290 of the Financial Services and Markets Act 2000^{M17} is in force.

Operator holding accounts

11.—(1) This paragraph applies where the regulator—

- (a) issues a greenhouse gas emissions permit for an installation under paragraph 3 of Schedule 6;
- (b) grants an application for the partial transfer of a greenhouse gas emissions permit under paragraph 9 of Schedule 6;
- (c) converts an installation's hospital or small emitter permit into a greenhouse gas emissions permit under paragraph 24(2) or 26(3) of Schedule 7; or
- (d) converts an installation's permit (within the meaning of GGESR 2012) into a greenhouse gas emissions permit under paragraph 1(4)(a) of Schedule 11.

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

- (a) instruct the registry administrator to open an operator holding account for the installation in the name of the operator of the installation or, where sub-paragraph (1)(b) applies, for the installation consisting of the transferred units (as defined in paragraph 8(1) of Schedule 6) in the name of the new operator (as defined in paragraph 7(1) of that Schedule); or
- (b) inform the registry administrator that a new operator holding account is not required.

(3) Where sub-paragraph (2)(a) applies, the registry administrator may, by notice to the operator or the regulator, require the operator or the regulator to provide, in the form specified in the notice, such information as the registry administrator considers necessary to—

- (a) open the account; and
- (b) assess whether the operator is a fit and proper person to hold an operator holding account.

(4) As soon as reasonably practicable after receiving an instruction under sub-paragraph (2)(a) and any information required under sub-paragraph (3), the registry administrator must assess whether the operator is a fit and proper person to hold an operator holding account and—

- (a) if the registry administrator considers that the operator is a fit and proper person to hold an operator holding account, open the account; or
- (b) if the registry administrator does not consider that the operator is a fit and proper person to hold an operator holding account, open, and immediately suspend, the account, imposing the restriction set out in paragraph 25(2)(b) or (c) (or both).

(5) The registry administrator must give notice to the operator and the regulator of a decision to open and suspend an account under sub-paragraph (4)(b).

(6) A notice under sub-paragraph (5) must include the reason for the suspension unless the registry administrator considers that its inclusion might prejudice the investigation or prosecution of an offence under the law of any part of the United Kingdom or a country or territory outside the United Kingdom or would be contrary to the interests of national security.

(7) Where, after a suspension under sub-paragraph (4)(b), the registry administrator subsequently considers that the operator is a fit and proper person to hold an operator holding account, the registry administrator must, as soon as reasonably practicable—

- (a) lift the suspension;
- (b) give notice to the operator and the regulator that the suspension has been lifted.

Transfer of operator holding accounts

12.—(1) Where the regulator grants an application for the transfer (other than a partial transfer) of an installation's greenhouse gas emissions permit under paragraph 9 of Schedule 6, the regulator must, as soon as reasonably practicable—

- (a) instruct the registry administrator to transfer the operator holding account for the installation held in the name of the transferring operator (as defined in paragraph 7(1) of Schedule 6) to the new operator (as defined in that sub-paragraph);
- (b) instruct the registry administrator to—
 - (i) open an operator holding account for the installation in the name of the new operator; and
 - (ii) close the operator holding account held in the name of the transferring operator; or
- (c) inform the registry administrator that no action under paragraph (a) or (b) is required.

(2) Where paragraph (1)(a) or (b) applies, the registry administrator may, by notice to the new operator or the regulator, require the new operator or the regulator to provide, in the form specified in the notice, such information as the registry administrator considers necessary to—

- (a) transfer or, as the case may be, open the account; and
 - (b) assess whether the new operator is a fit and proper person to hold an operator holding account.
- (3) As soon as reasonably practicable after receiving an instruction under sub-paragraph (1)(a) or (b) and any information required under sub-paragraph (2), the registry administrator must assess whether the new operator is a fit and proper person to hold an operator holding account and—
- (a) if the registry administrator considers that the new operator is a fit and proper person to hold an operator holding account, transfer or, as the case may be, open the account; or
 - (b) if the registry administrator does not consider that the new operator is a fit and proper person to hold an operator holding account—
 - (i) transfer or, as the case may be, open the account; and
 - (ii) immediately suspend the account, imposing the restriction set out in paragraph 25(2)(b) or (c) (or both).
- (4) The registry administrator must give notice to the new operator and the regulator of a decision to transfer or, as the case may be, open and suspend an account under sub-paragraph (3)(b).
- (5) A notice under sub-paragraph (4) must include the reason for the suspension unless the registry administrator considers that its inclusion might prejudice the investigation or prosecution of an offence under the law of any part of the United Kingdom or a country or territory outside the United Kingdom or would be contrary to the interests of national security.
- (6) Where, after a suspension under sub-paragraph (3)(b), the registry administrator subsequently considers that the new operator is a fit and proper person to hold an operator holding account, the registry administrator must, as soon as reasonably practicable—
- (a) lift the suspension;
 - (b) give notice to the new operator and the regulator that the suspension has been lifted.
- (7) Where the registry administrator receives an instruction to transfer an operator holding account under sub-paragraph (1)(a), no action may be performed in relation to the account until the registry administrator complies with sub-paragraph (3).

Aircraft operator holding accounts

- 13.—**(1) Where the regulator issues an emissions monitoring plan to a person under article 29, the regulator must, as soon as reasonably practicable, instruct the registry administrator to open an aircraft operator holding account in the name of the person.
- (2) The registry administrator may, by notice to the person or the regulator, require the person or the regulator to provide, in the form specified in the notice, such information as the registry administrator considers necessary to—
- (a) open the account; and
 - (b) assess whether the person is a fit and proper person to hold an aircraft operator holding account.
- (3) As soon as reasonably practicable after receiving an instruction under sub-paragraph (1) and any information required under sub-paragraph (2), the registry administrator must assess whether the person is a fit and proper person to hold an aircraft operator holding account and—

- (a) if the registry administrator considers that the person is a fit and proper person to hold an aircraft operator holding account, open the account; or
 - (b) if the registry administrator does not consider that the person is a fit and proper person to hold an aircraft operator holding account, open, and immediately suspend, the account imposing the restriction set out in paragraph 25(2)(b) or (c) (or both).
- (4) The registry administrator must give notice to the person and the regulator of a decision to open and suspend an account under sub-paragraph (3)(b).
- (5) A notice under sub-paragraph (4) must include the reason for the suspension unless the registry administrator considers that its inclusion might prejudice the investigation or prosecution of an offence under the law of any part of the United Kingdom or a country or territory outside the United Kingdom or would be contrary to the interests of national security.
- (6) Where, after a suspension under sub-paragraph (3)(b), the registry administrator subsequently considers that the person is a fit and proper person to hold an aircraft operator holding account, the registry administrator must, as soon as reasonably practicable—
- (a) lift the suspension;
 - (b) give notice to the person and the regulator that the suspension has been lifted.

Trading accounts

- 14.**—(1) Any person may apply to the registry administrator to open a trading account on terms agreed by the registry administrator.
- (2) An application must be accompanied by—
- (a) the charge for the application set out in the charging scheme published under article 36A;
 - (b) applications under paragraph 16 to appoint at least 2 individuals as operational authorised representatives for the account with account permissions such that they are together able to propose and approve all types of action in relation to the account.
- (3) After receiving an application, the registry administrator may, by notice to the applicant, require the applicant to provide, in the form specified in the notice, such information as the registry administrator considers necessary to determine the application.
- (4) As soon as reasonably practicable after receiving the application and any information required under sub-paragraph (3), the registry administrator must assess whether the applicant is a fit and proper person to hold a trading account and—
- (a) if the registry administrator considers that the applicant is a fit and proper person to hold a trading account and at least 2 operational authorised representatives with the account permissions referred to in sub-paragraph (2)(b) have been appointed for the account, open the account; or
 - (b) if either—
 - (i) the registry administrator does not consider that the applicant is a fit and proper person to hold a trading account; or
 - (ii) at least 2 operational authorised representatives with the account permissions referred to in sub-paragraph (2)(b) have not been appointed for the account,give notice to the applicant that the application to open the account is refused.

(5) A notice under sub-paragraph (4)(b) must include the reason for the refusal unless the registry administrator considers that its inclusion might prejudice the investigation or prosecution of an offence under the law of any part of the United Kingdom or a country or territory outside the United Kingdom or would be contrary to the interests of national security.

CHAPTER 2

Account representatives

Primary contacts and alternative primary contacts

15.—(1) An account holder must give details to the registry administrator of an individual whom the account holder appoints as a person authorised to give instructions to the registry administrator on the account holder's behalf in relation to the account.

(2) An individual appointed under sub-paragraph (1) is the “primary contact” for the account.

(3) An account holder who is an individual may appoint the account holder as the primary contact for the account.

(4) An account holder who has appointed a primary contact may give details to the registry administrator of a second individual whom the account holder appoints as a person authorised to give instructions to the registry administrator on the account holder's behalf in relation to the account.

(5) An individual appointed under sub-paragraph (4) is the “alternative primary contact” for the account.

(6) The primary contact and any alternative primary contact must be at least 18 years of age.

(7) An account holder may, at any time by notice to the registry administrator—

- (a) replace the primary contact;
- (b) replace or remove the alternative primary contact.

Appointment of authorised representatives

16.—(1) An account holder or a prospective account holder may apply to the registry administrator for one or more individuals (up to a maximum number of 8) to be appointed as authorised representatives for the account with access to the registry to perform actions in relation to the account on behalf of the account holder.

(2) An account holder who is an individual may apply for the account holder to be appointed as an authorised representative for the account.

(3) An authorised representative must be at least 18 years of age.

(4) An authorised representative may have one of the following permissions (an “account permission”)—

- (a) permission to propose actions in relation to the account;
- (b) permission to approve actions in relation to the account;
- (c) permission to propose actions, and approve actions proposed by another operational authorised representative, in relation to the account;
- (d) permission to review account information only.

(5) An application for an individual to be appointed as an authorised representative must—

- (a) specify which account permission the individual is to have;
 - (b) be accompanied by the charge for the application set out in the charging scheme published under article 36A.
- (6) After receiving an application, the registry administrator may, by notice to the applicant, require the applicant to provide, in the form specified in the notice, such information as the registry administrator considers necessary to determine the application.
- (7) As soon as reasonably practicable after receiving the application and any information required under sub-paragraph (6), the registry administrator must assess whether the individual is a fit and proper person to be an authorised representative and—
- (a) if the registry administrator considers that the individual is a fit and proper person to be an authorised representative, appoint the individual as an authorised representative with the account permission in respect of which the application is made and give notice to the applicant of the appointment; or
 - (b) if the registry administrator considers that the individual is not a fit and proper person to be an authorised representative, give notice to the applicant that the application is refused.
- (8) A notice under sub-paragraph (7)(b) must include the reason for the refusal unless the registry administrator considers that its inclusion might prejudice the investigation or prosecution of an offence under the law of any part of the United Kingdom or a country or territory outside the United Kingdom or would be contrary to the interests of national security.
- (9) The registry administrator may, in administrative rules made under paragraph 6(1)(a), provide for whether actions of a particular type require the approval of a second operational authorised representative in addition to the operational authorised representative proposing the action.
- (10) The appointment of an authorised representative for an account does not preclude the account holder from instructing the registry administrator to perform actions in relation to the account on behalf of the account holder.
- (11) In this Schedule, “operational authorised representative” means an authorised representative who has an account permission referred to in sub-paragraph (4)(a), (b) or (c).

Change in account permission of authorised representatives

- 17.—(1) An account holder may apply to the registry administrator to change the account permission of an individual appointed as an authorised representative.
- (2) An application must—
- (a) specify which account permission the individual is to have;
 - (b) be accompanied by the charge for the application set out in the charging scheme published under article 36A.
- (3) After receiving an application, the registry administrator may, by notice to the account holder, require the account holder to provide, in the form specified in the notice, such information as the registry administrator considers necessary to determine the application.
- (4) As soon as reasonably practicable after receiving the application and any information required under sub-paragraph (3), the registry administrator must assess whether the individual is still a fit and proper person to be an authorised representative and—
- (a) if the registry administrator considers that the individual is still a fit and proper person to be an authorised representative, change the individual's account

permission to the account permission in respect of which the application is made and give notice to the account holder of the change; or

- (b) if the registry administrator considers that the individual has ceased to be a fit and proper person to be an authorised representative, give notice to the account holder that the application is refused.

(5) A notice under sub-paragraph (4)(b) must include the reason for the refusal unless the registry administrator considers that its inclusion might prejudice the investigation or prosecution of an offence under the law of any part of the United Kingdom or a country or territory outside the United Kingdom or would be contrary to the interests of national security.

Suspension of access to registry of authorised representatives

18.—(1) The registry administrator may suspend an authorised representative's access to the registry in either of the following circumstances—

- (a) if the registry administrator considers that the suspension is necessary to ensure that the registry is secure and protected from misuse;
- (b) if the registry administrator considers that the authorised representative has ceased to be a fit and proper person to be an authorised representative.

(2) Where the registry administrator suspends an authorised representative's access to the registry, the registry administrator must give notice of the suspension to the account holder as soon as reasonably practicable.

(3) A notice under sub-paragraph (2) must include the reason for the suspension unless the registry administrator considers that its inclusion might prejudice the investigation or prosecution of an offence under the law of any part of the United Kingdom or a country or territory outside the United Kingdom or would be contrary to the interests of national security.

(4) Where, after a suspension under sub-paragraph (2), the registry administrator subsequently considers that the circumstances giving rise to the suspension no longer exist, the registry administrator must as soon as reasonably practicable—

- (a) lift the suspension;
- (b) give notice to the account holder that the suspension has been lifted.

Removal of authorised representatives

19.—(1) The registry administrator may remove an individual as an authorised representative for an account—

- (a) if the account holder requests the registry administrator to remove the individual as authorised representative;
- (b) if the individual requests the registry administrator to remove the individual as authorised representative;
- (c) if the registry administrator considers that the individual has ceased to be a fit and proper person to be an authorised representative; or
- (d) where the individual's access to the registry has been suspended, if the registry administrator considers that the circumstances giving rise to the suspension still exist and are unlikely to be resolved within a reasonable period of time.

(2) The registry administrator must give notice to the account holder of a removal under sub-paragraph (1)(b), (c) or (d).

(3) A notice following a removal under sub-paragraph (1)(c) or (d) must include the reason for the removal unless the registry administrator considers that its inclusion might prejudice the investigation or prosecution of an offence under the law of any part of the United Kingdom or a country or territory outside the United Kingdom or would be contrary to the interests of national security.

CHAPTER 3

Transfers of allowances

Transfers between accounts

- 20.**—(1) An allowance may be transferred from one account to another.
- (2) Sub-paragraph (1) is subject to—
- (a) paragraph 11(4)(b) (operator holding accounts);
 - (b) paragraph 12(3)(b) or (7) (transfer of operator holding accounts);
 - (c) paragraph 13(3)(b) (aircraft operator holding accounts);
 - (d) paragraph 25 (suspension of accounts).

Transfer cancellations

21. The transfer of an allowance between accounts may be cancelled by the account holder of the transferring account at any time before the transfer has completed.

Transfer reversals

- 22.**—(1) A transfer of an allowance that has completed may not be reversed except as set out in this paragraph.
- (2) The registry administrator must reverse the transfer of an allowance to the deletion account if, within 14 days beginning with the day on which the transfer completes, the account holder requests the registry administrator to reverse the transfer.
- (3) The registry administrator must reverse the transfer of an allowance to the surrender account if, within 14 days beginning with the day on which the transfer completes, the account holder requests the registry administrator to reverse the transfer.
- (4) Sub-paragraph (3) is subject to paragraph 24 (surrender of allowances).
- (5) Where the account from which the allowance was transferred has been closed since the transfer completed (and the transfer cannot therefore be reversed), the account holder who requests the reversal of a transfer must give notice to the registry administrator of an alternative account to which the allowance is to be transferred.

Deletion of allowances

- 23.**—(1) An account holder may delete an allowance by transferring the allowance from the account holder's account to the deletion account.
- (2) An allowance transferred to the deletion account may not be transferred from the deletion account and ceases to be available for any other purpose unless the transfer is reversed under paragraph 22 (transfer reversals).

Surrender of allowances

24.—(1) The operator of an installation or a person who is an aircraft operator in relation to a scheme year may surrender an allowance by transferring the allowance from the operator's operator holding account for the installation or the aircraft operator's aircraft operator holding account to the surrender account.

(2) An allowance that has been transferred to the surrender account may not be transferred from the surrender account and ceases to be available for any other purpose.

(3) But the transfer of an allowance to the surrender account may be reversed under paragraph 22(3) if—

- (a) the person requesting the reversal has complied with—
 - (i) where the person requesting the reversal is the operator of an installation, the person's obligations to surrender allowances under article 27 in respect of the installation;
 - (ii) where the person requesting the reversal is an aircraft operator in relation to a scheme year, the person's obligations to surrender allowances under article 34; and
- (b) the reversal of the transfer would not result in the person being in breach of those obligations.

CHAPTER 4

Suspension and closure of accounts

Suspension of accounts

25.—(1) The registry administrator may suspend an account other than a central account in any of the following circumstances—

- (a) if, on the death or dissolution of the account holder or the occurrence of an insolvency event in relation to the account holder, either—
 - (i) it is not clear who has the right to deal with the assets of the account holder; or
 - (ii) the registry administrator has not received instructions about the operation of the account from the person who has the right to deal with the assets of the account holder;
 - (b) if the registry administrator does not consider that the account holder is a fit and proper person to hold the account;
 - (c) if the registry administrator considers that the account has been, is being or may be used in relation to the commission of an offence under the law of any part of the United Kingdom or a country or territory outside the United Kingdom.
- (2) A suspended account may be subject to one or more of the following restrictions—
- (a) no allowances may be transferred to the account except from the allocation account;
 - (b) no authorised representative may perform an action in relation to the account by accessing the registry;
 - (c) no allowances may be transferred from the account except to a central account.

(3) Where the registry administrator suspends an account, the registry administrator must give notice of the suspension to the account holder as soon as reasonably practicable.

(4) A notice under sub-paragraph (3) must include the reason for the suspension unless the registry administrator considers that its inclusion might prejudice the investigation or prosecution of an offence under the law of any part of the United Kingdom or a country or territory outside the United Kingdom or would be contrary to the interests of national security .

(5) Where, after a suspension under sub-paragraph (1), the registry administrator subsequently considers that the circumstances giving rise to the suspension no longer exist, the registry administrator must as soon as reasonably practicable—

- (a) lift the suspension;
- (b) give notice to the account holder that the suspension has been lifted.

(6) For the purposes of this paragraph an “insolvency event” occurs in relation to an account holder if—

- (a) an order for the winding-up of the account holder is made;
- (b) a resolution for the voluntary winding-up of the account holder is passed;
- (c) the account holder enters into administration;
- (d) a bankruptcy order is made in relation to the account holder or, in Scotland, an award of sequestration is made against the account holder;
- (e) a provisional liquidator is appointed for the account holder under section 135 of the Insolvency Act 1986^{M18}; or
- (f) an event (an “overseas insolvency event”) occurs in a country or territory outside the United Kingdom in relation to the account holder that the registry administrator considers corresponds to an event (a “UK insolvency event”) referred to in paragraphs (a) to (e).

(7) For the purpose of considering under sub-paragraph (6)(f) whether an overseas insolvency event corresponds to a UK insolvency event, where, in consequence of the UK insolvency event, a person is appointed to an office (for example, liquidator or trustee in bankruptcy) to deal with the assets of the account holder, it is immaterial whether or not there is a corresponding appointment in consequence of the overseas insolvency event.

Closure of central accounts and auction delivery account

26. The UK ETS authority may close—

- (a) a central account;
- (b) the auction delivery account.

Closure of operator holding accounts

27.—(1) This paragraph applies where—

- (a) (i) an installation's greenhouse gas emissions permit is cancelled under paragraph 9(5)(b) of Schedule 6;
- (ii) after giving a surrender notice under paragraph 11(3) of that Schedule in respect of a greenhouse gas emissions permit for an installation, the regulator certifies under paragraph 11(6)(b) of that Schedule that the conditions of the permit and the requirements of the surrender notice have been complied with or that there is no reasonable prospect of their being complied with;
- (iii) after giving a revocation notice under paragraph 12(4) of that Schedule in respect of a greenhouse gas emissions permit for an installation, the

regulator certifies under paragraph 12(7)(b) of that Schedule that the conditions of the permit and the requirements of the revocation notice have been complied with or that there is no reasonable prospect of their being complied with; or

(iv) after the regulator converts an installation's greenhouse gas emissions permit into a hospital or small emitter permit under paragraph 10 of Schedule 7, the obligations of the operator under the permit in respect of specified emissions before 1st January 2026 are complied with; and

(b) where relevant, any notice given under article 34V (return of allowances: notice to operator, etc.) to the operator of the installation or to a transferring operator (as defined in paragraph 7(1) of Schedule 6) has been complied with or the regulator considers that there is no reasonable prospect of the notice being complied with.

(2) The regulator must instruct the registry administrator to close the operator holding account for the installation.

(3) The registry administrator must give notice to the operator of the installation as soon as reasonably practicable after the account is closed.

Closure of aircraft operator holding accounts

28.—(1) This paragraph applies where—

(a) the regulator is satisfied under article 34P that a person has ceased to perform aviation activity and there is no realistic prospect that the person will resume aviation activity;

(b) the person has complied with the requirements of article 34(1) or the regulator considers that there is no reasonable prospect of the requirements being complied with; and

(c) where relevant, any notice given under article 34V (return of allowances: notice to operator, etc.) to the person has been complied with or the regulator considers that there is no reasonable prospect of the notice being complied with.

(2) The regulator must instruct the registry administrator to close the aircraft operator holding account.

(3) The registry administrator must give notice to the person as soon as reasonably practicable after the account is closed.

Closure of trading accounts

29.—(1) Where the account holder of a trading account instructs the registry administrator to close the account, the registry administrator must close the account—

(a) within 14 days after receiving the instruction; or

(b) if there are allowances in the account at the date on which the instruction is received, as soon as reasonably practicable after the allowances are transferred to another account.

(2) Where a trading account has been suspended, the registry administrator may close the account if the registry administrator considers that the circumstances giving rise to the suspension still exist and are unlikely to be resolved within a reasonable period of time.

(3) Where no transfers have been made to or from a trading account for a period of at least 1 year, the registry administrator may give notice to the account holder that the trading account will be closed; and if the account holder does not object in writing to the closure

within 60 days after the date on which the notice is given, the registry administrator may close the account.

(4) The registry administrator must give notice to the account holder as soon as reasonably practicable after the account is closed under sub-paragraph (2) or (3).

(5) A notice following the closure of an account under sub-paragraph (2) must include the reason for the closure unless the registry administrator considers that its inclusion might prejudice the investigation or prosecution of an offence under the law of any part of the United Kingdom or a country or territory outside the United Kingdom or would be contrary to the interests of national security.

Balance in accounts to be closed

30.—(1) This paragraph applies where there are allowances in an account that is to be closed under paragraph 27, 28 or 29(2) or (3).

(2) Subject to sub-paragraph (3), the registry administrator must give notice to the account holder, requiring the account holder to transfer the allowances to another account on or before a date set out in the notice; and if the account holder does not comply with the notice, the registry administrator must transfer the allowances to a general holding account before closing the account.

(3) If the account to be closed has been suspended, the registry administrator must transfer the allowances to a general holding account before closing the account.”.

Commencement Information

I34 Art. 37 in force at 31.12.2020, see [art. 2\(1\)](#)

Marginal Citations

M13 2020 c. 14.

M14 2007 c. 27. Schedule 1 to that Act has been amended by Schedule 22 to the [Marine and Coastal Access Act 2009 \(c. 23\)](#); paragraph 101 of Schedule 7 to the [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#); paragraph 14 of Schedule 1 to the [Bribery Act 2010 \(c. 23\)](#); paragraph 142 of Schedule 9 to the [Protection of Freedoms Act 2012 \(c. 9\)](#); paragraph 7 of Schedule 4, and Schedule 5, to the [Human Trafficking and Exploitation \(Criminal Justice and Support for Victims\) Act \(Northern Ireland\) 2015 \(c. 2\)](#); section 47 of, and paragraph 31 of Schedule 1 and paragraph 81 of Schedule 4 to, the [Serious Crime Act 2015 \(c. 9\)](#); paragraph 7 of Schedule 5 to the [Modern Slavery Act 2015 \(c. 30\)](#); paragraph 8 of Schedule 5 to the [Psychoactive Substances Act 2016 \(c. 2\)](#); section 151 of the [Policing and Crime Act 2017 \(c. 3\)](#); section 51 of the [Criminal Finances Act 2017 \(c. 22\)](#); paragraph 5 of Schedule 3 to the [Sanctions and Anti-Money Laundering Act 2018 \(c. 13\)](#); section 14 of the [Counter-Terrorism and Border Security Act 2019 \(c. 3\)](#); and regulation 3 of S.I. 2019/1354.

M15 1971 c. 80. Schedule 1 to that Act has been amended by section 1 of the [St Andrew's Day Bank Holiday \(Scotland\) Act 2007 \(asp 2\)](#).

M16 S.I. 2011/2699, amended by S.I. 2012/1906, 2013/429, 2013/642, 2013/3115, 2016/680 and 2017/1064.

M17 2000 c. 8. Section 290 has been amended by paragraph 6 of Schedule 8 to the [Financial Services Act 2012 \(c. 21\)](#) and S.I. 2007/126, 2013/504, 2017/701 and 2017/1064 and is amended prospectively by S.I. 2019/662 with effect from IP completion day.

M18 1986 c. 45.

Schedule 6 amended (permits)

38.—(1) Schedule 6 is amended as follows.

Paragraph 4 amended (greenhouse gas emissions permits: content of permit)

- (2) In paragraph 4—
- (a) after sub-paragraph (1)(h) insert—
- “(ha) the free allocation conditions (see sub-paragraph (6));
- (hb) where a monitoring methodology plan has been approved in relation to the installation under Article 8 of the Free Allocation Regulation, the monitoring methodology plan;”;
- (b) in sub-paragraph (2)(b)—
- (i) after “verified” insert “ as satisfactory ”;
- (ii) after “submit the report” insert “ (and the verification report) ”;
- (c) after sub-paragraph (5) insert—
- “(6) The free allocation conditions are the following conditions, which must be expressed to apply while the installation is an FA installation—
- (a) a condition requiring the operator to monitor the activity level of the installation in accordance with—
- (i) the Free Allocation Regulation; and
- (ii) the monitoring methodology plan approved under Article 8 of the Free Allocation Regulation (including the written documentation of the procedures referred to in Article 8(3) of that Regulation);
- (b) a condition requiring the operator, in accordance with the Activity Level Changes Regulation, to prepare an activity level report that is verified as satisfactory in accordance with the Verification Regulation 2018 and to submit the report (and the verification report) to the regulator on or before 30th June in the 2021 scheme year and on or before 31st March in each subsequent scheme year;
- (c) a condition requiring the operator, if the installation has ceased operation, to notify the regulator on or before 31st December in the scheme year in which the cessation occurs or within 1 month of the cessation, whichever is later;
- (d) any further conditions that the regulator considers necessary to give proper effect to the Free Allocation Regulation or the Activity Level Changes Regulation.
- (7) Where, after the date of issue of, or conversion of a permit into, a greenhouse gas emissions permit, a monitoring methodology plan is approved in relation to an installation under Article 8 of the Free Allocation Regulation, the regulator must vary the permit under paragraph 6 so that it contains the monitoring methodology plan.”.

Paragraph 6 amended (variation of permits)

- (3) In paragraph 6—
- (a) after sub-paragraph (2)(c) insert—
- “(d) a failure by the operator to implement—
- (i) a recommendation for improvement of the monitoring methodology plan as required by Article 9(2)(e) of the Free Allocation Regulation; or
- (ii) a modification of the monitoring methodology plan requested by the regulator under Article 9(5)(d) of that Regulation.”;
- (b) in sub-paragraph (3) before paragraph (a) insert—
- “(za) paragraph 4(7) (adding monitoring methodology plan);”.

Paragraph 7 amended (transfer of permits: application)

- (4) In paragraph 7(5) for “8(a)” in both places substitute “ 8(1)(a) ”.

Paragraph 8 amended (transfer of permits: contents of application)

- (5) In paragraph 8 renumber the existing text as sub-paragraph (1) and insert after that sub-paragraph—

“(2) Where the application is for the transfer or partial transfer of a greenhouse gas emissions permit for an installation that is an FA installation, the application must also contain—

- (a) either—

(i) the new operator's monitoring methodology plan in accordance with Article 8 of the Free Allocation Regulation; or

(ii) the new operator's specification of the parts of the existing monitoring methodology plan that it is proposed be varied;

- (b) in the case of an application for the partial transfer of the permit, the transferring operator's specification of the parts of the existing monitoring methodology plan that it is proposed be varied.

(3) But sub-paragraph (2) does not apply if the application contains a statement by the new operator that the new operator renounces free allocation in respect of the transferred units.”.

Paragraph 9 amended (transfer of permits: grant of application)

- (6) In paragraph 9—

- (a) in sub-paragraph (1)—

(i) in paragraph (a) omit the final “and”;

(ii) in paragraph (b) for “paragraph).” substitute “ paragraph); and ”;

- (iii) after paragraph (b) insert—

“(c) where the application is for the transfer or partial transfer of a greenhouse gas emissions permit of an installation that is an FA installation, will be capable of complying with the free allocation conditions of the permit (including as varied under this paragraph).”;

- (b) after sub-paragraph (1) insert—

“(1A) But sub-paragraph (1)(c) does not apply if the application contains a statement by the new operator that the new operator renounces free allocation in respect of the transferred units.”;

- (c) after sub-paragraph (5) insert—

“(5A) Where a permit is cancelled under sub-paragraph (5)(b), the regulator must give notice to the registry administrator as soon as reasonably practicable.”.

Paragraph 11 amended (surrender of permits)

- (7) In paragraph 11(6)(b) after “complied with” insert “ or that there is no reasonable prospect of their being complied with ”.

Paragraph 12 amended (revocation of permits)

- (8) In paragraph 12—

- (a) after sub-paragraph (3)(a)(i)(cc) insert—

“(dd) the Free Allocation Regulation;
 (ee) the Activity Level Changes Regulation.”;

(b) in sub-paragraph (7)(b) after “complied with” insert “ or that there is no reasonable prospect of their being complied with ”.

Commencement Information

I35 Art. 38 in force at 31.12.2020, see [art. 2\(1\)](#)

Schedule 7 amended (hospitals and small emitters)

39.—(1) Schedule 7 is amended as follows.

Paragraph 5 amended (obtaining hospital or small emitter status for 2026-2030 allocation period)

(2) In paragraph 5(6)(a) after “verified” insert “ as satisfactory ”.

Paragraph 11 amended (hospital or small emitter permits: content of permit)

(3) In paragraph 11(2)(b)—

(a) in sub-paragraph (i) after “verified” insert “ as satisfactory ”;

(b) in the words after sub-paragraph (ii) for “(and any declaration)” substitute “ and the verification report (where sub-paragraph (i) applies) or declaration (where sub-paragraph (ii) applies) ”.

Paragraph 13 amended (hospital and small emitters: modifications to Monitoring and Reporting Regulation 2018)

(4) In paragraph 13—

(a) omit sub-paragraph (2);

(b) in sub-paragraph (6) for “verified in accordance” substitute “ verified as satisfactory in accordance ”.

Paragraph 16 amended (emissions targets for 2021-2025 allocation period)

(5) In paragraph 16(8)—

(a) in paragraph (a) after “verified” insert “ as satisfactory ”;

(b) after paragraph (a) insert—

“(aa) determined under regulation 44 of GGETSR 2012 or article 45 of this Order; or”.

Paragraph 17 amended (emissions targets for 2026-2030 allocation period)

(6) In paragraph 17(8)—

(a) in paragraph (a)—

(i) after “verified” insert “ as satisfactory ”;

(ii) omit the final “or”;

(b) after paragraph (a) insert—

“(aa) determined under article 45; or”.

Commencement Information

I36 Art. 39 in force at 31.12.2020, see [art. 2\(1\)](#)

Schedule 8 amended (ultra-small emitters)

40.—(1) Schedule 8 is amended as follows.

Paragraph 3 amended (obtaining ultra-small emitter status for 2026-2030 allocation period)

(2) In paragraph 3(7)(a) after “verified” insert “ as satisfactory ”.

Paragraph 4 amended (obtaining ultra-small emitter status for 2026-2030 allocation period: modifications to Verification Regulation 2018 for ultra-small emitters in 2021-2025 allocation period)

(3) In paragraph 4—

(a) omit sub-paragraph (3);

(b) for sub-paragraph (5)(a)(i) substitute—

“(i) in point (a) the words from “and meets the requirements” to the end were omitted;”;

(c) in sub-paragraph (6)(c) after “points” insert “ (c) and ”;

(d) in sub-paragraph (14)(a)—

(i) in sub-paragraph (i) for “the Verification Regulation 2018” substitute “ Commission Implementing Regulation (EU) 2018/2067 (as it had effect in EU law) ”;

(ii) in sub-paragraph (ii) for “2021-2026” substitute “ 2021-2025 ”.

Commencement Information

I37 Art. 40 in force at 31.12.2020, see [art. 2\(1\)](#)

Schedule 9 amended (appeals to Scottish Land Court)

41.—(1) Schedule 9 is amended as follows.

(2) In paragraph 1—

(a) in sub-paragraph (1)—

(i) in the words before paragraph (a) after “regulator” insert “ or the registry administrator (in either case, the “respondent”) ”;

(ii) in paragraph (b) for “regulator” substitute “ respondent ”;

(b) in sub-paragraph (2)(d) for “regulator” substitute “ respondent ”.

(3) In paragraph 4 for “regulator” in each place substitute “ respondent ”.

Commencement Information

I38 Art. 41 in force at 31.12.2020, see [art. 2\(1\)](#)

Schedule 10 amended (appeals to Planning Appeals Commission (Northern Ireland))

42.—(1) Schedule 10 is amended as follows.

(2) In paragraph 1—

(a) in sub-paragraph (1) after “regulator” insert “ or the registry administrator (in either case, the “respondent”) ”;

(b) in sub-paragraph (3) for “regulator” substitute “ respondent ”.

(3) In paragraph 2 for “regulator” substitute “ respondent ”.

(4) In paragraph 3(2) for “regulator” substitute “ respondent ”.

Commencement Information

I39 Art. 42 in force at 31.12.2020, see [art. 2\(1\)](#)

Schedule 11 amended (transitional provisions: installations)

43.—(1) Schedule 11 is amended as follows.

Paragraph 1 amended (permits under GGETSR 2012)

(2) In paragraph 1(7) for “the Verification Regulation 2018” substitute “ Commission Implementing Regulation (EU) 2018/2067 (as it had effect in EU law) ”.

Paragraph 2 amended (applications for permits, etc. under GGETSR 2012)

(3) After paragraph 2(3) insert—

“(4) This sub-paragraph applies where—

(a) a permit for an installation is converted into a greenhouse gas emissions permit under paragraph 1(4);

(b) the monitoring methodology plan approved in respect of the installation under Article 8 of the Free Allocation Regulation is contained in the permit by virtue of paragraph 4(1)(hb) or (7) of Schedule 6; and

(b) a significant modification of the monitoring methodology plan is notified for approval under Article 9 of the Free Allocation Regulation on or before 31st December 2020, but not approved before that date.

(5) Where sub-paragraph (4) applies, the notification of the significant modification must be treated as an application to vary the permit under paragraph 6 of Schedule 6 to make the significant modification.”.

Commencement Information

I40 Art. 43 in force at 31.12.2020, see [art. 2\(1\)](#)

Changes to legislation:

There are currently no known outstanding effects for the The Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020, PART 2.