

SCHEDULE 8

Article 26(5)

Ultra-small emitters

Interpretation

1.—(1) In this Schedule, “maximum amount” means 2,499 tonnes of carbon dioxide equivalent.

(2) For the purposes of this Order, in determining whether or not an installation’s reportable emissions exceed the maximum amount, emissions from biomass must be excluded.

Ultra-small emitter status

2.—(1) This paragraph applies to determine whether or not an installation is an ultra-small emitter for a scheme year.

(2) An installation is an ultra-small emitter for the scheme years in the 2021-2025 allocation period if the installation is included in the list (the “ultra-small emitter list for 2021-2025”) of installations to be excluded from the EU ETS under Article 27a of the Directive from 1st January 2021 published for the purposes of the EU ETS on the website of SEPA on 28th May 2020⁽¹⁾.

(3) But if a notice under paragraph 7(2) is given to the operator of the installation stating that the installation is not an ultra-small emitter for a scheme year in the 2021-2025 allocation period, the installation is not an ultra-small emitter for that scheme year or subsequent scheme years in the allocation period.

(4) An installation is an ultra-small emitter for the scheme years in the 2026-2030 allocation period if the installation is included in the ultra-small emitter list for 2026-2030.

(5) But if a notice under paragraph 7(2) is given to the operator of the installation stating that the installation is not an ultra-small emitter for a scheme year in the 2026-2030 allocation period, the installation is not an ultra-small emitter for that scheme year or subsequent scheme years in the allocation period.

Obtaining ultra-small emitter status for 2026-2030 allocation period

3.—(1) The operator of an installation who wishes to apply for the installation to be an ultra-small emitter for the scheme years in the 2026-2030 allocation period must submit the following to the regulator—

- (a) details of the installation, including details of any permit in force;
- (b) evidence that the installation meets the relevant condition.

(2) An application—

- (a) may not be made before 1st April 2024;
- (b) must be made on or before 30th June 2024.

(3) After receiving an application, the regulator must on or before 30th September 2024—

- (a) make a preliminary assessment of whether or not the installation meets the relevant condition; and
- (b) send the preliminary assessment and the reasons for it to the UK ETS authority.

(1) The ultra-small emitter list for 2021-2025 can be accessed at www.sepa.org.uk/media/504726/uk-article-27-27a-installation-list.pdf. A copy of the list may be inspected at the Department for Business, Energy and Industrial Strategy, 1 Victoria Street, London SW1H 0ET; the Industrial Pollution and Radiochemical Inspectorate, Department for Agriculture, Environment and Rural Affairs, Klondyke Building, Cromac Avenue, Belfast BT7 2JA; the Scottish Government Directorate of Energy & Climate Change, Fourth Floor, 5 Atlantic Quay, 150 Broomielaw, Glasgow G2 8LU; and the offices of the Welsh Government, Cathays Park 2, Cathays Park, Cardiff CF10 2NQ.

- (4) The relevant condition is that—
 - (a) a regulated activity begins to be carried out at the installation on or before 1st January 2021; and
 - (b) the installation’s reportable emissions in each of the 2021, 2022 and 2023 scheme years do not exceed the maximum amount.
- (5) After receiving the preliminary assessment—
 - (a) the UK ETS authority must make a final assessment of whether or not the installation meets the relevant condition; and
 - (b) if the UK ETS authority considers that the installation meets the relevant condition, the UK ETS authority must include the installation in a list (the “ultra-small emitter list for 2026-2030”).
- (6) The UK ETS authority must publish the ultra-small emitter list for 2026-2030 on or before 30th April 2025.
- (7) Evidence of an installation’s reportable emissions may not be taken into account for the purposes of assessing whether or not an installation meets the relevant condition unless the evidence is—
 - (a) verified in accordance with the Verification Regulation 2018; or
 - (b) where relevant, in an emissions report accompanied by the declaration referred to in paragraph 11(2)(b)(ii) of Schedule 7.
- (8) An application may not be made under this paragraph and paragraph 5 of Schedule 7.

Obtaining ultra-small emitter status for 2026-2030 allocation period: modifications to Verification Regulation 2018 for ultra-small emitters in 2021-2025 allocation period

4.—(1) For the purposes of paragraph 3(7)(a), where an installation is included in the ultra-small emitter list for the 2021-2025 allocation period, the Verification Regulation 2018 has effect with the following modifications.

- (2) References in the Verification Regulation 2018—
 - (a) to the operator’s report or emission report are to be read as references to the evidence of the installation’s reportable emissions provided to the verifier by the operator for verification and intended to be submitted under paragraph 3(1)(b);
 - (b) to the monitoring plan or the monitoring plan approved by the regulator are to be read as references to the appropriate monitoring plan referred to in paragraph 5, including any modifications to the plan made under Article 14 of the Monitoring and Reporting Regulation 2018, as applied by paragraph 5(4) of this Schedule (even though such modifications do not require the approval of the regulator: see paragraph 5(5)).
- (3) Article 2 is to be read as if “reported pursuant to Implementing Regulation (EU) 2018/2066” were omitted.
- (4) Article 3(13)(a) is to be read as if “the permit and” were omitted.
- (5) Article 7 is to be read as if—
 - (a) in paragraph 4—
 - (i) in point (a) “and meets the requirements laid down in Annex X to Implementing Regulation (EU) 2018/2066” were omitted;
 - (ii) in point (b) “the permit and” were omitted;

- (b) in paragraph 5 the reference to non-compliance with the Monitoring and Reporting Regulation 2018 were a reference to non-compliance with the provisions of that Regulation referred to in paragraph 5(4) to (6) of this Schedule;
 - (c) paragraph 6 were omitted.
- (6) Article 10(1) is to be read as if—
- (a) point (a) were omitted;
 - (b) in point (b) “as well as any other relevant versions of the monitoring plan approved by the regulator, including evidence of the approval” were omitted;
 - (c) points (l) to (n) were omitted.
- (7) Article 11 is to be read as if paragraph 4(c) were omitted.
- (8) Article 17 is to be read as if paragraph 4 were omitted.
- (9) Article 18(1) is to be read as if—
- (a) the second subparagraph were omitted;
 - (b) in the third subparagraph for “is not able to obtain such approval in time” there were substituted “uses methods other than those referred to in the first subparagraph”.
- (10) Article 19(1) is to be read as if for “Implementing Regulation (EU) 2018/2066” there were substituted “the monitoring plan”.
- (11) Article 21(1) is to be read as if after “verification process” there were inserted “but at least once during the 2021-2025 allocation period (as defined in the Greenhouse Gas Emissions Trading Scheme Order 2020)”.
- (12) Article 22 is to be read as if—
- (a) references to non-compliance with the Monitoring and Reporting Regulation 2018 were references to non-compliance with the provisions of that Regulation referred to in paragraph 5(4) to (6) of this Schedule;
 - (b) in paragraph 1 in the third subparagraph “notify the regulator and” were omitted.
- (13) Article 27 is to be read as if—
- (a) references to non-compliance with the Monitoring and Reporting Regulation 2018 were references to non-compliance with the provisions of that Regulation referred to in paragraph 5(4) to (6) of this Schedule;
 - (b) in paragraph 3—
 - (i) point (n) were omitted;
 - (ii) for point (p) there were substituted—
 - “(p) a confirmation whether the method used to complete the data gap pursuant to the last subparagraph of Article 18(1) is conservative and whether it does or does not lead to material misstatements;”.
- (14) Article 29(1) is to be read as if—
- (a) the reference to the verification report related to the previous monitoring period were a reference to—
 - (i) the verification report under the Verification Regulation 2018 in respect of the scheme year (within the meaning of GGGETSR 2012) beginning on 1st January 2020; or
 - (ii) where the operator has previously provided evidence of the installation’s reportable emissions in the 2021-2026 allocation period to the verifier for verification for the purposes of submission under paragraph 3(1)(b) of this Schedule, the verifier’s last

report under the Verification Regulation 2018 (as modified by this paragraph) on that evidence;

- (b) “according to the requirements on the operator referred to in Article 69(4) of Implementing Regulation (EU) 2018/2066, where relevant” were omitted;
 - (c) “pursuant to Article 69(4) of Implementing Regulation (EU) 2018/2066” were omitted.
- (15) The Verification Regulation 2018 is to be read as if Articles 30 to 32 were omitted.

Duty to monitor reportable emissions, etc.

5.—(1) Where an installation is an ultra-small emitter for a scheme year, the operator of the installation must monitor the installation’s reportable emissions in the scheme year in accordance with the appropriate monitoring plan.

(2) The appropriate monitoring plan is—

- (a) the monitoring plan approved in relation to the installation under Articles 11 to 13 of the Monitoring and Reporting Regulation 2018 for the 2025 scheme year, including—
 - (i) any modifications approved by the regulator in that scheme year; and
 - (ii) any modifications that are not significant (within the meaning of Article 15(3) of that Regulation) notified to the regulator on or before 31st December 2025; or
- (b) if there is no such monitoring plan, the monitoring plan approved in relation to the installation under Articles 11 to 13 of the Monitoring and Reporting Regulation 2012 for the purposes of the EU ETS for the scheme year (within the meaning of GGETSR 2012) beginning on 1st January 2020, including—
 - (i) any modifications approved by the regulator in that scheme year; and
 - (ii) any modifications that are not significant (within the meaning of Article 15(3) of that Regulation) notified to the regulator on or before 31st December 2020.

(3) Subject to sub-paragraphs (4) to (6), where an installation is an ultra-small emitter for a scheme year, the Monitoring and Reporting Regulation 2018 does not apply to the monitoring or reporting of emissions of greenhouse gases from the installation in the scheme year.

(4) Article 14 of the Monitoring and Reporting Regulation 2018 applies to the operator of an installation that is an ultra-small emitter for a scheme year, but is to be read as if—

- (a) references to the monitoring plan were references to the appropriate monitoring plan;
- (b) in paragraph 1 “, and whether the monitoring methodology can be improved” were omitted;
- (c) in paragraph 2—
 - (i) after “the following situations” there were inserted “and those referred to in Article 15(3)(c), (f) and (i)”;
 - (ii) points (b) and (d) to (f) were omitted.

(5) Any modifications to the appropriate monitoring plan under Article 14 of the Monitoring and Reporting Regulation 2018 must be made in accordance with the provisions of that Regulation; but this sub-paragraph does not require—

- (a) the operator to give notice of the modifications to the regulator;
- (b) the regulator to approve the modifications;
- (c) the regulator to assess whether a monitoring methodology is technically feasible or would incur unreasonable costs.

(6) Where the appropriate monitoring plan is modified under Article 14 of the Monitoring and Reporting Regulation 2018, Article 16 of that Regulation applies in relation to the modifications, but is to be read as if—

- (a) paragraphs 1 and 2 were omitted;
- (b) in paragraph 3—
 - (i) references to the monitoring plan were references to the appropriate monitoring plan;
 - (ii) points (c) and (d) were omitted;
 - (iii) in point (e) “in accordance with paragraph 2 of this Article” were omitted.

(7) Where the appropriate monitoring plan is modified under Article 14 of the Monitoring and Reporting Regulation 2018, sub-paragraph (1) of this paragraph has effect as if the reference to the appropriate monitoring plan included a reference to the plan as modified.

Reportable emissions must not exceed maximum amount

6. If an installation’s reportable emissions in a scheme year for which the installation is an ultra-small emitter exceed the maximum amount, the operator of the installation must give notice to the regulator on or before 31st March in the following year.

End of ultra-small emitter status: ceasing to meet criteria

7.—(1) This paragraph applies where—

- (a) an installation is an ultra-small emitter for any of the 2021, 2022, 2023, 2026, 2027 and 2028 scheme years; and
- (b) the regulator considers that the installation’s reportable emissions in any of those years (the “excess year”) exceed the maximum amount.

(2) Subject to sub-paragraph (7), the regulator must, as soon as reasonably practicable, give a notice to the operator of the installation.

(3) The notice must—

- (a) set out the grounds for the notice;
- (b) state that the installation is not an ultra-small emitter—
 - (i) where the notice is given in the scheme year following the excess year, for the scheme year following the scheme year in which the notice is given;
 - (ii) where the notice is given after the scheme year following the excess year, for the scheme year in which the notice is given;
- (c) state that the operator must—
 - (i) apply for a greenhouse gas emissions permit; and
 - (ii) comply with the conditions of the permit—
 - (aa) where paragraph (b)(i) applies, from 1st January in the scheme year following the year in which the notice is given; or
 - (bb) where paragraph (b)(ii) applies, from no later than the date (the “relevant date”) set out in the notice.

(4) But the notice must also state that, where sub-paragraph (5) applies, the operator must apply for a hospital or small emitter permit and comply with the requirements of that permit, instead of a greenhouse gas emissions permit.

(5) This sub-paragraph applies where—

- (a) the operator within 14 days of the date of the notice—

- (i) gives notice to the regulator that the operator prefers to comply with the conditions of a hospital or small emitter permit instead of a greenhouse gas emissions permit; and
 - (ii) submits evidence to the regulator that the installation is not an ineligible installation for the purposes of paragraph 4 of Schedule 7; and
 - (b) the regulator gives notice to the operator that the regulator considers that the installation is not an ineligible installation.
- (6) Where sub-paragraph (3)(b)(ii) applies, although the installation is not an ultra-small emitter for the scheme year in which the notice is given (see paragraph 2), the operator—
- (a) must comply with paragraph 5 in respect of the period beginning on 1st January in the scheme year in which the notice is given and ending on the earlier of—
 - (i) the day before a permit for the installation comes into force; and
 - (ii) the relevant date;
 - (b) is not liable to a civil penalty under article 50 in respect of that period (but is liable to a civil penalty under article 60).
- (7) Sub-paragraph (2) does not apply where—
- (a) it is not possible for the notice to be given in the same allocation period as the excess year; or
 - (b) although it is possible for the notice to be given in the same allocation period as the excess year, the regulator considers that it would not be reasonable to expect the operator to apply for a permit before the end of the allocation period.

End of ultra-small emitter status: publication

- 8.—(1) The regulator must, as soon as reasonably practicable, inform the UK ETS authority about—
- (a) each installation in respect of which a notice under paragraph 7(2) is given; and
 - (b) where relevant, whether the operator of the installation applied for a greenhouse gas emissions permit or a hospital or small emitter permit.
- (2) The UK ETS authority must, from time to time, publish the information referred to in sub-paragraph (1).