STATUTORY INSTRUMENTS

2020 No. 1557

CLIMATE CHANGE

The Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020

Made - - - -	*16th December 2020*
Laid before Parliament	*17th December 2020*
Laid before the Northern Ireland Assembly - -	*17th December 2020*
Laid before the Scottish Parliament - - - -	*17th December 2020*
Laid before Senedd Cymru	*17th December 2020*
Coming into force in accordance with article 2	

At the Court at Windsor Castle, the 16th day of December 2020

Present,

The Queen's Most Excellent Majesty in Council

This Order is made in exercise of the powers conferred by sections 44, 46(3), 54 and 90(3) of, and Schedule 2 and paragraph 9 of Schedule 3 to, the Climate Change Act 2008 [M1].
In accordance with paragraph 10 of Schedule 3 to that Act, before the recommendation to Her Majesty in Council to make this Order was made—

(a) the advice of the Committee on Climate Change, including on the amount of the limit referred to in section 48(2) of that Act, was obtained and taken into account; and

(b) such persons likely to be affected by the Order as the Secretary of State, the Department of Agriculture, Environment and Rural Affairs, the Scottish Ministers, the Welsh Ministers considered appropriate were consulted.

Accordingly, Her Majesty, by and with the advice of Her Privy Council, makes the following Order:

Marginal Citations

M1 2008 c. 27.

PART 1

Preliminary

Citation

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

Commencement Information
I1 Art. 1 in force at 31.12.2020, see **art. 2(1)**

Commencement

2.—(1) Except as provided by paragraph (2), this Order comes into force on 31st December 2020.

(2) The following provisions come into force on IP completion day—

(a) article 46 and Schedule 1 (Free Allocation Regulation amended);

(b) article 47 and Schedule 2 (Activity Level Changes Regulation amended).

Commencement Information
I2 Art. 2 in force at 31.12.2020, see **art. 2(1)**

Extent

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

Commencement Information
I3 Art. 3 in force at 31.12.2020, see **art. 2(1)**

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 [M2] is amended in accordance with this Part.

Commencement Information
I4 Art. 4 in force at 31.12.2020, see **art. 2(1)**

Marginal Citations
M2 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

I5 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

I6 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 [M3];

(c) NRW [M4];

(d) the Secretary of State; and

(e) SEPA [M5].

(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

I7 Art. 7 in force at 31.12.2020, see **art. 2(1)**

Marginal Citations

M3 The Environment Agency was established by section 1 of the Environment Act 1995 (c. 25).

M4 "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).

M5 "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

I8 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

I9 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

I10 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

I11 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
I12 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
I13 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
I14 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
I15 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
I16 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
I17 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 sub-paragraph (a) was produced and verified in accordance with whichever of the following applied in relation to that previous submission—

(i) Commission Decision 2007/589/EC of 18 July 2007 establishing guidelines for the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87/EC of the European Parliament and of the Council [M6];

(ii) the Monitoring and Reporting Regulation 2012 and the Verification Regulation 2012; and

(c) the applicant submits to the regulator a statement from the competent authority to which the data was submitted for the purpose of the application referred to in sub-paragraph (a) confirming that the data was not altered before the free allocation was calculated.

(6) 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

Column 1 Scheme year	*Column 2 Reduction factor*
2021	0.978
2022	0.956
2023	0.934
2024	0.912

(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

I18 Art. 18 in force at 31.12.2020, see **art. 2(1)**

Marginal Citations

M6 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

I19 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
I20 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
I21 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
I22 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
I23 Art. 23 in force at 31.12.2020, see **art. 2(1)**

Article 44 amended (enforcement notices)

24.—(1) Article 44 is amended as follows.

(2) In paragraph (2)(a)—

(a) in paragraph (i) after "this Order" insert " , except for Schedule 5A ";

(b) after paragraph (ii) insert—

"(iii) the Verification Regulation 2018;

(iv) the Free Allocation Regulation;

(v) the Activity Level Changes Regulation.".

(3) After paragraph (2) insert—

"(2A) Where the registry administrator considers that a person has contravened, is contravening or is likely to contravene a requirement imposed on the person by or under Schedule 5A, the registry administrator may give notice (an "enforcement notice") to the person.".

(4) In paragraph (3)(a) after "regulator" insert " , or the requirement imposed by or under Schedule 5A that the registry administrator, ".

(5) In paragraph (5) after "regulator" insert " or the registry administrator ".

Commencement Information

I24 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

I25 Art. 25 in force at 31.12.2020, see **art. 2(1)**

Article 65 amended (failure to comply with enforcement notice)

26.—(1) Article 65 is amended as follows.

(2) In the heading omit "given by regulator".

(3) In paragraph (1) omit "by the regulator".

Commencement Information

I26 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
I27 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
I28 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—

“(iia) paragraph 11(5) of Schedule 5A (notice suspending operator holding account);

(iib) paragraph 12(4) of Schedule 5A (notice suspending operator holding account on transfer);

(iic) paragraph 13(4) of Schedule 5A (notice suspending aircraft operator holding account);

(iid) paragraph 14(4)(b) of Schedule 5A (notice refusing to open trading account);

(iie) paragraph 16(7)(b) of Schedule 5A (notice refusing to appoint authorised representative);

(iif) paragraph 17(4)(b) of Schedule 5A (notice refusing to change account permission);

(iig) paragraph 18(2) of Schedule 5A (notice suspending access to registry of authorised representative);

(iih) paragraph 19(2) of Schedule 5A (notice removing authorised representative);

(iii) paragraph 25(3) of Schedule 5A (notice suspending account);

(iij) 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
I29 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
I30 Art. 30 in force at 31.12.2020, see **art. 2(1)**

Article 75 amended (information notices)

31.—(1) Article 75 is amended as follows.

(2) In paragraph (1)—

(a) for "or a regulator" substitute " , a regulator or the registry administrator ";

(b) after sub-paragraph (c) insert—

"(d) the Free Allocation Regulation;

(e) the Activity Level Changes Regulation.".

Commencement Information
I31 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 [M7];

(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 [M8];

(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 [M9];

(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 [M10];

(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

I32 Art. 32 in force at 31.12.2020, see **art. 2(1)**

Marginal Citations

M7 Cm 2833. The Convention entered into force on 21st March 1994.

M8 S.I. 2015/933, amended by S.I. 2016/1108.

M9 S.R. 2016 No. 28, amended by S.R. 2018 No. 200.

M10 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

I33 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

I34 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 CO_2, N_2O and PFCs shall be reported as rounded tonnes of CO_2 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 "F_{CF2F6}" in both places there were substituted " F_{C2F6} ";".

Commencement Information

I35 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 [M11] ";

(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[M12];";

(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 [M13] ".".

Commencement Information

I36 Art. 36 in force at 31.12.2020, see **art. 2(1)**

Marginal Citations

M11 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.

M12 Regulation (EC) 765/2008 is amended prospectively by S.I. 2019/696 with effect from IP completion day.

M13 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 [M14];

"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 [M15];

(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 [M16].

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 sub-paragraph (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 [M17] 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 [M18] 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 GGETSR 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 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 [M19]; 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

I37 Art. 37 in force at 31.12.2020, see **art. 2(1)**

Marginal Citations

M14 2020 c. 14.

M15 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.

M16 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).

M17 S.I. 2011/2699, amended by S.I. 2012/1906, 2013/429, 2013/642, 2013/3115, 2016/680 and 2017/1064.

M18 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.

M19 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

I38 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

I39 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

I40 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

I41 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
I42 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
I43 Art. 43 in force at 31.12.2020, see **art. 2(1)**

PART 3

Amendments to other legislation

Climate Change Agreements (Amendment of Agreements) (EU Exit) Regulations 2018 amended

44.—(1) The Climate Change Agreements (Amendment of Agreements) (EU Exit) Regulations 2018 [M20] are amended as follows.

(2) In regulation 2(1)(d) after "the Greenhouse Gas Emissions Trading Scheme Regulations 2012" insert " or the Greenhouse Gas Emissions Trading Scheme Order 2020 ".

Commencement Information
I44 Art. 44 in force at 31.12.2020, see **art. 2(1)**

Marginal Citations
M20 S.I. 2018/1205.

Greenhouse Gas Emissions Trading Scheme (Amendment) (EU Exit) (No. 2) Regulations 2019 amended

45.—(1) The Greenhouse Gas Emissions Trading Scheme (Amendment) (EU Exit) (No. 2) Regulations 2019 [M21] are amended as follows.

(2) Omit regulation 62 (revocation of Commission Delegated Regulation (EU) 2019/331).

Commencement Information
I45 Art. 45 in force at 31.12.2020, see **art. 2(1)**

Marginal Citations
M21 S.I. 2019/916.

Free Allocation Regulation amended

46. Schedule 1 (which amends Commission Delegated Regulation (EU) 2019/331 for the purposes of the United Kingdom Emissions Trading Scheme) has effect.

Commencement Information
I46 Art. 46 in force at 31.12.2020 on IP completion day, see **art. 2(2)(a)**

Activity Level Changes Regulation amended

47. Schedule 2 (which amends Commission Implementing Regulation (EU) 2019/1842 for the purposes of the United Kingdom Emissions Trading Scheme) has effect.

Commencement Information
I47 Art. 47 in force at 31.12.2020 on IP completion day, see **art. 2(2)(b)**

Richard Tilbrook
Clerk of the Privy Council

SCHEDULE 1

Article 46

Free Allocation Regulation amended

Free Allocation Regulation amended

1. Commission Delegated Regulation (EU) 2019/331 is amended in accordance with this Schedule.

Commencement Information
I48 Sch. 1 para. 1 in force at 31.12.2020 on IP completion day, see **art. 2(2)(a)**

"Regulator" substituted for "competent authority"

2. For "competent authority" in each place substitute " regulator ".

Commencement Information
I49 Sch. 1 para. 2 in force at 31.12.2020 on IP completion day, see **art. 2(2)(a)**

Article 1 amended (scope)

3.—(1) Article 1 is amended as follows.

(2) For the words from "emission allowances under Chapter III" to the end substitute " allowances to installations under the UK ETS ".

Commencement Information
I50 Sch. 1 para. 3 in force at 31.12.2020 on IP completion day, see **art. 2(2)(a)**

Article 2 amended (definitions)

4.—(1) Article 2 is amended as follows.

(2) Renumber the existing text as paragraph 1.

(3) In paragraph 1—

(a) for point (1) substitute—

"(1) 'incumbent installation' means an installation in respect of which a deemed application for free allocation in the 2021-2025 allocation period or an application for free allocation in the 2026-2030 allocation period under Article 4 is made;";

(b) in point (3) (heat benchmark sub-installation) after "EU ETS" in both places insert " or UK ETS ";

(c) in point (4) (district heating) after "EU ETS" insert " or UK ETS ";

(d) in point (5) (district heating sub-installation) after "EU ETS" insert " or UK ETS ";

(e) in point (10) (process emissions sub-installation) for "greenhouse gas emissions listed in Annex I to Directive 2003/87/EC" substitute " emissions of greenhouse gases set out in column 2 of table C in Schedule 2 to the UK ETS Order ";

(f) in point (11) (waste gas) for "Article 3(50) of Regulation (EU) No 601/2012" substitute " Article 3(52) of the Monitoring and Reporting Regulation 2018 ";

(g) for point (14) substitute—

"(14) 'baseline period' means:

(a) in relation to a deemed application for free allocation in the 2021-2025 allocation period or an incumbent installation in respect of which such an application is made, the 5-year period beginning on 1 January 2014;

(b) in relation to an application for free allocation in the 2026-2030 allocation period under Article 4 or an incumbent installation in respect of which such an application is made, the 5-year period beginning on 1 January 2019;";

(h) omit point (15);

(i) after point (18) insert—

"(19) 'deemed application for free allocation in the 2021-2025 allocation period' must be construed in accordance with Article 3a;

(20) 'electricity generator' means an installation:

(a) that, on or after 1 January 2005, produced electricity for sale to third parties; and

(b) at which no regulated activity other than the regulated activity referred to in column 1 of the first entry in table C in Schedule 2 to the UK ETS Order (combustion of fuels) is carried out;

(21) 'emission allowance' means an allowance (as defined in the UK ETS Order);

(22) 'new entrant' means an installation in respect of which an application for free allocation under Article 5 is made;

(23) 'UK ETS Order' means the Greenhouse Gas Emissions Trading Scheme Order 2020. ".

(4) After paragraph 1 insert—

"**2.** Expressions used in this Regulation that are defined for the purposes of the Climate Change Act 2008 or the UK ETS Order have the meanings given in that Act or Order

3. A reference in this Regulation to a "non-ETS" entity, installation or process is a reference to an entity, installation or process that is not covered by either the EU ETS or the UK ETS.".

Commencement Information

I51 Sch. 1 para. 4 in force at 31.12.2020 on IP completion day, see **art. 2(2)(a)**

Article 2a inserted

5. After Article 2 insert—

"Article 2a

Eligibility for free allocation

1. An application for free allocation of allowances may not be made under this Regulation in respect of:

(a) an installation used for any of the following:

(i) the capture of greenhouse gases from other installations for the purpose of transport and geological storage in a storage site;

(ii) the transport of greenhouse gases by pipelines for geological storage in a storage site;

(iii) the geological storage of greenhouse gases in a storage site;

(b) an electricity generator, except in relation to measurable heat:

(i) produced by an electricity generator that produced measurable heat by means of high-efficiency cogeneration (as defined in Article 2(34) of Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 [M22]) in the relevant period, calculated over the relevant period as a whole; or

(ii) exported for the purposes of district heating.

2. For the purposes of paragraph 1(b)(i):

(a) the "relevant period" is:

(i) in the case of a deemed application for free allocation in the 2021-2025 allocation period or an application for free allocation in the 2026-2030 allocation period under Article 4, the baseline period;

(ii) in the case of an application for free allocation under Article 5, the period from the start of normal operation until the end of the year before the year in which the application is made;

(b) Directive 2012/27/EU has effect as if in Annex 2 in point (a) in the first indent after "heat and electricity" there were inserted " ; and for the purposes of this indent, cogeneration production from cogeneration units certified under the standard applying from time to time for the purposes of the Combined Heat and Power Quality Assurance Programme [M23] that provides primary energy savings during the period of certification must be treated as providing primary energy savings of at least 10% during that period ".".

Commencement Information

I52 Sch. 1 para. 5 in force at 31.12.2020 on IP completion day, see **art. 2(2)(a)**

Marginal Citations

M22 OJ No L 315, 14.11.2012, p. 1.

M23 Details of the Combined Heat and Power Quality Assurance Programme are available at https://www.gov.uk/guidance/combined-heat-power-quality-assurance-programme. The current and previous standards can be accessed at https://www.gov.uk/government/publications/chpqa-standard. Copies may be inspected at the Department for Business, Energy and Industrial Strategy,1 Victoria Street, London SW1H 0ET.

Article 3 omitted

6. Article 3 is omitted.

Commencement Information

I53 Sch. 1 para. 6 in force at 31.12.2020 on IP completion day, see **art. 2(2)(a)**

Article 3a inserted

7. After Article 2 and the cross-heading to Chapter 2 (application, data reporting and monitoring rules) insert—

"Article 3a

Applications for free allocation under EU ETS to be treated as applications for free allocation in 2021-2025 allocation period by operators of incumbent installations

1. This Article applies where before 1 January 2021, the operator of an installation made an application (an "EU ETS application") under Article 4 for free allocation of emission allowances under the EU ETS in respect of the allocation period in the EU ETS beginning on 1 January 2021

2. For the purposes of this Regulation:

(a) the EU ETS application must be treated as an application (a "deemed application for free allocation in the 2021-2025 allocation period") by the operator of the installation for free allocation of allowances under the UK ETS in the 2021-2025 allocation period;

(b) the determination of historical activity levels under Article 15, and anything else done in connection with the EU ETS application under this Regulation, before IP completion day must be treated as done in connection with the deemed application for free allocation in the 2021-2025 allocation period.

3. Without limiting paragraph 2, in this Regulation—

(a) a reference to a monitoring methodology plan includes a monitoring methodology plan approved for the purposes of the EU ETS application;

(b) a reference to a baseline data report or a verification report includes a baseline data report or a verification report submitted for the purposes of the EU ETS application.".

Commencement Information

I54 Sch. 1 para. 7 in force at 31.12.2020 on IP completion day, see **art. 2(2)(a)**

Article 4 amended (application for free allocation in 2026-2030 allocation period by operators of incumbent installations)

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

(2) In the heading after "allocation" insert " in 2026-2030 allocation period ".

(3) For paragraph 1 substitute—

"**1.** The operator of any of the following installations may apply to the regulator for free allocation in the 2026-2030 allocation period:

(a) an installation for which a permit is issued on or before 30 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.

1A. An application:

(a) may not be made before 1 April 2024;

(b) must be made on or before 30 June 2024.".

(4) In paragraph 2—

(a) in point (a)—

(i) for "verified as satisfactory in accordance with measures adopted pursuant to Article 15 of Directive 2003/87/EC" substitute " verified in accordance with the Verification Regulation 2018 ";

(ii) omit "relating to the allocation period to which the application relates";

(b) in point (b)—

(i) at the beginning insert " except where a monitoring methodology plan has already been approved in relation to the installation under Article 8, ";

(ii) after "in accordance with" insert " Article 8 and ";

(c) for point (c) substitute—

"(c) the verification report on the baseline data report, which (unless the monitoring methodology plan has already been approved by the regulator) must contain the confirmation relating to the plan referred to in Article 27(3)(f) of the Verification Regulation 2018.".

(5) After paragraph 2 insert—

"**3.** Where an application is made in respect of an installation referred to in paragraph 1(c), the application must be treated as never having been made unless the permit is issued on or before 30 June 2024.

4. An application may be made under this Article and under either of the following at the same time:

(a) paragraph 5 of Schedule 7 to the UK ETS Order (obtaining hospital or small emitter status for 2026-2030 allocation period);

(b) paragraph 3 of Schedule 8 to that Order (obtaining ultra-small emitter status for 2026-2030 allocation period).".

Commencement Information

I55 Sch. 1 para. 8 in force at 31.12.2020 on IP completion day, see **art. 2(2)(a)**

Article 5 substituted

9. For Article 5 substitute—

"Article 5

Application for free allocation by new entrants

1. The operator of an installation at which a regulated activity is carried out and for which a greenhouse gas emissions permit (including a greenhouse gas emissions permit within the meaning of GGETSR 2012) issued for the first time is in force may apply to the regulator:

(a) for free allocation in the 2021-2025 allocation period, if the permit is issued in the period beginning on 1 July 2019 and ending on 30 June 2024;

(b) for free allocation in the 2026-2030 allocation period, if the permit is issued in the period beginning on 1 July 2024 and ending on 30 June 2029.

2. An application may be made at any time after the end of the year in which the start of normal operation occurs.

3. But where an installation has not been operating for a full calendar year after the start of normal operation, an application may not be made unless:

(a) in the case of an application under paragraph 1(a), the start of normal operation is on or after 1 January 2021;

(b) in the case of an application under paragraph 1(b), the start of normal operation is on or after 1 January 2026.

4. For the purposes of the application, the operator must divide the installation into sub-installations in accordance with Article 10.

5. The application must set out the start of normal operation and be accompanied by:

(a) a new entrant data report, verified in accordance with the Verification Regulation 2018, containing each parameter set out in sections 1 and 2 of Annex 4 for each sub-installation separately from the start of normal operation until the end of the year before the year in which the application is made;

(b) a monitoring methodology plan in accordance with Article 8 and Annex 6;

(c) the verification report on the new entrant data report, which must contain the confirmation relating to the monitoring methodology plan referred to in Article 27(3)(f) of the Verification Regulation 2018.

6. The regulator:

(a) must assess the new entrant data report and the verification report to ensure conformity with the requirements of this Regulation;

(b) where appropriate, may request corrections by the operator of any non-conformity or error that impacts on the determination of activity levels;

(c) must not determine historical activity levels under Article 17, activity levels for the purpose of Article 18(2) or calculate the preliminary or final annual number of allowances under Article 18 or 18a unless:

(i) the regulator considers that the date set out in the application as the start of normal operation, or such other date proposed by the operator, is accurate;

(ii) the data relating to the installation has been verified as satisfactory or, where it has not been verified as satisfactory, the regulator considers that any data gaps referred to in the verifier's opinion are due to exceptional and unforeseeable circumstances that could not have been avoided even if all due care had been exercised; and

(iii) any corrections requested under point (b) have been made.”.

Commencement Information

I56 Sch. 1 para. 9 in force at 31.12.2020 on IP completion day, see **art. 2(2)(a)**

Article 6 amended (general obligation to monitor)

10.—(1) Article 6 is amended as follows.

(2) Omit “pursuant to Article 10a of Directive 2003/87/EC”.

(3) For "by 31 December 2020" substitute " under Article 8 ".

Commencement Information
I57 Sch. 1 para. 10 in force at 31.12.2020 on IP completion day, see **art. 2(2)(a)**

Article 7 amended (monitoring principles)

11.—(1) Article 7 is amended as follows.

(2) In paragraph 3 after "application for free allocation" insert " (including a deemed application for free allocation in the 2021-2025 allocation period) ".

Commencement Information
I58 Sch. 1 para. 11 in force at 31.12.2020 on IP completion day, see **art. 2(2)(a)**

Article 8 amended (content and submission of the monitoring methodology plan)

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

(2) In paragraph 1 for "Articles 4(2)b and 5(2) shall draw up" substitute " Article 4 or 5 must, except where a monitoring methodology plan has already been approved in relation to the installation under this Article, draw up ".

(3) In paragraph 3 omit "and for the purposes of Article 12(3) of Regulation (EU) No 601/2012,".

(4) Omit paragraphs 4 and 5.

(5) After paragraph 3 insert—

"**6.** Where the operator has submitted a monitoring methodology plan to the regulator, the regulator must, by notice to the operator:

(a) if the plan is in accordance with this Regulation, approve it; or

(b) reject it.

7. A notice under paragraph 6 must be given:

(a) where the monitoring methodology plan is submitted with an application for free allocation in the 2026-2030 allocation period under Article 4, on or before 31 December 2025;

(b) where the monitoring methodology plan is submitted with an application for free allocation under Article 5, as soon as reasonably practicable after the application is made."

Commencement Information
I59 Sch. 1 para. 12 in force at 31.12.2020 on IP completion day, see **art. 2(2)(a)**

Article 9 amended (changes to the monitoring methodology plan)

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

(2) For paragraph 3 substitute—

"**3.** The operator must notify the regulator of:

(a) any significant modification (within the meaning of paragraph 5) of the monitoring methodology 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 on or before 31 December in the year in which the modification is made.”.

Commencement Information

I60 Sch. 1 para. 13 in force at 31.12.2020 on IP completion day, see **art. 2(2)(a)**

Article 10 amended (division into sub-installations)

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

(2) In paragraph 1—

(a) after “data reporting and of monitoring” insert “ under this Regulation and the Activity Level Changes Regulation ”;

(b) omit “eligible for the free allocation of emission allowances under Article 10a of Directive 2003/87/EC”.

(3) In paragraph 3—

(a) in the first subparagraph for “deemed to be exposed to a significant risk of carbon leakage as determined in accordance with Article 10b(5) of Directive 2003/87/EC” in both places substitute “ set out in the Annex to Commission Delegated Decision (EU) 2019/708 ”;

(b) in the second subparagraph—

(i) for “deemed to be exposed to a significant risk of carbon leakage as determined in accordance with Article 10b(5) of Directive 2003/87/EC” substitute “ set out in the Annex to Commission Delegated Decision (EU) 2019/708 ”;

(ii) for “not deemed to be exposed to a significant risk of carbon leakage” substitute “ other than those set out in the Annex to Commission Delegated Decision (EU) 2019/708 ”.

(4) In paragraph 4 in the first subparagraph—

(a) for “installation included in the EU ETS” substitute “ installation ”;

(b) after “not included in the EU ETS” insert “ or the UK ETS ”;

(c) for “deemed to be exposed to a significant risk of carbon leakage as determined in accordance with Article 10b(5) of Directive 2003/87/EC” in both places substitute “ set out in the Annex to Commission Delegated Decision (EU) 2019/708 ”.

(5) In paragraph 5—

(a) in point (b)—

(i) after “Regulation (EU) No 601/2012” insert “ or the Monitoring and Reporting Regulation 2018 ”;

(ii) after “EU ETS” insert “ or UK ETS ”;

(b) in point (d)—

(i) after “EU ETS” insert “ or UK ETS ”;

(ii) for “non-EU ETS” substitute “ non-ETS ”.

Commencement Information
I61 Sch. 1 para. 14 in force at 31.12.2020 on IP completion day, see **art. 2(2)(a)**

Article 12 amended (data gaps)

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

(2) In paragraph 3 for "Article 5(2)" substitute " Article 5(5)(a) ".

Commencement Information
I62 Sch. 1 para. 15 in force at 31.12.2020 on IP completion day, see **art. 2(2)(a)**

Articles 13 and 14 omitted

16. Articles 13 and 14 are omitted.

Commencement Information
I63 Sch. 1 para. 16 in force at 31.12.2020 on IP completion day, see **art. 2(2)(a)**

Article 15 amended (historical activity level for incumbent installations)

17.—(1) Article 15 is amended as follows.

(2) In paragraph 1 for "Member States" substitute " The regulator ".

(3) In paragraph 2—

(a) for "Member States" in the first place where that expression occurs substitute " the regulator ";

(b) for the words "Member States may" to the end substitute—

"But the regulator must not determine historical activity levels for an installation unless:

(a) the data relating to an installation has been verified as satisfactory or, where it has not been verified as satisfactory, the regulator considers that any data gaps referred to in the verifier's opinion are due to exceptional and unforeseeable circumstances that could not have been avoided even if all due care had been exercised; and

(b) any corrections requested under paragraph 1 have been made.".

(4) In paragraph 4 after "EU ETS" in each place insert " or UK ETS ".

(5) In paragraph 7 in the third subparagraph—

(a) for "calendar year" in both places substitute " full calendar year ";

(b) after "submitted" insert—

"(see Article 3a of the Activity Level Changes Regulation); and in Articles 16 to 16b:

(a) "sub-installation" does not include such a sub-installation;

(b) a reference to an installation must be treated as a reference to the installation excluding such a sub-installation or, where the installation consists entirely of such sub-installations, as excluding the installation.".

(6) In paragraph 8 for "Member States" substitute " the regulator ".

Commencement Information
I64 Sch. 1 para. 17 in force at 31.12.2020 on IP completion day, see **art. 2(2)(a)**

Article 15a inserted

18. After Article 15 insert—

"Article 15a

Assessment of applications for free allocation by operators of incumbent installations

1. This Article applies where:

(a) a deemed application for free allocation in the 2021-2025 allocation period has been made by the operator of an incumbent installation; or

(b) an application under Article 4 for free allocation in the 2026-2030 allocation period has been made by the operator of an incumbent installation.

2. The regulator must send the information set out in paragraph 3 to the UK ETS authority:

(a) where paragraph 1(a) applies, as soon as reasonably practicable after IP completion day;

(b) where paragraph 1(b) applies, on or before 30 September 2024.

3. The information is:

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

(b) the information contained in the baseline data report submitted with the application;

(c) the historical activity levels (if any) of the installation and each sub-installation determined under Article 15 or, if the regulator has not determined historical activity levels by virtue of Article 15(2), the regulator's explanation.

4. The UK ETS authority must as soon as reasonably practicable:

(a) assess the application for free allocation and, where relevant, the regulator's explanation under paragraph 3(c); and

(b) inform the regulator whether or not the application is valid, making any corrections to the historical activity levels that the UK ETS authority considers appropriate.

5. Where the application is not valid, the regulator must give notice to the operator of the installation of that fact and the reasons for it.

6. For the purposes of this Article, an application for free allocation is valid if:

(a) the application is one that may be made under this Regulation (see Article 2a); and

(b) the application is otherwise in accordance with this Regulation.".

Commencement Information

I65 Sch. 1 para. 18 in force at 31.12.2020 on IP completion day, see **art. 2(2)(a)**

Article 16 amended (preliminary allocation at installation level for incumbent installations)

19.—(1) Article 16 is amended as follows.

(2) In the heading for "Allocation" substitute " Preliminary allocation ".

(3) For paragraph 1 substitute—

"**1.** Where the UK ETS authority informs the regulator under Article 15a(4)(b) that:

(a) a deemed application for free allocation in the 2021-2025 allocation period is valid, the regulator must calculate the preliminary annual number of allowances to be allocated in respect of the installation for each scheme year in the 2021-2025 allocation period;

(b) an application for free allocation in the 2026-2030 allocation period under Article 4 is valid, the regulator must calculate the preliminary annual number of allowances to be allocated in respect of the installation for each scheme year in the 2026-2030 allocation period.".

(4) In paragraph 2—

(a) in the first subparagraph—

(i) in the words before point (a) for "Member States" substitute " the regulator ";

(ii) in point (d) for "five-year" substitute " allocation ";

(b) omit the second subparagraph.

(5) In paragraph 3—

(a) for "For the purpose of Article 10b(4) of Directive 2003/87/EC, the" substitute " The ";

(b) for "deemed not to be exposed to a significant risk of carbon leakage as determined in accordance with Article 10b(5) of Directive 2003/87/EC" substitute " other than those set out in the Annex to Commission Delegated Decision (EU) 2019/708 ".

(6) In paragraph 4 for "as determined in accordance with Article 10b(5) of Directive 2003/87/EC" substitute " set out in the Annex to Commission Delegated Decision (EU) 2019/708 ".

(7) In paragraph 5 for "From 2026" substitute " In the case of an application for free allocation in the 2026-2030 allocation period under Article 4 "

(8) In paragraph 7 for "Member States and operators" substitute " the regulator ".

(9) Omit paragraph 8.

(10) In paragraph 9—

(a) for "8" substitute " 7 ";

(b) after "integer" insert " , taking 0.5 as nearest to the previous integer ".

(11) After paragraph 9 insert—

"**10.** The regulator must send the preliminary annual number of allowances calculated in respect of each installation and each sub-installation of each installation to the UK ETS authority as soon as reasonably practicable after the benchmarks for the relevant allocation period referred to in paragraphs 2 and 5 have been adopted.

11. The regulator must make any corrections to the calculation required by the UK ETS authority.

12. In this Article and in Articles 19 to 22, "relevant allocation period" means, in relation to a benchmark adopted in accordance with Article 10a(2) of Directive 2003/87/EC:

(a) in the case of a deemed application for free allocation in the 2021-2025 allocation period or an application for free allocation in the 2021-2025 allocation period under Article 5(1)(a), the allocation period in the EU ETS beginning on 1 January 2021;

(b) in the case of an application for free allocation in the 2026-2030 allocation period under Article 4 or an application for free allocation in the 2026-2030 allocation period under Article 5(1)(b), the allocation period in the EU ETS beginning on 1 January 2026.".

Commencement Information

I66 Sch. 1 para. 19 in force at 31.12.2020 on IP completion day, see **art. 2(2)(a)**

Articles 16a and 16b inserted

20. After Article 16 insert—

"Article 16a

Cross-sectoral correction factors

1. This Article applies where, for a scheme year (the "relevant scheme year") in an allocation period:

(a) the sum ("PFA") of the preliminary annual number of allowances to be allocated in respect of all installations in the relevant scheme year calculated under Article 16 (including any corrections required under Article 16(11)) is greater than the industry cap ("IC") for the relevant scheme year; and

(b) the amount by which PFA exceeds IC is greater than the previous unallocated amount.

2. The previous unallocated amount is TIC + FS - TFA, where:

(a) TIC is the sum of the industry cap for each scheme year in the trading period preceding the relevant scheme year;

(b) FS is 40,984,970 allowances (the flexible share);

(c) TFA is the sum of the final allocation for each scheme year in the trading period preceding the relevant scheme year.

3. The final allocation for a scheme year is the sum of—

(a) the total preliminary annual number of allowances calculated under Article 16 to be allocated in the scheme year in respect of all installations other than electricity generators multiplied by the cross-sectoral correction factor (if any) for the scheme year determined under this Article; and

(b) the total preliminary annual number of allowances calculated under Article 16 to be allocated in the scheme year in respect of all electricity generators multiplied by the cross-sectoral correction factor (if any) for the scheme year determined under this Article or, if there is no cross-sectoral correction factor for the scheme year, the reduction factor for the scheme year.

4. The UK ETS authority must determine the cross-sectoral correction factor for the relevant scheme year, that is to say the factor that reduces PFA by such amount that TIC + IC + FS = TFA + the final allocation for the relevant scheme year.

5. The UK ETS authority must, as soon as reasonably practicable, publish for each allocation period:

(a) the cross-sectoral correction factors for scheme years in the allocation period determined under paragraph 4; or

(b) if there is no cross-sectoral correction factor for any scheme year in the allocation period, a statement to that effect.

6. For the purposes of this Article:

(a) the industry cap for a scheme year set out in column 1 of table A is the number of allowances set out in the corresponding entry in column 2;

(b) the reduction factor for a scheme year set out in column 1 of table A is the value set out in the corresponding entry in column 3.

Table A

Column 1 Scheme year	***Column 2 Industry cap***	***Column 3 Reduction factor***
2021	57,856,572	0.8562
2022	56,273,432	0.8342
2023	54,690,292	0.8122
2024	53,107,152	0.7902
2025	51,524,012	0.7682
2026	49,940,872	0.7462
2027	48,357,732	0.7242
2028	46,774,592	0.7022
2029	45,191,452	0.6802
2030	43,608,312	0.6582

7. In this Article and Article 16b, “installation” does not include an installation if:

(a) a deemed application for free allocation in the 2021-2025 allocation period was made in respect of the installation and the installation is included in the hospital and small emitter list for 2021-2025 or the ultra-small emitter list for 2021-2025; or

(b) an application for free allocation in the 2026-2030 allocation period is made in respect of the installation under Article 4 and the installation is included in the hospital and small emitter list for 2026-2030 or the ultra-small emitter list for 2026-2030.

8. Accordingly, the matters referred to in paragraph 5 must not, in relation to the 2026-2030 allocation period, be published before the publication of the hospital and small emitter list for 2026-2030 and the ultra-small emitter list for 2026-2030 under the UK ETS Order (see paragraph 5(5) of Schedule 7, and paragraph 3(6) of Schedule 8, to that Order)

Article 16b

Final allocation at installation level for incumbent installations

1. Where the preliminary annual number of allowances to be allocated in respect of an installation has been calculated under Article 16, the regulator must, as soon as reasonably practicable after the publication of the matters referred to in Article 16a(5):

(a) calculate the final annual number of allowances to be allocated in respect of each installation and each sub-installation of each installation:

(i) in the case of a deemed application for free allocation in the 2021-2025 allocation period, for each scheme year in the 2021-2025 allocation period;

(ii) in the case of an application for free allocation in the 2026-2030 allocation period under Article 4, for each scheme year in the 2026-2030 allocation period; and

(b) send the calculation to the UK ETS authority.

2. The final annual number of allowances to be allocated for a scheme year in respect of a sub-installation is the preliminary annual number of allowances calculated under Article 16 (including any corrections required under Article 16(11)) multiplied by:

(a) in the case of sub-installation of an installation other than an electricity generator, the cross-sectoral correction factor for the scheme year (if any) determined under Article 16a;

(b) in the case of a sub-installation of an electricity generator, the cross-sectoral correction factor for the scheme year determined under Article 16a or, if there is no cross-sectoral correction factor for the scheme year, the reduction factor for the scheme year (see Article 16a(6)).

3. The final annual number of allowances to be allocated in respect of an installation for a scheme year is the sum of the final annual number of allowances to be allocated in respect of all sub-installations of the installation.

4. The UK ETS authority must:

(a) approve the final annual number allowances, making any corrections to the calculation that the UK ETS authority considers appropriate;

(b) inform the regulator accordingly.

5. For the purpose of the calculation referred to in paragraphs 2 and 3, the number of allowances for sub-installations and installations must be expressed as the nearest integer, taking 0.5 as nearest to the previous integer.”.

Commencement Information

I67 Sch. 1 para. 20 in force at 31.12.2020 on IP completion day, see **art. 2(2)(a)**

Article 17 amended (historical activity level for new entrants)

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

(2) Renumber the existing text as paragraph 1.

(3) In paragraph 1—

(a) in the words before point (a) for “Member States” substitute “ Where an application for free allocation is made under Article 5, the regulator ”;

(b) in point (a) omit "or pursuant to Article 24 of Directive 2003/87/EC";

(c) in point (b) after "EU ETS" in both places insert " or UK ETS ";

(d) in point (c) after "EU ETS" insert " or UK ETS ";

(4) After paragraph 1 insert—

"**2.** But if a sub-installation has not been operating for a full calendar year after the start of normal operation, the historical activity level must be determined when the activity level report after the first full calendar year of operation is submitted (see Article 3a of the Activity Level Changes Regulation).".

Commencement Information

I68 Sch. 1 para. 21 in force at 31.12.2020 on IP completion day, see **art. 2(2)(a)**

Article 18 amended (preliminary allocation to new entrants)

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

(2) In the heading for "Allocation" substitute " Preliminary allocation ".

(3) Before paragraph 1 insert—

"**A1.** The regulator must calculate the preliminary annual number of allowances to be allocated free of charge in respect of a new entrant for scheme years in the relevant allocation period in accordance with this Article

A2. Where the start of normal operation of a new entrant is before the date on which the permit (including a permit within the meaning of GGETSR 2012) for the installation comes into force, for the purposes of this Article and Article 18a:

(a) the start of normal operation must be treated as the date on which the permit comes into force; and

(b) the activity level of the year in which the start of normal operation occurs must be treated as the activity level of that year excluding any days before the date on which the permit comes into force.".

(4) In paragraph 1—

(a) in the first subparagraph—

(i) in the words before point (a) for the words "For the purposes of the free allocation" to "each sub-installation separately," substitute " Where the historical activity level of a sub-installation of the new entrant has been determined under Article 17, the preliminary annual number of allowances to be allocated free of charge in respect of the sub-installation for the first scheme year in the relevant allocation period after the year in which the start of normal operation occurs and for each subsequent scheme year in the relevant allocation period is ";

(ii) in point (a) after "relevant historical activity level" insert " ; and in this point "benchmark for the relevant period" means the benchmark for the relevant allocation period (as defined in Article 16(12)) adopted in accordance with Article 10a(2) of Directive 2003/87/EC ";

(b) in the second subparagraph for "to new entrants" substitute " in respect of new entrants under this paragraph and paragraph 2 ".

(5) In paragraph 2—

(a) for "The preliminary" substitute " Where the start of normal operation of a sub-installation of a new entrant occurs in a scheme year in the relevant allocation period, the preliminary ";

(b) for "calendar year where the start of normal operation occurs" substitute " scheme year ".

(6) After paragraph 2 insert—

"**2A.** Paragraph 2 applies whether or not the historical activity level of the sub-installation has been determined under Article 17.".

(7) Omit paragraphs 4 and 5.

(8) In paragraph 6—

(a) for "1 to 5" substitute " 1 to 3 ";

(b) after "integer" insert " , taking 0.5 as nearest to the previous integer ".

(9) After paragraph 6 insert—

"**7.** In this Article (except as provided in paragraph 1(a)) and Article 18b, "relevant allocation period" means:

(a) in relation to an application for free allocation made under Article 5(1)(a), the 2021-2025 allocation period;

(b) in relation to an application for free allocation made under Article 5(1)(b), the 2026-2030 allocation period.".

Commencement Information

I69 Sch. 1 para. 22 in force at 31.12.2020 on IP completion day, see **art. 2(2)(a)**

Article 18a inserted

23. After Article 18 insert—

"Article 18a

Assessment of applications and final allocation at installation level for new entrants

1. Where an application for free allocation is made by a new entrant under Article 5, the regulator must send the information set out in paragraph 2 to the UK ETS authority as soon as reasonably practicable.

2. The information is:

(a) details of the installation, including details of the greenhouse gas emissions permit in force;

(b) the information contained in the new entrant data report submitted with the application under Article 5;

(c) the historical activity levels (if any) determined under Article 17;

(d) the preliminary annual number of allowances to be allocated in respect of the installation and of each sub-installation separately, as calculated under Article 18;

(e) where the regulator has not, by virtue of Article 5(6)(c), determined historical activity levels or the preliminary annual number of allowances, the regulator's explanation;

(f) except where point (e) applies, the final annual number of allowances to be allocated in respect of each sub-installation of the installation:

(i) for the scheme year in the relevant allocation period in which the start of normal operation of the sub-installation occurs; and

(ii) where the historical activity level of the sub-installation has been determined under Article 17, for each subsequent scheme year in the relevant allocation period;

(g) except where point (e) applies, the final annual number of allowances to be allocated in respect of the installation for each scheme year in the relevant allocation period;

(h) whether or not a monitoring methodology plan has been approved in relation to the installation under Article 8.

3. The final annual number of allowances to be allocated in respect of a sub-installation for a scheme year is the preliminary annual number of allowances calculated under Article 18 multiplied by the reduction factor for the scheme year.

4. The final annual number of allowances to be allocated in respect of an installation for a scheme year is the sum of the final annual number of allowances to be allocated in respect of all sub-installations of the installation for the scheme year.

5. The UK ETS authority must as soon as reasonably practicable:

(a) assess the application for free allocation and, where relevant, the regulator's explanation under paragraph 2(e); and

(b) inform the regulator whether or not the application is valid.

6. Where the application is valid, the UK ETS authority must also:

(a) approve the final annual number of allowances, making any corrections to the historical activity levels, preliminary annual number of allowances and final annual number of allowances that the UK ETS authority considers appropriate; and

(b) inform the regulator of the matters referred to in point (a).

7. But where a monitoring methodology plan has not been approved in relation to the installation at the date on which the information set out in paragraph 2 is sent to the UK ETS authority, paragraph 6 applies only after the regulator informs the UK ETS authority that the monitoring methodology plan submitted to the regulator for approval has been approved and does not apply if the regulator informs the UK ETS authority that the monitoring methodology plan has been rejected.

8. The regulator must give notice to the operator of the installation of the following:

(a) whether or not the application is valid;

(b) if the application is not valid, the reasons why it is not valid.

9. Where the application is valid, the regulator must also give notice to the operator:

(a) of the final annual number of allowances approved under paragraph 6; or

(b) that a final annual number of allowances has not been approved because the monitoring methodology plan submitted to the regulator for approval has been rejected.

10. For the purpose of the calculations referred to in paragraphs 3 and 4, the number of allowances for sub-installations and installations must be expressed as the nearest integer, taking 0.5 as nearest to the previous integer.

11. For the purposes of this Article, the reduction factor for a scheme year set out in column 1 of table B is the value set out in the corresponding entry in column 2.

Table B

Column 1 Scheme year	*Column 2 Reduction factor*
2021, 2026	1
2022, 2027	0.978
2023, 2028	0.956
2024, 2029	0.934
2025, 2030	0.912

12. For the purposes of this Article, an application for free allocation is valid if:

(a) the application is one which may be made under this Regulation (see Article 2a); and

(b) the application is otherwise in accordance with this Regulation.”.

Commencement Information

I70 Sch. 1 para. 23 in force at 31.12.2020 on IP completion day, see **art. 2(2)(a)**

Article 19 amended (allocation in respect of steam cracking)

24.—(1) Article 19 is amended as follows.

(2) For “Article 17(a)” in both places substitute “ Article 17(1)(a) ”.

Commencement Information

I71 Sch. 1 para. 24 in force at 31.12.2020 on IP completion day, see **art. 2(2)(a)**

Article 20 amended (allocation in respect of vinyl chloride monomer)

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

(2) For “Article 17(a)” in both places substitute “ Article 17(1)(a) ”.

Commencement Information

I72 Sch. 1 para. 25 in force at 31.12.2020 on IP completion day, see **art. 2(2)(a)**

Article 21 amended (heat flows between installations)

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

(2) After “EU ETS” in both places insert “ or UK ETS ”.

Commencement Information
I73 Sch. 1 para. 26 in force at 31.12.2020 on IP completion day, see **art. 2(2)(a)**

Article 22 amended (exchangeability of fuel and electricity)

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

(2) For "Article 17(a)" in each place substitute " Article 17(1)(a) ".

(3) In paragraph 2 after "EU ETS" insert " or UK ETS ".

Commencement Information
I74 Sch. 1 para. 27 in force at 31.12.2020 on IP completion day, see **art. 2(2)(a)**

Article 23 omitted

28. Article 23 is omitted.

Commencement Information
I75 Sch. 1 para. 28 in force at 31.12.2020 on IP completion day, see **art. 2(2)(a)**

Article 24 substituted

29. For Article 24 substitute—

"Article 24

Renunciation of free allocation of allowances

1. Where an installation is an FA installation for the 2021-2025 allocation period, the operator of the installation may by giving notice (a "renunciation notice") to the regulator renounce free allocation in respect of the remaining scheme years in the 2021-2025 allocation period beginning with the scheme year after the year in which the notice is given.

2. Where an installation is an FA installation for the 2026-2030 allocation period, the operator of the installation may by giving notice (a "renunciation notice") to the regulator renounce free allocation in respect of the remaining scheme years in the 2026-2030 allocation period beginning with the scheme year after the year in which the notice is given.

3. The renunciation notice must set out:

(a) whether the renunciation is made in respect of:

(i) the installation as a whole; or

(ii) one or more sub-installations of the installation (but not all of them); and

(b) where point (a)(ii) applies, the sub-installation or sub-installations in respect of which the renunciation is made.

4. Where a renunciation notice is given, the regulator must:

(a) recalculate the final annual number of allowances to be allocated in respect of the installation for each of the remaining scheme years of the allocation period, to take account of the renunciation notice;

(b) send the calculation to the UK ETS authority.

5. The UK ETS authority must:

(a) approve the final annual number of allowances to be allocated in respect of the installation, making any corrections that the UK ETS authority considers appropriate; and

(b) inform the regulator accordingly.

6. The regulator must inform the operator of the final annual number of allowances approved.

7. Where an application under paragraph 7 of Schedule 6 to the UK ETS Order for the transfer of a greenhouse gas emissions permit containing a statement by the new operator (as defined in paragraph 7 of that Schedule) that the new operator renounces free allocation in respect of the transferred units (as defined in that paragraph) is granted under paragraph 9 of that Schedule:

(a) for the purposes of this Article, the new operator must be treated as giving a renunciation notice in respect of the transferred units; and

(b) in the case of a transfer other than a partial transfer, for the purposes of article 4A(3)(b) and (5)(b) of the UK ETS Order, the renunciation notice must be treated as having been given by the new operator in respect of the installation as a whole.”.

Commencement Information

I76 Sch. 1 para. 29 in force at 31.12.2020 on IP completion day, see **art. 2(2)(a)**

Article 25 substituted

30. For Article 25 substitute—

“Article 25

Mergers and splits

1. This Article applies where an application for the transfer of a greenhouse gas emissions permit of an installation that is an FA installation at the transfer date is granted under paragraph 9 of Schedule 6 to the UK ETS Order.

2. But this Article does not apply if the application contains a statement by the new operator (as defined in paragraph 7 of that Schedule) that the new operator renounces free allocation in respect of the transferred units (as defined in that paragraph).

3. The operators of installations (“new installations”) resulting from a merger or split must submit the following to the regulator:

(a) the relevant report or reports (see paragraphs 4 and 5);

(b) a report on the activity level of each sub-installation of each new installation in the calendar year preceding the transfer date containing the information referred

to in Article 3(2) of the Activity Level Changes Regulation, as if the merger or split had taken place at the beginning of that year;

(c) a verification report on the reports referred to in points (a) and (b) in accordance with the Verification Regulation 2018.

4. In the case of a merger, the relevant report is:

(a) if at least one of the installations before the merger was an incumbent installation whose start of normal operation occurred before the end of the baseline period, a report verified in accordance with the Verification Regulation 2018 containing the data referred to in Article 4(2)(a) covering the baseline period for the new installation and its sub-installations, as if the merger had taken place at the beginning of the baseline period;

(b) in any other case, a report verified in accordance with the Verification Regulation 2018 on the activity level of the first calendar year after the start of normal operation of the following installations before the merger and their sub-installations:

(i) the installation with the earliest start of normal operation; and

(ii) any other installation whose start of normal operation occurred in the same year as the installation with the earliest start of normal operation.

5. In the case of a split, the relevant reports are:

(a) if the installation before the split was an incumbent installation whose start of normal operation occurred before the end of the baseline period, a report verified in accordance with the Verification Regulation 2018 containing the data referred to in Article 4(2)(a) covering the baseline period for each new installation and its sub-installations, as if the split had taken place at the beginning of the baseline period;

(b) in any other case, a report verified in accordance with the Verification Regulation 2018 on the activity level of the installation in the first calendar year after the start of normal operation for each new installation and its sub-installations, as if the split had taken place at the beginning of that year.

6. After assessing the reports referred to in paragraph 3, the regulator must:

(a) determine the historical activity level of each sub-installation of each new installation:

(i) where paragraph 4(a) or 5(a) applies, in accordance with Article 15;

(ii) where paragraph 4(b) or 5(b) applies in accordance with Article 17;

(b) based on the historical activity levels, calculate the preliminary and final annual number of allowances to be allocated in respect of each new installation and of each sub-installation of each new installation for each scheme year in the relevant allocation period beginning with the scheme year after the year in which the transfer date occurs:

(i) where paragraph 4(a) or 5(a) applies, in accordance with Articles 16 and 16b;

(ii) where paragraph 4(b) or 5(b) applies, in accordance with Article 18 and 18a;

(c) send the information contained in the relevant report or reports referred to in paragraph 3(a), the determination referred to in point (a) and the calculation referred to in point (b) to the UK ETS authority.

7. For the purposes of paragraph 6:

(a) where a sub-installation of an installation before a split is split into 2 or more sub-installations, the historical activity level and allocation in respect of the sub-installation of the new installation must be based on the historical activity level of the respective stationary technical units of the installation before the split;

(b) the final annual number of allowances to be allocated in respect of the new installation or installations for a scheme year must correspond to the final annual number of allowances to be allocated in respect of the installation or installations before the merger or split for the scheme year.

8. The UK ETS authority must:

(a) approve the final annual number of allowances to be allocated in respect of each new installation for each scheme year in the relevant allocation period beginning with the scheme year after the year in which the transfer date occurs, making any corrections that the UK ETS authority considers appropriate; and

(b) inform the regulator accordingly.

9. The regulator must give notice to the operator of each new installation:

(a) of the final annual number of allowances approved; and

(b) where the final annual number of allowances to be allocated in respect of a new installation for each scheme year in the relevant allocation period after the scheme year in which the transfer date occurs is zero, that the installation is not an FA installation for the relevant allocation period.

10. In this Article:

(a) "relevant allocation period" means:

(i) where any installation before the split or merger is an FA installation for the 2021-2025 allocation period, the 2021-2025 allocation period;

(ii) where any installation before the split or merger is an FA installation for the 2026-2030 allocation period, the 2026-2030 allocation period;

(b) "transfer date", in relation to the transfer referred to in paragraph 1, has the meaning given in paragraph 9 of Schedule 6 to the UK ETS Order.".

Commencement Information

I77 Sch. 1 para. 30 in force at 31.12.2020 on IP completion day, see **art. 2(2)(a)**

Articles 26 substituted

31. For Article 26 substitute—

"Article 26

Cessation of operations of an installation

1. This Article applies where:

(a) an installation that is an FA installation has ceased operation; or

(b) the greenhouse gas emissions permit of such an installation is surrendered under paragraph 11(2) of Schedule 6 to the UK ETS Order or revoked under paragraph 12(3) of that Schedule.

2. No allowances may be allocated in respect of the installation for the scheme year after the year in which the installation ceased operation or, where paragraph 1(b) applies, the surrender or revocation of the permit takes effect and for all subsequent scheme years.

3. The regulator must:

(a) recalculate the final annual number of allowances to be allocated in respect of the installation for those scheme years as zero; and

(b) send the calculation to the UK ETS authority.

4. The UK ETS authority must:

(a) approve the final annual number of allowances to be allocated in respect of the installation; and

(b) inform the regulator accordingly.

5. The regulator must give notice to the operator of the installation of the UK ETS authority's approval.”.

Commencement Information

I78 Sch. 1 para. 31 in force at 31.12.2020 on IP completion day, see **art. 2(2)(a)**

Final text omitted

32. Omit “This Regulation shall be binding in its entirety and directly applicable in all Member States.” (which follows Article 28).

Commencement Information

I79 Sch. 1 para. 32 in force at 31.12.2020 on IP completion day, see **art. 2(2)(a)**

Annex 3 amended (historical activity level for specific benchmarks referred to in Articles 15(8) and 17(1)(f))

33.—(1) Annex 3 is amended as follows.

(2) In the heading for “17(f)” substitute “ 17(1)(f) ”.

Commencement Information

I80 Sch. 1 para. 33 in force at 31.12.2020 on IP completion day, see **art. 2(2)(a)**

Annex 4 amended (parameters for baseline data collection)

34.—(1) Annex 4 is amended as follows.

(2) In the first paragraph for “relevant baseline period” substitute “ baseline period beginning on 1 January 2019 ”.

(3) In section 1—

(a) in section 1.1—

(i) in point (b) for “Union Registry” substitute “ registry ”;

(ii) omit point (c);

(iii) in point (d) omit "GHG";

(b) in section 1.3—

(i) in point (a) for "activities pursuant to Annex I to Directive 2003/87/EC" substitute " regulated activities ";

(ii) for point (c) substitute—

"(c) Whether the installation meets condition A, B or C referred to in paragraph 6 of Schedule 7 to the UK ETS Order or the relevant condition referred to in paragraph 3 of Schedule 8 to that Order.";

(c) in section 1.4—

(i) in point (a) omit "pursuant to Article 3(u) of Directive 2003/87/EC";

(ii) for point (b) substitute—

"(b) Whether the installation is used for any of the following:

(i) the capture of greenhouse gases from other installations for the purpose of transport and geological storage in a storage site;

(ii) the transport of greenhouse gases by pipelines for geological storage in a storage site;

(iii) the geological storage of greenhouse gases in a storage site;";

(d) in section 1.6—

(i) in the heading after "EU ETS" insert " or UK ETS ";

(ii) in point (c)—

(aa) after "EU ETS" insert " or UK ETS ";

(bb) for "Registry" substitute " Union Registry or registry ".

(4) In section 2—

(a) in section 2.1—

(i) in the first subparagraph—

(aa) in point (b) for "GHG" substitute " greenhouse gas ";

(bb) in point (c) for "Regulation (EU) No 601/2012" substitute " the Monitoring and Reporting Regulation 2018 ";

(ii) in the second subparagraph for "Member States may choose to allow operators to report" substitute " The report may include ".

(b) in section 2.3—

(i) in point (c) after "EU ETS" insert " or UK ETS ";

(ii) in point (d) after "EU ETS" insert " or UK ETS ";

(iii) in point (i) after "EU ETS" insert " or UK ETS ";

(iv) in point (j) after "EU ETS" insert " or UK ETS ";

(v) in point (m) after "EU ETS" insert " or UK ETS ";

(vi) in point (n) after "EU ETS" insert " or UK ETS ";

(vii) in point (p)—

(aa) omit "carbon leakage and non-carbon leakage";

(bb) after "district heating sub-installations" insert " that serve and do not serve sectors or subsectors set out in the Annex to Commission Delegated Decision (EU) 2019/708 ";

(c) in section 2.6—

(i) in point (a) for "non-EU ETS" substitute " non-ETS ";

(ii) in point (b) for "delegated acts adopted pursuant to Article 10b(5) of Directive 2003/87/EC" substitute " Commission Delegated Decision (EU) 2019/708 ";

(iii) in point (c)—

(aa) for "the carbon leakage heat benchmark sub-installation" substitute " a heat benchmark sub-installation that serves a sector or subsector set out in the Annex to Commission Delegated Decision (EU) 2019/708 ";

(bb) after "EU ETS" insert " or UK ETS ";

(d) in section 2.7 in point (b) for "delegated acts adopted pursuant to Article 10b(5) of Directive 2003/87/EC" substitute " Commission Delegated Decision (EU) 2019/708 ".

Commencement Information

I81 Sch. 1 para. 34 in force at 31.12.2020 on IP completion day, see **art. 2(2)(a)**

Annex 5 amended (factors applicable for reducing free allocation)

35.—(1) Annex 5 is amended as follows.

(2) In the heading omit "pursuant to Article 10b(4) of Directive 2003/87/EC".

Commencement Information

I82 Sch. 1 para. 35 in force at 31.12.2020 on IP completion day, see **art. 2(2)(a)**

Annex 6 amended (minimum content of the monitoring methodology plan)

36.—(1) Annex 6 is amended as follows.

(2) In section 1—

(a) in point (a) for "Union Registry" substitute " registry ";

(b) in point (e)—

(i) after "EU ETS" insert "or " UK ETS ";

(ii) after "Union Registry" insert " or the registry ".

(3) In section 4 in the first subparagraph in point (a) for "Regulation (EU) No 601/2012" substitute " the Monitoring and Reporting Regulation 2018 ".

Commencement Information

I83 Sch. 1 para. 36 in force at 31.12.2020 on IP completion day, see **art. 2(2)(a)**

Annex 7 amended (data monitoring methods)

37.—(1) Annex 7 is amended as follows.

(2) In section 1—

(a) after "pursuant to Regulation (EU) No 601/2012" insert " or the Monitoring and Reporting Regulation 2018 ";

(b) for "in accordance with Regulation (EU) No 601/2012" substitute " in accordance with either Regulation ".

(3) In section 2—

(a) in the definition of "data set" in point (b) for "Regulation (EU) No 601/2012" substitute " the Monitoring and Reporting Regulation 2018 ";

(b) in the final subparagraph for "Regulation (EU) No 601/2012" substitute " the Monitoring and Reporting Regulation 2018 ".

(4) In section 3.1 for "Article 6" substitute " Article 8 ".

(5) In section 4—

(a) in section 4.2—

(i) in the second subparagraph for "EUR 20" substitute " £20 ";

(ii) in the fourth subparagraph—

(aa) for "EUR 2 000" substitute " £2,000 ";

(bb) for "Regulation (EU) No 601/2012" substitute " the Monitoring and Reporting Regulation 2018 ";

(cc) for "EUR 500" substitute " £500 ".

(b) in section 4.4 in the first subparagraph—

(i) in point (a) after "Regulation (EU) No 601/2012" insert " or the Monitoring and Reporting Regulation 2018 ";

(ii) in point (b) for "subject to national legal metrological control or measuring instruments compliant with the requirements of Directive 2014/31/EU of the European Parliament and of the Council or Directive 2014/32/EU of the European Parliament and of the Council" substitute " that comply with the Non-automatic Weighing Instruments Regulations 2016 [M24] or the Measuring Instruments Regulations 2016 [M25] ";

(c) in section 4.5 in the first subparagraph in point (a) for "subject to national legal metrological control or measuring instruments compliant with the requirements of the Directive 2014/31/EU or Directive 2014/32/EU" substitute " that comply with the Non-automatic Weighing Instruments Regulations 2016 or the Measuring Instruments Regulations 2016 ";

(d) in section 4.6 in the first subparagraph—

(i) in point (a) after "Regulation (EU) No 601/2012" insert " or the Monitoring and Reporting Regulation 2018 ";

(ii) in point (d) in the first indent for "Member State" substitute " United Kingdom ";

(iii) in point (e) in the first indent for "Regulation (EU) No 601/2012" substitute " the Monitoring and Reporting Regulation 2018 ".

(6) In section 6.1 for "Regulation (EU) No 601/2012" in both places substitute " the Monitoring and Reporting Regulation 2018 ".

(7) In section 7.3—

(a) in the heading after "EU ETS" insert " or UK ETS ";

(b) in the first subparagraph—

(i) after "EU ETS" insert " or UK ETS ";

(ii) for "non-EU ETS" substitute " non-ETS ";

(c) in the second subparagraph—

(i) after "EU ETS" insert " or UK ETS ";

(ii) for "non-EU ETS" substitute " non-ETS ".

(8) In section 10.1—

(a) in section 10.1.1 in point 1 for "Regulation (EU) No 601/2012" substitute " the Monitoring and Reporting Regulation 2012 or, where relevant, the Monitoring and Reporting Regulation 2018 ";

(b) in section 10.1.2 in point 4 after "EU ETS" in both places insert " or UK ETS ".

Commencement Information

I84 Sch. 1 para. 37 in force at 31.12.2020 on IP completion day, see **art. 2(2)(a)**

Marginal Citations

M24 S.I. 2016/1152.

M25 S.I. 2016/1153.

SCHEDULE 2

Article 47

Activity Level Changes Regulation amended

Activity Level Changes Regulation amended

1. Commission Implementing Regulation (EU) 2019/1842 is amended in accordance with this Schedule.

Commencement Information

I85 Sch. 2 para. 1 in force at 31.12.2020 on IP completion day, see **art. 2(2)(b)**

Article 1 amended (scope)

2.—(1) Article 1 is amended as follows.

(2) For the words from "pursuant to Article 10a" to the end substitute " to installations under the UK ETS ".

Commencement Information

I86 Sch. 2 para. 2 in force at 31.12.2020 on IP completion day, see **art. 2(2)(b)**

Article 2 amended (definitions)

3.—(1) Article 2 is amended as follows.

(2) Renumber the existing text as paragraph 1.

(3) In paragraph 1—

(a) omit points (5) and (6);

(b) after point (4) insert—

"(7) 'Delegated Regulation (EU) 2019/331' means the Free Allocation Regulation (as defined in the UK ETS Order);

(8) 'emission allowance' means an allowance (as defined in the UK ETS Order);

(9) 'Implementing Regulation (EU) 2018/2067' means the Verification Regulation 2018 (as defined in the UK ETS Order);

(10) 'UK ETS Order' means the Greenhouse Gas Emissions Trading Scheme Order 2020. ".

(4) After paragraph 1 insert—

"**2.** Expressions used in this Regulation that are defined for the purposes of the UK ETS Order or the Free Allocation Regulation have the meaning given in that Order or Regulation.

3. For the purposes of this Regulation, a sub-installation has ceased operation if:

(a) the sub-installation is no longer operating; and

(b) it is technically impossible to resume operation.

4. For the purpose of this Regulation, the number of allowances to be allocated in respect of sub-installations and installations must be expressed as the nearest integer, taking 0.5 as nearest to the previous integer.".

Commencement Information

I87 Sch. 2 para. 3 in force at 31.12.2020 on IP completion day, see **art. 2(2)(b)**

Article 3 amended (reporting requirements)

4.—(1) Article 3 is amended as follows.

(2) In paragraph 1—

(a) in the first subparagraph—

(i) for "to which free allocation has been given, in accordance with Article 10a of Directive 2003/87/EC, for the trading period from 2021 until 2030" substitute " that are FA installations ";

(ii) after "its submission." insert " In 2026 this report must include data for the 2 years preceding its submission if the operator is not required under this Article to submit in 2025 a report including data for 2024. ";

(b) omit the second subparagraph.

(3) In paragraph 2—

(a) in the first subparagraph—

(i) after "must" insert " be verified as satisfactory in accordance with the Verification Regulation 2018 and ";

(ii) omit "on the structure of the group, if any, to which the installation belongs and";

(iii) for "to operate" substitute " operation ";

(b) omit the second subparagraph.

(4) In paragraph 3—

(a) in the first subparagraph for the words from "by 31 March" to "submission" substitute " to the regulator on or before 30 June in the 2021 scheme year and on or before 31 March in each subsequent scheme year ";

(b) omit the second to fifth subparagraphs.

(5) In paragraph 4—

(a) for "competent authority" in each place substitute " regulator ";

(b) in the first subparagraph—

(i) in point (a)—

(aa) omit "verified";

(bb) omit "and the issuance of the allowances has not been suspended";

(ii) in point (c) after "verified" insert " as satisfactory ";

(c) omit the second subparagraph (that is to say, the words from "The competent authority shall not" to "point (a).").

(6) After paragraph 4 insert—

"**5.** Where the regulator makes an estimate of the value of a parameter under paragraph 4, the regulator must give notice of the value to the operator

6. Subject to paragraph 8, where notice of an estimate of the value of a parameter is given, for the purposes of this Regulation, the operator must be treated as having submitted an activity level report including the estimated value.

7. Where, after making an estimate of a parameter (including a rectified estimate, or a further rectified estimate, made under this paragraph), the regulator considers that there is an error in the estimate, the regulator must:

(a) withdraw any notice of the estimate given under paragraph 5;

(b) make a rectified estimate; and

(c) give notice of the rectified estimate in accordance paragraph 5,

and paragraph 6 applies to a notice of the rectified estimate as it does to the notice of the previous estimate.

8. Where no activity level report has been submitted by the operator of an installation by the time limit referred to in paragraph 3 and the regulator makes an estimate of the value of a parameter under paragraph 4(a):

(a) Article 3a does not apply;

(b) the regulator must not send to the UK ETS authority under Article 6a(2) any adjustment to free allocation calculated on the basis of such an estimate, or any recalculation of the preliminary or final annual number of allowances to be allocated in respect of the installation calculated on the basis of such an estimate, if the effect of the adjustment is to increase the final annual number of allowances to be allocated.".

Commencement Information

I88 Sch. 2 para. 4 in force at 31.12.2020 on IP completion day, see **art. 2(2)(b)**

Articles 3a inserted

5. After Article 3 insert—

"Article 3a

Sub-installations for which no historical activity level determined

1. This Article applies where the historical activity level of a sub-installation referred to in an activity level report has not been determined under Article 15 or 17 of the Free Allocation Regulation (see Articles 15(7) and 17(2) of that Regulation) or under this Article.

2. If the activity level report contains data for the first calendar year after the start of normal operation of the sub-installation, the regulator must:

(a) determine the historical activity level of the sub-installation in accordance with Article 17(1) of the Free Allocation Regulation (whether the sub-installation is a sub-installation of an incumbent installation or a new entrant);

(b) calculate in accordance with Article 18(1) of that Regulation the preliminary annual number of allowances to be allocated in respect of the sub-installation for each scheme year in the relevant allocation period beginning with the first scheme year after the start of normal operation; and

(c) calculate the final annual number of allowances to be allocated in respect of the sub-installation for each scheme year referred to in point (b):

(i) in the case of a sub-installation of an incumbent installation, in accordance with Article 16b(2) of that Regulation, but using the preliminary annual number of allowances calculated under point (b) instead of the preliminary annual number of allowances referred to in the words before point (a) of paragraph 2 of Article 16b;

(ii) in the case of a sub-installation of a new entrant, in accordance with Article 18a(3) of that Regulation.

3. If the year in which the start of normal operation of the sub-installation occurs is a scheme year in the relevant allocation period, the regulator must:

(a) determine the activity level of the sub-installation in the scheme year;

(b) calculate in accordance with Article 18(2) of the Free Allocation Regulation the preliminary annual number of allowances to be allocated in respect of the sub-installation for the scheme year;

(c) calculate the final annual number of allowances to be allocated in respect of the sub-installation for the scheme year:

(i) in the case of a sub-installation of an incumbent installation, in accordance with Article 16b(2) of that Regulation, but using the preliminary annual number of allowances calculated under point (b) instead of the preliminary annual number of allowances referred to in the words before point (a) of paragraph 2 of Article 16b;

(ii) in the case of a sub-installation of a new entrant, in accordance with Article 18a(3) of that Regulation.

4. In this Article, "relevant allocation period" means:

(a) in the case of a sub-installation of an incumbent installation in respect of which a deemed application for free allocation in the 2021-2025 allocation period was made or a new entrant in respect of which an application for free allocation is made under Article 5(1)(a) of the Free Allocation Regulation, the 2021-2025 allocation period;

(b) in the case of a sub-installation of an incumbent installation in respect of which an application for free allocation in the 2026-2030 allocation period is made under

Article 4 of that Regulation or a new entrant in respect of which an application for free allocation is made under Article 5(1)(b) of that Regulation, the 2026-2030 allocation period.”.

Commencement Information

I89 Sch. 2 para. 5 in force at 31.12.2020 on IP completion day, see **art. 2(2)(b)**

Article 4 amended (average activity levels)

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

(2) In paragraph 1 for “competent authority” substitute “ regulator ”.

Commencement Information

I90 Sch. 2 para. 6 in force at 31.12.2020 on IP completion day, see **art. 2(2)(b)**

Article 5 amended (adjustments to free allocation due to activity level changes)

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

(2) In paragraph 1—

(a) for “competent authority” substitute “ regulator ”;

(b) for “to that installation” substitute “ in respect of the sub-installation ”;

(c) for “That adjustment shall be made” substitute “ The regulator must calculate that adjustment ”.

(3) In paragraph 2—

(a) for “has been made” substitute “ has been approved by the UK ETS authority under Article 6a ”;

(b) for “to that installation” substitute “ in respect of the sub-installation ”.

(4) In paragraph 3—

(a) for “to that sub-installation” substitute “ in respect of the sub-installation ”;

(b) for “determined by Article 16 or 18 of Delegated Regulation (EU) 2019/331” substitute “ approved under Article 16b or 18a of the Free Allocation Regulation or under Article 6a of this Regulation ”;

(c) after “determining the average activity level.” insert “ The regulator must calculate an adjustment to the free allocation of the sub-installation accordingly. ”.

(5) In paragraph 4 for “the free allocation of this sub-installation shall be set to” substitute “ the regulator must calculate an adjustment to the free allocation of the sub-installation so that it is ”.

(6) Omit paragraph 6.

(7) After paragraph 5 insert—

“**7.** In this Article, a reference to the historical activity level of a sub-installation includes a reference to the historical activity level approved under Article 6a.”.

Commencement Information
I91 Sch. 2 para. 7 in force at 31.12.2020 on IP completion day, see **art. 2(2)(b)**

Article 6 amended (other changes in the operation of the installation)

8.—(1) Article 6 is amended as follows.

(2) In paragraph 1 for "competent authority" substitute " regulator ".

(3) In paragraph 2 for "competent authority" in each place substitute " regulator ".

(4) In paragraph 3—

(a) in the first subparagraph after "baseline data report" insert " or the new entrant data report ";

(b) in the second subparagraph for "Article 6" substitute " Article 8 ".

(5) In paragraph 4—

(a) for "to that installation" substitute " in respect of the sub-installation ";

(b) for "allowances, by increasing" substitute " allowances. The regulator must calculate that adjustment by increasing ".

(6) After paragraph 4 insert—

"**5.** In this Article, where an application under Article 5 of the Free Allocation Regulation is made in respect of a new entrant that has not been operating for a full calendar year after the start of normal operation, a reference to the new entrant data report includes a reference to the activity level report submitted after the end of the first full calendar year of operation.".

Commencement Information
I92 Sch. 2 para. 8 in force at 31.12.2020 on IP completion day, see **art. 2(2)(b)**

Article 6a inserted

9. After Article 6 insert—

"Article 6a

Approval of changes by UK ETS authority

1. This Article applies where the regulator:

(a) determines the activity level or historical activity level of a sub-installation or calculates the preliminary or final annual number of allowances to be allocated in respect of a sub-installation for a scheme year under Article 3a; or

(b) calculates an adjustment to free allocation in respect of a sub-installation for a scheme year under Article 5 or 6.

2. Subject to Article 3(8), the regulator must as soon as reasonably practicable send to the UK ETS authority:

(a) the determination or calculation referred to in paragraph 1;

(b) 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, calculation or adjustment referred to paragraph 1.

3. 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 activity level, historical activity level, preliminary annual number of allowances and final annual number of allowances that the UK ETS authority considers appropriate; and

(b) inform the regulator accordingly.

4. The regulator must inform the operator of the installation of the final annual number of allowances approved.”.

Commencement Information

I93 Sch. 2 para. 9 in force at 31.12.2020 on IP completion day, see **art. 2(2)(b)**

Final text amended

10. Omit “This Regulation shall be binding in its entirety and directly applicable in all Member States.” (which follows Article 7).

Commencement Information

I94 Sch. 2 para. 10 in force at 31.12.2020 on IP completion day, see **art. 2(2)(b)**

EXPLANATORY NOTE

(This note is not part of the Order)

The United Kingdom Emissions Trading Scheme (the “UK ETS”) was established by the Greenhouse Gas Emissions Trading Scheme Order 2020 (the “UK ETS Order”). The UK ETS runs for ten “scheme years” beginning in 2021, divided into two “allocation periods”, the 2021-2025 allocation period and the 2026-2030 allocation period. Operators of certain industrial installations and certain aircraft operators are required to monitor, report on, and surrender “allowances” equivalent to, their greenhouse gas emissions in each scheme year.

This Order amends the UK ETS Order and other legislation, largely to provide for a registry for the UK ETS and for the free allocation of allowances. The legislation amended includes Commission Delegated Regulation (EU) 2019/331 (the “Free Allocation Regulation”) and Commission Implementing Regulation (EU) 2019/1842 (the “Activity Level Changes Regulation”). Both Regulations are retained EU law, originally made for the EU Emissions Trading System (“EU ETS”), but adapted for the UK ETS.

For provision for the registry, see new Schedule 5A to the UK ETS Order; for provision for free allocation for installations, see new Part 4A of the UK ETS Order, the Free Allocation Regulation

and the Activity Level Changes Regulation; and for provision for free allocation for aircraft operators, see new Part 4A of the UK ETS Order.

Registry

The Order establishes a registry for the UK ETS to record the creation, allocation (whether by free allocation or auction), transfer and surrender of allowances. Operators and aircraft operators are required to have accounts in the registry in order to comply with their obligations under the scheme. Others may apply for trading accounts for the purpose of trading in allowances. Registry functions are exercised by the "registry administrator", defined as the Secretary of State, the Environment Agency, the Natural Resources Body for Wales, the Scottish Environment Protection Agency and the Northern Ireland chief inspector: see new article 8A of the UK ETS Order.

Free allocation of allowances

Operators of eligible installations and eligible aircraft operators may apply for the free allocation of allowances. Decisions about free allocation are made by the Secretary of State, the Northern Ireland Department of Agriculture, Environment and Rural Affairs, the Scottish Ministers and the Welsh Ministers, referred to as the "UK ETS authority". Allowances are allocated to successful applicants in each scheme year in an allocation period in accordance with allocation tables published by the UK ETS authority. The allowances may be traded or surrendered to comply with the scheme obligation.

For installations, the Order provides for free allocation in both allocation periods in respect of (a) "incumbent installations" - installations for which a greenhouse gas emissions permit is issued by a specified cut-off date, who apply for free allocation for all scheme years in an allocation period; and (b) "new entrants" – new installations in respect of which such a permit is issued after the cut-off date, who apply for free allocation for scheme years in an allocation period after operation starts. For the 2021-2025 allocation period, only operators of installations who applied for free allocation under the EU ETS are eligible for free allocation under the UK ETS as "incumbent installations".

The number of allowances allocated in respect of incumbent installations is subject to an "industry cap" and may be reduced by a cross-sectoral correction factor: see new Article 16a of the Free Allocation Regulation. Allocations in respect of new entrants are reduced by an annual reduction factor over an allocation period: see new Article 18a of that Regulation. Operators of installations are required to report on their "activity level" each year, which may lead to an increase or decrease in the allowances allocated: see the Activity Level Changes Regulation. Allowances allocated in respect of new entrants and increases in allocations in respect of all installations come from a reserve of 30,249,066 allowances known as the "new entrants' reserve" until the reserve is exhausted: see new article 34G of the UK ETS Order.

For aircraft operators, the Order provides for free allocation in the 2021-2025 allocation period only. There is no provision for "new" aircraft operators to apply. Allocations are reduced by an annual reduction factor over the allocation period, but otherwise do not change: see new article 34M of the UK ETS Order. Only an "aircraft operator" as defined in article 6 of the UK ETS Order, that is a person who operates above a specified minimum threshold, is entitled to an allocation of allowances.

Where allowances have been over-allocated, operators and aircraft operators may be required to return them or an equivalent number may be taken directly from registry accounts: see new articles 34S to 34V of the UK ETS Order. The allocation of allowances may be withheld whilst investigation is underway into circumstances which may lead to a change in allocation: see new article 34W of the UK ETS Order. There are also some specific provisions, in article 34O, which take into account that it is not always possible to be certain whether a person will be an aircraft operator in a particular year (and so have an entitlement to free allocation) at the time allowances for that year are due to be allocated. These provide for allowances to be withheld if a person was not an aircraft operator in the previous year and for adjustments in later years where necessary.

A regulatory impact assessment of the effect that the UK ETS will have on the costs of business, the voluntary sector and the public sector is available from the Industrial Energy Directorate,

Department for Business, Energy and Industrial Strategy, 1 Victoria Street, London SW1H 0ET and is available alongside the UK ETS Order on www.legislation.gov.uk.

Status:
Point in time view as at 31/12/2020.

Changes to legislation:
There are currently no known outstanding effects for the The Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020.