
STATUTORY INSTRUMENTS

2020 No. 1557

The Greenhouse Gas Emissions Trading
Scheme (Amendment) Order 2020

PART 2

Greenhouse Gas Emissions Trading Scheme Order 2020 amended

Part 4A inserted

18. After Part 4 insert—

“PART 4A

Free Allocation

CHAPTER 1

Installations

Allocation tables

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

- (a) in the case of the allocation table for the 2021-2025 allocation period, in respect of which a deemed application for free allocation in the 2021-2025 allocation period (as defined in Article 2(19) of that Regulation) is made;
 - (b) in the case of the allocation table for the 2026-2030 allocation period, in respect of which an application for free allocation in the 2026-2030 allocation period is made under Article 4 of that Regulation.
- (2) The allocation table for the 2021-2025 allocation period must contain an entry for each relevant installation.
- (3) For the purposes of paragraph (2), an installation is a “relevant” installation if—
- (a) a deemed application for free allocation in the 2021-2025 allocation period (as defined in Article 2(19) of the Free Allocation Regulation) is made in respect of the installation that the UK ETS authority subsequently informs the regulator is valid; or
 - (b) an application for free allocation in the 2021-2025 allocation period is made in respect of the installation under Article 5(1)(a) of the Free Allocation Regulation that the UK ETS authority subsequently informs the regulator is valid.
- (4) But an installation referred to in paragraph (3)(a) is not a “relevant” installation if—

- (a) the installation is included in the hospital and small emitter list for 2021-2025 or the ultra-small emitter list for 2021-2025;
 - (b) the installation ceases operation (within the meaning of GGETSR 2012) on or before 31st December 2020; or
 - (c) the installation's permit (within the meaning of GGETSR 2012) is revoked under regulation 14 of GGETSR 2012 on or before that date.
- (5) The allocation table for the 2026-2030 allocation period must contain an entry for each relevant installation.
- (6) For the purposes of paragraph (5), an installation is a “relevant” installation if—
- (a) an application for free allocation in the 2026-2030 allocation period is made in respect of the installation under Article 4 of the Free Allocation Regulation that the UK ETS authority subsequently informs the regulator is valid; or
 - (b) an application for free allocation in the 2026-2030 allocation period is made in respect of the installation under Article 5(1)(b) of the Free Allocation Regulation that the UK ETS authority subsequently informs the regulator is valid.
- (7) But an installation referred to in paragraph (6)(a) is not a “relevant” installation if—
- (a) the installation is included in the hospital and small emitter list for 2026-2030 or the ultra-small emitter list for 2026-2030;
 - (b) the installation ceases operation on or before 31st December 2025; or
 - (c) the installation's permit is revoked under paragraph 12 of Schedule 6 on or before that date.
- (8) The entry for an installation must set out—
- (a) the installation identifier used in the registry;
 - (b) for each scheme year in the allocation period, the final annual number of allowances to be allocated in respect of the installation for the scheme year, in 3 columns as follows (see article 34B)—
 - (i) column A (standard free allocation);
 - (ii) column B (new entrants' reserve);
 - (iii) column C (total).

Allocation tables: supplementary

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

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

(3) Where the final annual number of allowances to be allocated in respect of an installation is approved under Article 18a of that Regulation, that number must be included in column B.

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

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

(5) If the effect of the relevant calculation is a final annual number of allowances to be allocated in respect of the installation for the scheme year that is greater than the number that would otherwise be set out in the entry for the installation for the scheme year, the net increase must be added to the amount that would otherwise be included in column B.

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

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

Allocation tables: updates

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

- (a) Article 18a of the Free Allocation Regulation (new entrants);
- (b) Article 6a of the Activity Level Changes Regulation (activity level changes);
- (c) Article 24 of the Free Allocation Regulation (renunciation);
- (d) Article 25 of that Regulation (mergers and splits);
- (e) Article 26 of that Regulation (cessation);
- (f) article 34H of this Order (installations: errors in applications for free allocation, etc.).

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

Allocation tables: publication, etc.

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

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

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

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

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

Allocation of allowances

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

(2) Allowances—

- (a) for the 2021 scheme year must be allocated as soon as reasonably practicable after the allocation table for the 2021-2025 allocation period is published;
- (b) for any other scheme year must be allocated on or before 28th February in that year.

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

(4) This article is subject to—

- (a) article 34F (no allocation unless monitoring methodology plan approved);
- (b) article 34G(2) (new entrants' reserve);
- (c) article 34W (notice to withhold allowances).

No allocation unless monitoring methodology plan approved

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

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

New entrants' reserve

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

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

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

(4) Allowances must first be allocated in respect of sub-installations of installations in respect of which the historical activity level of the sub-installation has been determined under Article 17(1) of the Free Allocation Regulation or Article 3a(2) of the Activity Level Changes Regulation, in chronological order of the date (and, where relevant, time) on which the operator submitted sufficient information to enable the historical activity level of the sub-installation to be determined.

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

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

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

- (a) keep such records as the regulator considers appropriate to enable the chronological order referred to in paragraph (4) or (5) to be determined;
- (b) provide any information required by the UK ETS authority or the registry administrator to enable allowances to be allocated in accordance with this article.

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

Installations: errors in applications for free allocation, etc.

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

- (a) the final annual number of allowances set out in an allocation table to be allocated in respect of an installation for a scheme year; or
- (b) the number of allowances allocated in accordance with an allocation table under article 34E in respect of an installation for a scheme year,

is materially greater, or materially less, than the number that would otherwise have been set out in the table but for the relevant error.

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

- (a) an error in an application for free allocation made in respect of an installation under Article 4 or 5 of the Free Allocation Regulation (including a deemed application for free allocation in the 2021-2025 allocation period as defined in Article 2(19) of that Regulation);
- (b) an error in an activity level report submitted by the operator of an installation under the Activity Level Changes Regulation;
- (c) an error of the regulator or the UK ETS authority in the exercise of functions under this Order (including under this article), the Free Allocation Regulation or the Activity Level Changes Regulation.

(3) The regulator may do any of the following—

- (a) determine the historical activity level of a sub-installation of the installation that the regulator considers would have been determined for the purposes of the UK ETS but for the relevant error;
- (b) calculate the preliminary annual number of allowances to be allocated in respect of a sub-installation of the installation for the scheme year that the regulator considers would have been calculated for the purposes of the UK ETS but for the relevant error;

- (c) calculate the final annual number of allowances to be allocated in respect of a sub-installation of the installation for the scheme year that the regulator considers would have been calculated for the purposes of the UK ETS but for the relevant error.
- (4) For the purposes of paragraph (3), the regulator may make a conservative estimate of the value of any relevant parameter; and if the regulator does so, the regulator must give notice of the value to the operator.
- (5) Where the regulator does any of the things referred to in paragraph (3), the regulator must send to the UK ETS authority—
- (a) details of the relevant error;
 - (b) any determination or calculation referred to in paragraph (3);
 - (c) the regulator's recalculation of the final annual number of allowances to be allocated in respect of the installation of which the sub-installation is part for the scheme year, taking account of the determination or calculation referred to in paragraph (3).
- (6) If the UK ETS authority considers that, as a result of the relevant error, the final annual number of allowances set out in an allocation table to be allocated in respect of an installation for a scheme year, or the number of allowances allocated in accordance with an allocation table under article 34E in respect of an installation for a scheme year, is materially greater, or materially less, than the number that would otherwise have been set out in the table but for the relevant error, the UK ETS authority must—
- (a) approve the final annual number of allowances to be allocated in respect of the installation for the scheme year, making any corrections to the historical activity level, preliminary annual number of allowances or final annual number of allowances determined or calculated by the regulator that the UK ETS authority considers appropriate; and
 - (b) inform the regulator accordingly.
- (7) The regulator must give notice to the operator of the installation—
- (a) of the relevant error;
 - (b) of the final annual number of allowances approved;
 - (c) where the relevant error was the error of including an entry for the installation in an allocation table for an allocation period, that the installation is not an FA installation for the allocation period.
- (8) In this article, “historical activity level” and “sub-installation” have the same meanings as in the Free Allocation Regulation.

CHAPTER 2

Aviation

Interpretation

34I.—(1) In this Chapter—

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

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

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

“business reorganisation” must be construed in accordance with paragraph (2);
“historical aviation activity level” has the meaning given in article 34J;
“special reserve application” means an application for a free allocation of allowances under the EU ETS from the special reserve referred to in Article 3f of the Directive;
“tonne-kilometre” has the meaning given in Article 3(3) of the Monitoring and Reporting Regulation 2018;
“transferor”, “transferee” and “relevant transferee” must be construed in accordance with paragraph (2).

(2) For the purposes of this Chapter—

- (a) where a part of a person's business responsible for performing an aviation activity has been transferred to another person, the person has been subject to a “business reorganisation” that affects the aviation activity; and, in relation to the aviation activity, the first person is the “transferor” and the second person is a “transferee”;
- (b) where there has been a business reorganisation affecting an aviation activity, a transferee is the “relevant transferee” in relation to that aviation activity where the transferee has not been subject to a further business reorganisation affecting the aviation activity.

Meaning of historical aviation activity level and attributable

34J.—(1) A person's historical aviation activity level is—

- (a) the number of tonne-kilometres of aviation activity performed by the person in 2010;
- (b) in the case of a person who fell within Article 3f(1)(a) of the Directive and made a successful special reserve application, the number of tonne-kilometres of aviation activity performed by the person in 2014; or
- (c) in the case of a person who fell within Article 3f(1)(b) of the Directive and made a successful special reserve application, the sum of—
 - (i) the number of tonne-kilometres of aviation activity performed by the person in 2010; and
 - (ii) the person's aviation activity ratio multiplied by the difference between the person's 2010 to 2014 growth in Annex 1 activities and the person's threshold figure.

(2) In this article, a person's—

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

“2010 to 2014 growth in aviation activity” means—

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

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

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

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

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

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

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

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

- (a) in the 2021-2025 allocation period; and
- (b) in relation to which the person is an aircraft operator,

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

Application for aviation free allocation entitlement

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

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

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

- (a) for each person on whose historical aviation activity level the applicant relies, a statement as to whether it is the person's historical aviation activity level within article 34J(1)(a), (b) or (c);
- (b) verified tonne-kilometre data as follows—
 - (i) where the applicant relies on a person's historical aviation activity level within article 34J(1)(a), verified tonne-kilometre data for the person's Annex 1 activities performed in 2010;
 - (ii) where the applicant relies on a person's historical aviation activity level within article 34J(1)(b), verified tonne-kilometre data for the person's Annex 1 activities performed in 2014;
 - (iii) where the applicant relies on a person's historical aviation activity level within article 34J(1)(c), verified tonne-kilometre data for the person's Annex 1 activities performed in 2010 and 2014;
- (c) if there has been no business reorganisation affecting an aviation activity included in the verified tonne-kilometre data, a statement of that fact;

- (d) if there has been a business reorganisation affecting an aviation activity included in the verified tonne-kilometre data, evidence of that business reorganisation;
 - (e) where the application relies on a person's historical aviation activity level within article 34J(1)(b) or (c), the other information that was included in the person's special reserve application and evidence that the application was successful.
- (4) In this article, “verified tonne-kilometre data” means—
- (a) a tonne-kilometre data report containing the information set out in section 3 of Annex 10 to Commission Regulation (EU) 2018/2066 (as it has effect in EU law), together with a verification report in relation to it containing the information set out in Article 27 of Commission Implementing Regulation (EU) 2018/2067 (as it has effect in EU law); or
 - (b) where paragraph (5) applies, the items submitted to the regulator under that paragraph.
- (5) This paragraph applies where—
- (a) the applicant submits to the regulator the same items as the applicant submitted for the purpose of an application for free allocation of allowances under the EU ETS;
 - (b) the previously submitted data included in the items referred to in subparagraph (a) was produced and verified in accordance with whichever of the following applied in relation to that previous submission—
 - (i) Commission Decision [2007/589/EC](#) of 18 July 2007 establishing guidelines for the monitoring and reporting of greenhouse gas emissions pursuant to Directive [2003/87/EC](#) of the European Parliament and of the Council ^{MI};
 - (ii) the Monitoring and Reporting Regulation 2012 and the Verification Regulation 2012; and
 - (c) the applicant submits to the regulator a statement from the competent authority to which the data was submitted for the purpose of the application referred to in subparagraph (a) confirming that the data was not altered before the free allocation was calculated.
- (6) An application under this article must be submitted to the regulator on or before 31st March 2021.

Processing of applications and calculation of aviation free allocation entitlement

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

- (a) the application and any related information the regulator holds; and
- (b) a calculation of the applicant's aviation free allocation entitlement for each scheme year in the 2021-2025 allocation period, applying paragraphs (2) to (6).

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

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

- (a) attributable to the applicant immediately before 1st January 2021; and
- (b) relied on for the purposes of the application.

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

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

Table B1

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

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

(7) The UK ETS authority must—

- (a) approve the applicant's aviation free allocation entitlement, making any corrections to the calculation referred to in paragraph (1)(b) that the UK ETS authority considers appropriate;
- (b) inform the regulator accordingly.

Aviation allocation table for 2021-2025 allocation period

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

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

(3) The person's entry must set out—

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

(4) The UK ETS authority must update the aviation allocation table to take account of any approval of the UK ETS authority under article 34Q (transfers of allocations) or article 34R (errors in aviation allocation table).

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

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

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

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

Aviation: allocation of allowances for 2021-2025 allocation period

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

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

(a) for the 2021 scheme year, as soon as reasonably practicable after the aviation allocation table is published;

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

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

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

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

(a) the regulator must as soon as reasonably practicable, by further notice to the registry administrator, withdraw the notice under paragraph (4); and

(b) the allowances must be allocated as soon as reasonably practicable after the registry administrator receives the further notice.

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

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

(a) the allowances so deducted; and

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

is equal to N.

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

Permanent cessation of aviation activity

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

(a) a person has ceased to perform aviation activity; and

- (b) there is no realistic prospect that the person will resume aviation activity.
- (2) Where paragraph (1) applies—
 - (a) the regulator must inform the UK ETS authority; and
 - (b) the UK ETS authority must update the aviation allocation table to record that the person has permanently ceased to perform aviation activity.

Transfers of aviation free allocation entitlement

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

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

- (3) An application under paragraph (2) must—
 - (a) include evidence of the business reorganisation;
 - (b) identify what part of the aviation free allocation entitlement (expressed as a whole number of allowances) should be transferred to the applicant, justified by reference to the business reorganisation;
 - (c) include confirmation that each person who is a transferor or transferee in relation to aviation activity affected by the business reorganisation is aware of the application.

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

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

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

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

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

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

(b) inform the regulator accordingly.

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

Errors in aviation allocation table

34R.—(1) This article applies where the regulator considers that, but for a relevant error, the number of allowances set out in the aviation allocation table as a person's aviation free allocation entitlement for a scheme year would be materially greater or materially less.

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

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

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

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

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

(5) If the UK ETS authority considers that but for the relevant error, the number of allowances set out in the aviation allocation table as the person's aviation free allocation entitlement for the scheme year would be materially greater or materially less, the UK ETS authority must—

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

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

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

CHAPTER 3

Common provisions

Return of allowances: installations

34S.—(1) This article applies where—

- (a) allowances are allocated under article 34E to a person in respect of an installation for a scheme year in accordance with an allocation table; and
- (b) the final annual number of allowances set out in the allocation table to be allocated in respect of the installation for the scheme year is subsequently reduced in consequence of an update to the allocation table to take account of any approval of the UK ETS authority under a provision referred to in article 34C(1)(b) to (f).

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

(3) For the purposes of this Chapter, the person to whom the allowances are allocated is “not entitled” to any allowances which would not have been allocated in respect of the

installation if the allocation table had been updated before the allocation of allowances referred to in paragraph (1)(a).

Return of allowances: aviation

34T.—(1) This article applies where—

- (a) allowances are allocated under article 34O to a person for a scheme year in accordance with the aviation allocation table; and
- (b) either—
 - (i) the number of allowances set out in the aviation allocation table to be allocated to that person for the scheme year is subsequently reduced in consequence of an update to the aviation allocation table; or
 - (ii) the person was not an aircraft operator in relation to the scheme year.

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

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

- (a) would not have been allocated if the aviation allocation table had been updated before the allocation of allowances referred to in paragraph (1)(a); or
- (b) are allocated for a scheme year in relation to which the person is not an aircraft operator.

Return of allowances: notice to registry administrator

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

(2) The notice must set out—

- (a) the number of allowances to which the person is not entitled;
- (b) the reason why the person is not entitled to the allowances;
- (c) the operator and installation from whose operator holding account, or the person from whose aircraft operator holding account, the transfer must be made.

(3) The registry administrator—

- (a) must comply with the notice to the extent that there are sufficient allowances in the person's account;
- (b) may suspend other transfers from the account until the notice is complied with.

(4) Paragraph (3)(a) does not apply until the period for bringing an appeal against the notice under article 70 has expired or, if an appeal is brought, until the appeal is determined or withdrawn.

(5) Where the regulator gives a notice under this article to the registry administrator, the regulator must also give a copy of the notice to the person who is not entitled to the allowances.

Return of allowances: notice to operator, etc.

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

(2) The notice must set out—

- (a) the number of allowances to which the person is not entitled;
- (b) the reason why the person is not entitled to the allowances;
- (c) the process by which the allowances must be returned;
- (d) the date by which the allowances must be returned.

(3) The person to whom the notice is given must comply with the notice.

(4) Where a notice is given under this article to a transferring operator in respect of allowances to which the transferring operator is not entitled that were allocated before the transfer of a greenhouse gas emissions permit under paragraph 9 of Schedule 6 takes effect, the notice may provide for the transferring operator to transfer allowances to the new operator and for the process by which the allowances must be returned by the new operator; and in such a case the notice must be given to the new operator as well as the transferring operator and both must comply with the notice.

(5) In paragraph (4), “new operator” and “transferring operator” have the meanings given in paragraph 7(5) of Schedule 6.

Notice to withhold allowances

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

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

- (i) if the regulator is assessing an application under article 34Q for the transfer of some or all of the aviation free allocation entitlement of the person with an entry in the aviation allocation table;
 - (j) in a case where allowances have not already been allocated to a person for a scheme year under article 34O, if the regulator is investigating whether, but for a relevant error (as defined in article 34R), the number of allowances set out in the aviation allocation table as the person's aviation free allocation entitlement for the scheme year would be materially less.
- (2) The notice to withhold must set out the installation referred to in paragraph (1)(a) to (g) or the person referred to in paragraph (1)(h) to (j).
- (3) Where a notice to withhold is given, no allowances may be allocated in respect of the installation set out in the notice, or to the person set out in the notice, until a further notice under paragraph (4) is given.
- (4) The regulator may by further notice to the registry administrator withdraw the notice to withhold at any time, and must do so as soon as reasonably practicable after the circumstances for giving the notice to withhold no longer apply and, where relevant, the UK ETS authority has updated the allocation table in consequence of those circumstances.
- (5) Where the regulator gives a notice to withhold, the regulator must also give notice to the operator of the installation set out in the notice to withhold, or to the person set out in the notice to withhold, setting out the reasons for giving the notice.
- (6) Where the regulator gives a further notice under paragraph (4), the regulator must also give notice to the operator of the installation set out in the notice to withhold, or to the person set out in the notice to withhold, setting out any explanation that the regulator considers appropriate.”.

Commencement Information

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

Marginal Citations

M1 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.

Changes to legislation:

There are currently no known outstanding effects for the The Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020, Section 18.