

2022 No. 1173

CLIMATE CHANGE

**The Greenhouse Gas Emissions Trading Scheme (Amendment)
(No. 2) Order 2022**

<i>Made</i>	- - - -	<i>9th November 2022</i>
<i>Laid before Parliament</i>		<i>16th November 2022</i>
<i>Laid before the Northern Ireland Assembly</i>		<i>16th November 2022</i>
<i>Laid before the Scottish Parliament</i>		<i>16th November 2022</i>
<i>Laid before Senedd Cymru</i>		<i>16th November 2022</i>
<i>Coming into force</i>		<i>1st January 2023</i>

At the Court at Buckingham Palace, the 9th day of November 2022

Present,

The King's Most Excellent Majesty in Council

This Order is made in exercise of the powers conferred by sections 44, 54 and 90(3) of, and Schedule 2 and paragraph 9 of Schedule 3 to, the Climate Change Act 2008^(a).

In accordance with paragraph 10 of Schedule 3 to that Act, before the recommendation to His Majesty in Council to make this Order was made—

- (a) the advice of the Committee on Climate Change 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 and the Welsh Ministers considered appropriate were consulted.

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

^(a) 2008 c. 27.

PART 1

Preliminary

Citation

1. This Order may be cited as the Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2022.

Commencement

2. This Order comes into force on 1st January 2023.

Extent

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

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(a) is amended in accordance with this Part.

Article 20 amended (cap for scheme years)

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

(2) In paragraph (2) after “Finance Act 2020” insert “or for the creation of up to 40,984,970 allowances in the trading period for the purpose of free allocation in respect of installations(b)”.

Article 34H amended (installations: errors in applications for free allocation, etc.)

6.—(1) Article 34H is amended as follows.

(2) In paragraph (2)(b) for “activity level report” substitute “activity level or other report”.

Article 34W amended (notice to withhold allowances)

7.—(1) Article 34W is amended as follows.

(2) After paragraph (1)(g) insert—

“(ga) in relation to allowances that would otherwise have been allocated in respect of the installation for the 2023 scheme year, if the operator of the installation has made an application under Article 5a of the Activity Level Changes Regulation(c) that has not been determined or has been granted an extension of time to make such an application that has not expired;”.

(3) In paragraph (2) for “paragraph (1)(a) to (g)” substitute “paragraph (1)(a) to (ga)”.

(a) S.I. 2020/1265, amended by S.I. 2020/1557, 2021/1455 and 2022/454.

(b) See Article 16a(2)(b) of EUR 2019/331, which refers to the “flexible share”.

(c) EUR 2019/1842, amended by S.I. 2020/1557 and by this Order. Article 5a is inserted by article 26 of this Order. Article 4(1) of S.I. 2020/1265 defines “Activity Level Changes Regulation” as Commission Implementing Regulation (EU) 2019/1842 of 31 October 2019, as it forms part of domestic law.

Article 45 amended (determination of reportable emissions or aviation emissions by regulator)

8.—(1) Article 45 is amended as follows.

(2) Omit paragraph (3)(a).

(3) Omit paragraph (4).

Article 57 amended (hospitals and small emitters: failure to notify when ceasing to meet criteria)

9.—(1) Article 57 is amended as follows.

(2) In paragraph (4) in the definition of “RE” for “paragraph 13(4)(a)” substitute “paragraph 13(4)(a)(i)”.

Article 75B amended (restriction on disclosing information)

10.—(1) Article 75B is amended as follows.

(2) After paragraph (3)(d) insert—

“(e) in the case of a disclosure by the UK ETS authority, if the disclosure is permitted under article 75BA (power to publish UK ETS information).”.

Article 75BA inserted

11. After article 75B insert—

“Power to publish UK ETS information

75BA.—(1) The UK ETS authority may publish information held or obtained under UK ETS legislation—

(a) to ensure the effective operation of the UK ETS;

(b) to inform the public about the operation of the UK ETS.

(2) But the UK ETS authority may not publish information under paragraph (1) that the UK ETS authority considers may be commercially sensitive unless the UK ETS authority considers that the publication of the information is proportionate to what is sought to be achieved by it.

(3) In this article, “UK ETS legislation” has the meaning given in article 75B(4).”.

Article 75C amended (national security)

12.—(1) Article 75C is amended as follows.

(2) In paragraph (1) after “(aviation allocation table)” insert “, paragraph 31 of Schedule 5A (information about accounts) or paragraph 22A of Schedule 7 (publication of emissions targets and reportable emissions)”.

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

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

Paragraph 18 amended (Article 38)

(2) In paragraph 18—

(a) in sub-paragraph (a) in the inserted text after “but” insert “, subject to paragraph 2a,”;

(b) after sub-paragraph (a) insert—

“(aa) after paragraph 2 there were inserted—

“2a. The emission factor for category 1 tallow or category 2 tallow may be treated as zero where the tallow concerned is used to produce heat that is used at the operator’s installation (including heat used to generate electricity at the installation, but only if the electricity is used at the installation).

In this paragraph:

- (a) “category 1 tallow” means tallow that is category 1 material under Article 8 of Regulation (EC) No 1069/2009 of the European Parliament and of the Council of 21 October 2009 laying down health rules as regards animal by-products and derived products not intended for human consumption^(a);
- (b) “category 2 tallow” means tallow that is category 2 material under Article 9 of that Regulation;”^(b).

Paragraph 19 amended (Article 39)

(3) For paragraph 19(b) substitute—

“(b) paragraph 3 were omitted.”.

Paragraph 27 amended (Article 54)

(4) In paragraph 27 in the substituted Article 54—

- (a) in paragraph 4 omit “referred to in the Schedule to the Renewable Transport Fuel Obligations Order 2007”;
- (b) in paragraph 5 for “those criteria” substitute “the sustainability criteria”;
- (c) after paragraph 5 insert—

“6. In this Article, “sustainability criteria”, in relation to biofuel, means the sustainability criteria (within the meaning of the Renewable Transport Fuel Obligations Order 2007^(b)) that applied for the purposes of that Order on the date of purchase of the biofuel.”.

Paragraph 35 amended (Annex 1)

(5) In paragraph 35—

- (a) for sub-paragraph (a) substitute—

“(a) in section 1—

- (i) in point (1)(a)—

- (aa) in the opening words “a description of the installation and activities carried out by the installation to be monitored, containing” were omitted;

- (bb) in point (i) for “description” there were substituted “list”;

- (cc) in point (ii) “describing the installation or” were omitted;

- (ii) in point (2)(b) for “and *de minimis*” in both places it occurs there were substituted “, *de minimis* and marginal;”;

- (b) in sub-paragraph (c)(ii) in the inserted point (f) for “referred to in the Schedule to the Renewable Transport Fuel Obligations Order 2007” substitute “(as defined in Article 54(6))”.

Paragraphs 38A and 38B inserted (Annexes 5 and 6)

(6) After paragraph 38 insert—

“**38A.** Annex 5 is to be read as if in Table 1 in the eighth row (scrubbing (urea))—

- (a) in the entry in the column headed “net calorific value” for “1” there were substituted “n.a.”;

(a) EUR 2009/1069. Articles 8 and 9 of the Regulation are amended by S.I. 2020/1388.

(b) S.I. 2007/3072; relevant amending instruments are S.I. 2011/2937, 2018/374 and 2021/1420.

- (b) in the entry in the column headed “oxidation factor” for “1” there were substituted “n.a.”;
- (c) in the entry in the column headed “conversion factor” for “n.a.” there were substituted “1”.

38B.—(1) Annex 6 is to be read as if in section 3 for Table 6 there were substituted—

<i>Gas</i>	<i>Global warming potential</i>
N ₂ O	265 t CO _{2(e)} /t N ₂ O
CF ₄	6 630 t CO _{2(e)} /t CF ₄
C ₂ F ₆	11 100 t CO _{2(e)} /t C ₂ F ₆

(2) The modifications made by sub-paragraph (1) have effect in relation to the 2023 and subsequent scheme years.”.

Paragraph 40 amended (Annex 10)

(7) In paragraph 40(c)(iiia) in the substituted point (12)(a) for “referred to in the Schedule to the Renewable Transport Fuel Obligations Order 2007” substitute “(as defined in Article 54(6))”.

Schedule 5 amended (modifications to Verification Regulation 2018)

14.—(1) Schedule 5 is amended as follows.

Paragraph 4 amended (Article 3)

(2) In paragraph 4—

- (a) in sub-paragraph (b)(ii) in the substituted text for “EN ISO 14065:2013” substitute “the standard referred to in Annex 2”;
- (b) in sub-paragraph (c) before paragraph (i) insert—
 - “(ai) “or another legal entity” were omitted;”.

Paragraph 5 amended (Article 4)

(3) In paragraph 5(a) in the substituted text for “EN ISO 14065:2013” substitute “the standard referred to in Annex 2”.

Paragraph 24 amended (Articles 34a and 34b)

(4) In paragraph 24—

- (a) in the inserted Article 34a—
 - (i) in the heading after “Virtual site visits” insert “by verifiers of installations”;
 - (ii) in the first subparagraph omit “or aircraft operator” each time it occurs;
 - (iii) in the second subparagraph omit “or the aircraft operator”;
 - (iv) in the third subparagraph omit “or aircraft operator”;
- (b) after the inserted Article 34a insert—

“Article 34b

Virtual site visits by verifiers of aircraft operators

1. For the purpose of verifying the report of an aircraft operator (other than a small emitter referred to in Article 55(1) of Implementing Regulation (EU) 2018/2066), the verifier may, with the agreement of the aircraft operator and subject to the approval of the regulator in accordance with paragraph 4, carry out a virtual site visit instead of carrying out a physical site visit in accordance with Article 21(1).

2. Before any virtual site visit, the verifier must undertake a risk analysis that includes considering measures to reduce the verification risk to an acceptable level to obtain reasonable assurance that the aircraft operator’s report is free from material misstatements.

3. An application for the regulator’s approval for a virtual site visit must be submitted by an aircraft operator on or before 28 February in the year after the scheme year to which the aircraft operator’s report relates or such later date as the regulator may specify.

4. On an application being submitted, the regulator must take the following into consideration in deciding whether or not to approve the virtual site visit:

- (a) the information provided by the verifier on the outcome of the risk analysis;
- (b) information on how the virtual site visit will be carried out;
- (c) evidence that measures are taken to reduce the verification risk to an acceptable level;
- (d) any proposal to carry out a physical site visit after the virtual site visit;
- (e) any other information requested by the regulator to enable the regulator to decide whether or not to approve the virtual site visit.

5. When approving a virtual site visit, the regulator may impose conditions on the approval (including a condition that a physical site visit be carried out within a period specified by the regulator); and the aircraft operator must ensure that any conditions are complied with.”.

Paragraph 34 substituted (Article 46)

(5) For paragraph 34 substitute—

“**34.** Article 46(1) is to be read as if—

- (a) in the first subparagraph “or other legal entity” were omitted;
- (b) in the second subparagraph “harmonised” were omitted.”.

Paragraph 37 substituted (Article 49)

(6) For paragraph 37 substitute—

“**37.** Article 49 is to be read as if—

- (a) in paragraph 1 “harmonised” were omitted;
- (b) in paragraph 2 in the second subparagraph “harmonised” were omitted;
- (c) after paragraph 2 there were inserted—

“**3.** An accreditation certificate granted on attestation by the national accreditation body that a verifier meets the requirements set by EN ISO 14065:2013(**a**) ceases to be valid on 1 July 2024 unless before that date the accreditation of the verifier is extended or renewed on attestation by the national accreditation body that the verifier meets the requirements set by EN ISO 14065:2020(**b**), in conjunction with ISO/IEC 17029:2019(**c**).”.

Paragraph 55 substituted (Annex 2)

(7) For paragraph 55 substitute—

“**55.** Annex 2 is to be read as if for the first sentence there were substituted—

“The standard referred to in this Annex is:

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- (a) 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.
 - (b) ISO 14065:2020 specifies general principles and requirements for bodies validating and verifying environmental information. The document includes sector-specific requirements in addition to the requirements of ISO/IEC 17029:2019. It can be accessed at <https://www.iso.org/standard/74257.html>. A copy may be inspected at the Department for Business, Energy and Industrial Strategy, 1 Victoria Street, London SW1H 0ET.
 - (c) ISO/IEC 17029:2019 contains general principles and requirements for the competence, consistent operation and impartiality of bodies performing validation/verification as conformity assessment activities. It can be accessed at <https://www.iso.org/standard/29352.html>. A copy may be inspected at the Department for Business, Energy and Industrial Strategy, 1 Victoria Street, London SW1H 0ET.

- (a) EN ISO 14065:2020, in conjunction with ISO/IEC 17029:2019:
 - (i) with respect to requirements on verifiers in relation to new requests for accreditation (whenever made);
 - (ii) with respect to other requirements on verifiers on or after 1 July 2024;
- (b) either the standard referred to in point (a) or EN ISO 14065:2013, with respect to requirements on verifiers (other than those referred to in point (a)(i)) before 1 July 2024.”.”.

Schedule 5A amended (registry)

15.—(1) Schedule 5A is amended as follows.

Paragraph 12 amended (transfer of operator holding accounts)

(2) In paragraph 12—

- (a) in sub-paragraph (1)(b)(ii) after “transferring operator” insert “(but see sub-paragraph (8))”;
- (b) after sub-paragraph (7) insert—

“(8) Where the grant of the application results in a merger (as defined in Article 2(17) of the Free Allocation Regulation^(a)) and the transfer date (as defined in paragraph 9(6) of Schedule 6 to this Order) is on or after 31st March in a scheme year, the registry administrator must not close the transferring operator’s operator holding account in accordance with an instruction under sub-paragraph (1)(b)(ii) of this paragraph until any transfers or returns of allowances required to be made from the operator holding account by notice under article 34U or 34V are made.”.

Part 4 inserted

(3) After paragraph 30 insert—

“PART 4

Publication of information from registry

Information about accounts: operator and aircraft operator holding accounts and trading accounts

31.—(1) The UK ETS authority must publish information about each of the following accounts (including closed accounts)—

- (a) operator holding accounts;
- (b) aircraft operator holding accounts;
- (c) trading accounts.

(2) The information is—

- (a) the account holder’s name;
- (b) the type of account;
- (c) whether the account is open or closed;
- (d) if the account is an operator holding account, the information referred to in paragraph 32;

(a) EUR 2019/331, amended by S.I. 2020/1557 and 2021/1455 and by this Order. Article 4(1) of S.I. 2020/1265 defines “Free Allocation Regulation” as Commission Delegated Regulation (EU) 2019/331 of 19 December 2018, as it forms part of domestic law.

- (e) if the account is an aircraft operator holding account, the information referred to in paragraph 33;
 - (f) if the account is a trading account, the account holder's address.
- (3) The UK ETS authority must—
- (a) publish the information as soon as reasonably practicable after this paragraph comes into force;
 - (b) publish updated information from time to time and in any event at least once a year as soon as reasonably practicable after 1st May.
- (4) This paragraph is subject to article 75C (national security).

Information about accounts: operator holding accounts

- 32.**—(1) In the case of an operator holding account, the information is—
- (a) the identifier used in the registry for the installation to which the account relates;
 - (b) the regulator for the installation;
 - (c) the number of the installation's greenhouse gas emissions permit;
 - (d) the first scheme year for which the installation's reportable emissions are recorded in the account;
 - (e) if the account is closed, the last scheme year for which the installation's reportable emissions are recorded in the account;
 - (f) the number of allowances allocated free of charge in respect of the installation for each scheme year;
 - (g) the installation's reportable emissions in each scheme year, and the installation's total reportable emissions in the trading period, recorded in the account as at the relevant date;
 - (h) the total number of allowances transferred from the account to the surrender account (excluding transfers that have subsequently been reversed) as at the relevant date;
 - (i) the code (known as the "static compliance code") generated in the registry from the information recorded in the account as at the relevant date, and the key to that code, indicating which one of the statuses referred to in sub-paragraph (2) applies.
- (2) The statuses are that—
- (a) a regulated activity did not begin to be carried out at the installation by the end of the scheme year preceding the relevant date;
 - (b) paragraph (a) does not apply and the installation's reportable emissions in the scheme year preceding the relevant date are not recorded in the account as at the relevant date;
 - (c) neither paragraph (a) nor (b) applies and the total number of allowances referred to in sub-paragraph (1)(h) is greater than or equal to the installation's total reportable emissions in the trading period recorded in the account as at the relevant date;
 - (d) neither paragraph (a) nor (b) applies and the total number of allowances referred to in sub-paragraph (1)(h) is less than the installation's total reportable emissions in the trading period recorded in the account as at the relevant date.
- (3) In this paragraph, "relevant date" means the 1st May preceding the date of publication of the information or updated information.

Information about accounts: aircraft operator holding accounts

- 33.**—(1) In the case of an aircraft operator holding account, the information is—

- (a) the account holder’s Eurocontrol Central Route Charges Office identification number;
 - (b) the regulator of the account holder;
 - (c) the number of the account holder’s emissions monitoring plan;
 - (d) the first scheme year for which the account holder’s aviation emissions are recorded in the account;
 - (e) if the account is closed, the last scheme year for which the account holder’s aviation emissions are recorded in the account;
 - (f) the number of allowances allocated free of charge to the account holder for each scheme year;
 - (g) the account holder’s aviation emissions in each scheme year, and the account holder’s total aviation emissions in the trading period, recorded in the account as at the relevant date;
 - (h) the total number of allowances transferred from the account to the surrender account (excluding transfers that have subsequently been reversed) as at the relevant date;
 - (i) the code (known as the “static compliance code”) generated in the registry from the information recorded in the account as at the relevant date, and the key to that code, indicating which one of the statuses referred to in sub-paragraph (2) applies.
- (2) The statuses are that—
- (a) the account holder is not an aircraft operator in relation to the scheme year preceding the relevant date;
 - (b) paragraph (a) does not apply and the account holder’s aviation emissions in the scheme year preceding the relevant date are not recorded in the account as at the relevant date;
 - (c) neither paragraph (a) nor (b) applies and the total number of allowances referred to in sub-paragraph (1)(h) is greater than or equal to the account holder’s total aviation emissions in the trading period recorded in the account as at the relevant date;
 - (d) neither paragraph (a) nor (b) applies and the total number of allowances referred to in sub-paragraph (1)(h) is less than the account holder’s total aviation emissions in the trading period recorded in the account as at the relevant date.
- (3) In this paragraph, “relevant date” means the 1st May preceding the date of publication of the information or updated information.

Information about transfers of allowances

34.—(1) The UK ETS authority must publish the total number of transfers, and the total number of allowances transferred, from each type of account referred to in paragraph 5(2)(a), broken down by transfers to accounts of the same type and to accounts of every other type separately.

(2) Information about transfers completing in the period beginning with 1st January 2021 and ending with 30th April 2022 must be published as soon as reasonably practicable after 30th April 2025.

(3) Information about transfers completing in the 12-month period ending with 30th April 2023, and in each subsequent 12-month period ending with 30th April, must be published as soon as reasonably practicable after 3 years have elapsed since the end of the 12-month period.

(4) The information that is required to be published under this paragraph does not include information about transfers that complete but are subsequently reversed.”.

Schedule 6 amended (permits)

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

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

(2) Omit paragraph 4(2)(c) (including the final “and”).

Paragraph 11 amended (surrender of permits)

(3) In paragraph 11—

(a) in sub-paragraph (7)—

(i) after “reportable emissions” insert “, or reports on activity levels,”;

(ii) for “condition referred to in paragraph 4(2)(b)” substitute “conditions referred to in paragraph 4(2)(b) and (6)(b)”;

(b) after sub-paragraph (7) insert—

“(8) Despite sub-paragraphs (6)(b) and (7), the condition referred to in paragraph 4(6)(b) does not have effect to require the operator to prepare a report on the installation’s activity levels in the scheme year before the first non-entitled scheme year (as defined in Article 26(2) of the Free Allocation Regulation).”.

Paragraph 12 amended (revocation of permits)

(4) In paragraph 12—

(a) in sub-paragraph (8)—

(i) after “reportable emissions” insert “, or reports on activity levels,”;

(ii) for “condition referred to in paragraph 4(2)(b)” substitute “conditions referred to in paragraph 4(2)(b) and (6)(b)”;

(b) after sub-paragraph (8) insert—

“(8A) Despite sub-paragraphs (7)(b) and (8), the condition referred to in paragraph 4(6)(b) does not have effect to require the operator to prepare a report on the installation’s activity levels in the scheme year before the first non-entitled scheme year (as defined in Article 26(2) of the Free Allocation Regulation).”.

Schedule 7 amended (hospitals and small emitters)

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

Paragraph 1 amended (interpretation)

(2) In paragraph 1(1) in the definition of “conversion notice” after “paragraph 23” insert “or 23A”.

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

(3) For paragraph 13(4) substitute—

“(4) Article 38 is to be read as if—

(a) in paragraph 2—

(i) in the first subparagraph “, but, subject to paragraph 2a, the emission factor for bioliquids shall be zero only if the sustainability criteria set out in Article 17(2) to (5) of Directive 2009/28/EC have been fulfilled” were omitted;

(ii) in the second subparagraph for “each fuel” there were substituted “a mixed fuel”;

(b) paragraph 2a were omitted.”.

Paragraph 22A inserted

(4) After paragraph 22 insert—

“Publication of emissions targets and reportable emissions

22A.—(1) The regulator must inform the UK ETS authority of—

- (a) emissions targets (including any revised emissions targets) calculated by the regulator;
- (b) the reportable emissions in each scheme year of every installation that is a hospital or small emitter for the scheme year that are reported to the regulator.

(2) The UK ETS authority must publish the information referred to in sub-paragraph (1) as soon as reasonably practicable after receiving it.

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

Paragraph 23A inserted

(5) After paragraph 23 insert—

“End of hospital or small emitter status: voluntary exit of status for 2024 and 2025 scheme years

23A.—(1) Where the operator of an installation included in the hospital and small emitter list for 2021-2025 wishes that the installation should not be a hospital or small emitter for the 2024 and 2025 scheme years, the operator may request the regulator to give a notice (a “conversion notice”) to the operator of the installation.

(2) If the regulator receives a request on or before 31st March 2023, the regulator must, as soon as reasonably practicable, give a conversion notice to the operator of the installation.

(3) The regulator must refuse a request received after 31st March 2023.”.

Schedule 8A amended (free allocation for former hospital or small emitters and ultra-small emitters)

18.—(1) Schedule 8A is amended as follows.

Paragraph 1 amended (interpretation)

(2) In paragraph 1 in the definition of “first eligible scheme year” in paragraph (a) after “paragraph 23” insert “or 23A”.

Paragraph 2 amended (application)

(3) In paragraph 2(a)(i) after “paragraph 23” insert “or 23A”.

Paragraph 4 amended (calculation and approval of final allocation)

(4) In paragraph 4(3) for “Article 18(11)” substitute “Article 18a(11)”.

PART 3

Free Allocation Regulation amended

Free Allocation Regulation amended

19. Commission Delegated Regulation (EU) 2019/331(a) is amended in accordance with this Part.

Article 5 amended (application for free allocation by new entrants)

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

(a) EUR 2019/331, amended by S.I. 2020/1557 and 2021/1455.

(2) After paragraph 3 insert—

“3a. The operator of an electricity generator may not make an application for free allocation in relation to measurable heat produced by means of high-efficiency cogeneration unless the application is made after the installation has been operating for a full calendar year after the start of normal operation; and in this paragraph “high-efficiency cogeneration” has the same meaning as in Article 2a.”.

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

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

(2) In paragraph 1 omit “the installation and its sub-installations,”.

Article 25 amended (mergers and splits)

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

(2) In paragraph 3(b) for “the activity level of each sub-installation of each new installation in the calendar year preceding the transfer date” substitute “the activity level (if any) of each sub-installation of each new installation in the first relevant calendar year”.

(3) In paragraph 6(b) for “scheme year after the year in which the transfer date occurs” substitute “first recalculated scheme year”.

(4) In paragraph 8(a) for “scheme year after the year in which the transfer date occurs” substitute “first recalculated scheme year”.

(5) In paragraph 9(b) for “after the scheme year in which the transfer date occurs” substitute “beginning with the first recalculated scheme year”.

(6) After paragraph 10(b) insert—

“(c) “first relevant calendar year” means—

(i) where the transfer date is before 31 March in a scheme year, the calendar year beginning 2 years before the scheme year in which the transfer date occurs;

(ii) where the transfer date is on or after 31 March in a scheme year, the calendar year before the scheme year in which the transfer date occurs;

(d) “first recalculated scheme year” means—

(i) where the transfer date is before 31 March in a scheme year, the scheme year in which the transfer date occurs;

(ii) where the transfer date is on or after 31 March in a scheme year, the scheme year after the scheme year in which the transfer date occurs.”.

Article 26 amended (cessation of operations of an installation)

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

(2) For paragraph 2 substitute—

“2. No allowances may be allocated in respect of the installation for the first non-entitled scheme year and all subsequent scheme years; and in this paragraph the “first non-entitled scheme year” means the earlier of:

(a) the scheme year after the year in which the installation ceased operation; and

(b) where paragraph 1(b) applies, the scheme year after the year in which the surrender or revocation of the permit takes effect.”.

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

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

(2) In paragraph 1—

- (a) omit point (c);
- (b) in point (d) for “A diagram which contains” substitute “A flow diagram and plan of the installation which allow an understanding of the main material and energy flows, containing”.

PART 4

Activity Level Changes Regulation amended

Activity Level Changes Regulation amended

25. Commission Implementing Regulation (EU) 2019/1842(a) is amended in accordance with this Part.

Articles 5a and 5b inserted

26. After Article 5 insert—

“Article 5a

2022 activity level changes: average activity level based on 2019 and 2021 years

1. The operator of an installation may apply for a determination by the UK ETS authority that a sub-installation of the installation meets the Covid condition referred to in Article 5b if, on submission of the 2022 activity level report under Article 3, Article 5(1), (2) or (3) requires (apart from this Article) an adjustment to decrease free allocation of allowances in respect of the sub-installation for the 2022 and subsequent scheme years.
2. But an application may not be made if the regulator made an estimate of the value of a parameter under Article 3(4)(a) because the operator did not submit the 2021 activity level report or the 2022 activity level report on or before the date referred to in Article 3(3).
3. An application must be made to the regulator on or before 31 January 2023 or such later date as the regulator may specify if, in a case where the operator requests an extension of time on or before 31 January 2023, the regulator considers that the reason for the request is reasonable.
4. An application must be accompanied by:
 - (a) either:
 - (i) a report identifying the quantity of emissions attributable to the sub-installation in 2019 and in 2020, determined in accordance with the methodology in the monitoring methodology plan and verified as satisfactory in accordance with the Verification Regulation 2018(b) as if the data in the report formed part of a baseline data report; or
 - (ii) where the data referred to in subpoint (i) are included in the 2021 activity level report, a statement by the verifier that the verification of the report included the verification of those data; and
 - (b) evidence that the sub-installation meets point (c) of the Covid condition set out in Article 5b(2), including an explanation why, when comparing 2020 to 2019 levels, the emissions attributable to the sub-installation did not fall by at least the same proportion as its activity level.

(a) EUR 2019/1842, amended by S.I. 2020/1557.

(b) “Verification Regulation 2018” is defined in article 4(1) of S.I. 2020/1265. Article 2(1) of the Activity Level Changes Regulation provides that expressions used in that Regulation that are defined for the purposes of S.I. 2020/1265 have the meaning given in that Order.

5. After receiving an application, the regulator must, as soon as reasonably practicable:
 - (a) assess whether or not the sub-installation meets the Covid condition; and
 - (b) send the assessment and the reasons for it to the UK ETS authority.
6. After receiving the assessment, the UK ETS authority must determine whether or not the sub-installation meets the Covid condition.
7. If the UK ETS authority determines that the sub-installation meets the Covid condition:
 - (a) this Regulation applies as if the regulator were required to determine the 2022 average activity level (that is to say, the average activity level of the sub-installation to be determined under Article 4 on submission of the 2022 activity level report) based on the activity levels of the sub-installation in 2019 and 2021 (and not on those in 2020 and 2021); or
 - (b) if, before the UK ETS authority determines that the sub-installation meets the Covid condition, the 2022 average activity level based on the activity levels of the sub-installation in 2020 and 2021 is determined by the regulator under Article 4, and an adjustment to free allocation in respect of the sub-installation is approved by the UK ETS authority based on the 2022 average activity level so determined:
 - (i) the regulator must re-determine the 2022 average activity level based on the activity levels of the sub-installation in 2019 and 2021; and
 - (ii) this Regulation applies on the basis of that re-determination (ignoring the first determination of the 2022 average activity level and subsequent approval).
8. If the UK ETS authority determines that the sub-installation does not meet the Covid condition:
 - (a) the UK ETS authority must inform the regulator; and
 - (b) the regulator must inform the operator.
9. In this Article:
 - (a) “2021 activity level report” means the activity level report (on activity levels in 2019 and 2020) due on or before 30 June 2021;
 - (b) “2022 activity level report” means the activity level report (on activity levels in 2021) due on or before 31 March 2022.

Article 5b

2022 activity level changes: Covid condition

1. This Article has effect for the purposes of Article 5a.
2. A sub-installation of an installation meets the Covid condition if:
 - (a) AL 2020 is less than AL 2019;
 - (b) $(AL\ 2019 - AL\ 2020) / AL\ 2019 - (E\ 2019 - E\ 2020) / E\ 2019$ is greater than or equal to 0.15; and
 - (c) the reason for the matters referred to in points (a) and (b) is wholly or mainly due to the effects of the coronavirus Covid-19 pandemic.
3. In paragraph 2:
 - (a) AL 2019 is the activity level of the sub-installation in 2019;
 - (b) AL 2020 is the activity level of the sub-installation in 2020;
 - (c) E 2019 is the emissions attributable to the sub-installation in 2019;
 - (d) E 2020 is the emissions attributable to the sub-installation in 2020.”.

Article 6a amended (approval of changes by UK ETS authority)

27.—(1) Article 6a is amended as follows.

(2) In paragraph 1—

- (a) in point (a) omit the final “or”;
- (b) in point (b) for “Article 5 or 6” substitute “Article 5 or 6; or”;
- (c) after point (b) insert—

“(c) does not calculate an adjustment to free allocation in respect of a heat or fuel benchmark sub-installation for a scheme year by virtue of paragraph 1 or 2 of Article 6.”.

(3) In paragraph 2—

- (a) in point (a) after “paragraph 1” insert “(if any)”;
- (b) in point (b) after “paragraph 1” insert “(if any)”;
- (c) after point (b) insert—

“(c) where, in the case of a heat or fuel benchmark sub-installation, after consideration of the matters referred to in paragraph 1 or 2 of Article 6, the regulator either calculates an adjustment to free allocation in respect of the sub-installation or does not calculate an adjustment, the regulator’s assessment of those matters for consideration by the UK ETS authority under paragraph 3.”.

(4) In paragraph 3(a) after “preliminary annual number of allowances and final annual number of allowances” insert “, and any calculations in respect of a sub-installation referred to in paragraph 1(c),”.

Richard Tilbrook
Clerk of the Privy Council

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 with 2021, split into two five-year “allocation periods”. Operators of certain industrial installations and certain aircraft operators are required to monitor, submit verified reports on, and surrender “allowances” equivalent to, their greenhouse gas emissions in each scheme year. Allowances (which are tradable) are held in accounts in the UK ETS registry, and there is a cap on the number of allowances. Allowances are sold at auction, but some operators of installations and aircraft operators receive an allocation of allowances free of charge. Free allocation for installations may change from year to year depending on the installation’s activity level. For installations that meet the eligibility criteria, there are two opt-out schemes, one for “hospital or small emitters”, the other for “ultra-small emitters”.

This Order amends the UK ETS Order, Commission Delegated Regulation (EU) 2019/331 (the “Free Allocation Regulation”) and Commission Implementing Regulation (EU) 2019/1842 (the “Activity Level Changes Regulation”). Articles 24 and 25 of the UK ETS Order provide that Commission Implementing Regulation (EU) 2018/2066 (the “Monitoring and Reporting Regulation 2018”) and Commission Implementing Regulation (EU) 2018/2067 (the “Verification Regulation 2018”) have effect for the purposes of the UK ETS, with modifications, and this Order also makes further modifications.

The main changes made by this Order are as follows. Where necessary for free allocation for installations, allowances may be created from the flexible share (40,984,970 allowances) in addition to the annual cap (see amendment to article 20 of the UK ETS Order).

New values for the global warming potentials (in tonnes of carbon dioxide equivalent) of certain greenhouse gases covered by the UK ETS are adopted for the 2023 and subsequent scheme years (see new paragraph 38B of Schedule 4 to the UK ETS Order).

From 1 July 2024, verifiers of emission reports must be accredited to a new standard. New applicants for accreditation as verifiers must satisfy the new standard immediately, but until 30 June 2024 the verification opinions of verifiers accredited to either the old or the new standard may be accepted (see amendments to paragraphs 4(b) and 5 and substituted paragraphs 37 and 55 of Schedule 5 to the UK ETS Order).

Verifiers of aircraft operators' emission reports may, with the approval of the regulator, carry out "virtual" site visits whether or not force majeure prevents a physical site visit (see amendments to paragraph 24 of Schedule 5 to the UK ETS Order).

Hospital or small emitters for the 2021-2025 allocation period may voluntarily exit the opt-out scheme and join the main scheme for the 2024 and 2025 scheme years (see new paragraph 23A of Schedule 7, and amendments to paragraphs 1 and 2 of Schedule 8A, to the UK ETS Order).

Where a "new entrant" installation to the UK ETS is an "electricity generator", an application for free allocation in respect of measurable heat produced by means of high-efficiency cogeneration may not be made unless the installation has been operating (and has demonstrated the energy savings required for eligibility) for a full calendar year (see amendment to Article 5 of the Free Allocation Regulation).

The decision about whether free allocation for installations should be adjusted as part of the activity level changes process where questions of energy efficiency arise under Article 6(1) or (2) of the Activity Level Changes Regulation will be made by the UK ETS authority, rather than the regulator (see amendments to Article 6a of the Activity Level Changes Regulation).

For free allocation for the 2022 scheme year, operators of installations whose allocations would otherwise be reduced by the activity level changes process may apply for average activity levels (on which changes to free allocation are based) to be determined by reference to activity levels in 2019 and 2021 instead of those in 2020 and 2021 (see new Articles 5a and 5b of the Activity Level Changes Regulation). Where such an application is made, the regulator may withhold free allocation for the 2023 scheme year until the application is determined (see amendment to article 34W of the UK ETS Order).

Information about accounts held in the UK ETS registry (including details of emissions recorded in accounts and allowances surrendered), transfers of allowances between accounts and emissions of installations in the hospital and small emitters opt-out scheme is required to be published (see new paragraphs 31 to 34 of Schedule 5A, and new paragraph 22A of Schedule 7, to the UK ETS Order). Other scheme information may also be published (see new article 75BA of the UK ETS Order).

In addition, this Order makes other minor amendments to provide further for the process for apportioning free allocation between transferring and new operators in the case of mergers or splits of installations; to clarify, and remove duplicate or unnecessary requirements from, the permitting regime for installations; to modify further the Monitoring and Reporting Regulation 2018 and the Verification Regulation 2018 to make corrections to, or remove unnecessary wording from, the original text; to provide for when an emission factor of zero may be claimed for tallow used at an installation; and to clarify when an emission factor of zero may be claimed for aviation biofuel. This Order also corrects an incorrect cross-reference in paragraph 4(3) of Schedule 8A to the UK ETS Order and amends Article 26 of the Free Allocation Regulation to provide correctly for the scheme year in which free allocation ceases where an installation ceases to operate.

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.

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