

## 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.

#### **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”.

#### **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.”.

#### **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”;

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- (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.”.

### **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

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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.”.

#### **Article 4 amended (average activity levels)**

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

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

#### **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.”.

## **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.”.

## **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.

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

**Final text amended**

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