

2020 No. 1265

CLIMATE CHANGE

# The Greenhouse Gas Emissions Trading Scheme Order 2020

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*Made*

*11th November 2020*

*Coming into force in accordance with article 2*

At the Court at Windsor Castle, the 11th day of November 2020

Present,

The Queen's Most Excellent Majesty in Council

This Order is made in exercise of the powers conferred by sections 44, 46(3), 54 and 90(3) of, and Schedule 2 and paragraph 9 of Schedule 3 to, the Climate Change Act 2008.

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

- (a) the advice of the Committee on Climate Change, including on the amount of the limit referred to in section 48(2) of that Act, was obtained and taken into account; and
- (b) such persons likely to be affected by the Order as the Secretary of State, the Scottish Ministers, the Welsh Ministers and the Department of Agriculture, Environment and Rural Affairs considered appropriate were consulted.

In accordance with paragraph 11 of that Schedule, a draft of the instrument containing this Order was laid before Parliament, the Northern Ireland Assembly, the Scottish Parliament and Senedd Cymru and approved by resolution of each House of Parliament, the Northern Ireland Assembly, the Scottish Parliament and Senedd Cymru.

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

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**Extent**

Preamble: United Kingdom

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## PART 1

### Preliminary

✓ Law In Force

#### 1. Citation

This Order may be cited as the Greenhouse Gas Emissions Trading Scheme Order 2020.

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#### Commencement

Pt 1 art. 1: November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

#### Extent

Pt 1 art. 1: United Kingdom

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✓ Law In Force

#### 2.— Commencement

(1) Except as provided by paragraph (2), this Order comes into force on the day after the day on which it is made.

(2) Article 25, Schedule 5 and paragraph 4 of Schedule 8 come into force—  
(a) on the day after the day on which this Order is made; or  
(b) immediately after IP completion day, whichever is later.

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#### Commencement

Pt 1 art. 2(1)-(2)(b): November 12, 2020

#### Extent

Pt 1 art. 2(1)-(2)(b): United Kingdom

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✓ Law In Force

#### 3. Extent

This Order extends to the whole of the United Kingdom.

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#### Commencement

Pt 1 art. 3: November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

#### Extent

Pt 1 art. 3: United Kingdom

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The text of this provision varies depending on jurisdiction or other application. See parallel texts relating to:  
[Northern Ireland](#) | [England, Scotland and Wales](#)

✓ Law In Force

Northern Ireland

## 4.— Interpretation

(1) In this Order—

"2021-2025 allocation period" means the 2021, 2022, 2023, 2024 and 2025 scheme years;

"2026-2030 allocation period" means the 2026, 2027, 2028, 2029 and 2030 scheme years;

[ "account" means account in the registry;

"Activity Level Changes Regulation" means Commission Implementing Regulation (EU) 2019/1842 of 31 October 2019, as it forms part of domestic law; ]<sup>1</sup>

"aerodrome" means a defined area (including any buildings, installations and equipment) on land or water or on a fixed, fixed offshore or floating structure to be used either wholly or in part for the arrival, departure and surface movement of aircraft;

"aircraft operator" has the meaning given in article 6;

[ "aircraft operator holding account" means an aircraft operator holding account opened under paragraph 13(3) of Schedule 5A; ]<sup>2</sup>

"allocation period" means—

(a) the 2021-2025 allocation period; or

(b) the 2026-2030 allocation period;

[ "allocation table" means an allocation table for the 2021-2025 allocation period or the 2026-2030 allocation period referred to in article 34A; ]<sup>3</sup>

"allowance" means an allowance created under this Order (see article 18);

"aviation activity" means an activity set out in paragraph 1 of Schedule 1;

[ "aviation allocation table" means the aviation allocation table for the 2021-2025 allocation period referred to in article 34N; ]<sup>4</sup>

"aviation emissions" means emissions of carbon dioxide arising from an aviation activity;

"carbon price", in relation to a scheme year, has the meaning given in article 46;

"CCA 2008" means the Climate Change Act 2008;

[ "central account" has the meaning given in paragraph 9(2) of Schedule 5A; ]<sup>5</sup>

"the Chicago Convention" means the Convention on International Civil Aviation which was, on 7th December 1944, signed on behalf of the Government of the United Kingdom at the International Civil Aviation Conference held at Chicago<sup>6</sup>;

"chief inspector" means the chief inspector constituted under regulation 8(3) of the Pollution Prevention and Control (Industrial Emissions) Regulations (Northern Ireland) 2013<sup>7</sup>;

"commercial air transport operator" means a person that, for remuneration, provides scheduled or non-scheduled air transport services to the public for the carriage of passengers, freight or mail and holds an air operator certificate (AOC) or equivalent document as required by Part I of Annex 6 to the Chicago Convention;

"Directive" means Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a system for greenhouse gas emission allowance trading within the Union and amending Council Directive 96/61/EC<sup>8</sup>;

"emission factor" has the same meaning as in the Monitoring and Reporting Regulation 2018;

"emissions monitoring plan" has the meaning given in article 28(1);

"EU ETS" means the system for greenhouse gas emission allowance trading established by the Directive;

"Eurocontrol" has the meaning given in section 24 of the Civil Aviation Act 1982<sup>9</sup>;

"excluded flights" means flights set out in paragraph 2 of Schedule 1;

[ "FA installation" , "FA installation for the 2021-2025 allocation period" and "FA installation for the 2026-2030 allocation period" must be construed in accordance with article 4A; ]<sup>10</sup>

"flight" means one flight sector that is a flight or one of a series of flights which commences at a parking place of the aircraft and terminates at a parking place of the aircraft;

[ "free allocation" means the allocation of allowances free of charge under Part 4A;

"free allocation conditions" means the conditions referred to in paragraph 4(6) of Schedule 6;

"Free Allocation Regulation" means Commission Delegated Regulation (EU) 2019/331 of 19 December 2018, as it forms part of domestic law; ]<sup>11</sup>

"full-scope flights" means flights departing from, or arriving in, an aerodrome situated in the United Kingdom, Gibraltar or an EEA state, other than excluded flights;

"GGETSR 2012" means the Greenhouse Gas Emissions Trading Scheme Regulations 2012<sup>12</sup>;

"GGETSR emissions plan" means an emissions plan as defined in regulation 20 of the GGETSR 2012;

"greenhouse gas emissions permit" means a greenhouse gas emissions permit—

(a) issued under paragraph 3 or 9 of Schedule 6; or

(b) converted under paragraph 24 or 26 of Schedule 7 or paragraph 1(4) of Schedule 11;

"hospital and small emitter list for 2021-2025" has the meaning given in paragraph 3(2) of Schedule 7;

"hospital and small emitter list for 2026-2030" has the meaning given in paragraph 5(4)(b) of Schedule 7;

"hospital or small emitter" must be construed in accordance with paragraphs 3 and 4 of Schedule 7;

"hospital or small emitter permit" means a hospital or small emitter permit—

(a) issued under paragraph 9 of Schedule 7; or

(b) converted under paragraph 10 of Schedule 7 or paragraph 1(3) of Schedule 11;

"installation" must be construed in accordance with Schedule 2;

"monitoring and reporting conditions" means—

(a) in relation to a greenhouse gas emissions permit, the conditions referred to in paragraph 4(2) of Schedule 6;

(b) in relation to a hospital or small emitter permit, the conditions referred to in paragraph 11(2) of Schedule 7;

"Monitoring and Reporting Regulation 2012" means Commission Regulation (EU) No. 601/2012 of 21 June 2012 on the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87/EC of the European Parliament and of the Council<sup>13</sup>;

"Monitoring and Reporting Regulation 2018" means Commission Implementing Regulation (EU) 2018/2066 of 19 December 2018 on the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87/EC of the European Parliament and of the Council<sup>14</sup> [(disregarding any amendments adopted after 11th November 2020) and, except in article 24 and Schedule 4, it means that Regulation ]<sup>15</sup> as given effect subject to modifications by article 24;

"non-commercial air transport operator" means a person who operates flights and is not a commercial air transport operator;

"NRW" means the Natural Resources Body for Wales<sup>16</sup>;

"operator", in relation to an installation, has the meaning given in article 5;

[ "operator holding account" means an operator holding account for an installation opened under paragraph 11(4) or 12(3) of Schedule 5A; ]<sup>17</sup>

"outermost region" means—

- (a) the Canary Islands;
- (b) French Guiana;
- (c) Guadeloupe;
- (d) Mayotte;
- (e) Martinique;
- (f) Réunion;
- (g) Saint-Martin;
- (h) the Azores; or
- (i) Madeira;

"permit" means—

- (a) a greenhouse gas emissions permit; or
- (b) a hospital or small emitter permit,

and a reference to a permit includes the monitoring plan (see paragraph 4(1)(f) of Schedule 6 and paragraph 11(1)(g) of Schedule 7) [ and, in the case of a greenhouse gas emissions permit, any monitoring methodology plan (see paragraph 4(1)(hb) and (7) of Schedule 6) ]<sup>18</sup>;

[ "registry" has the meaning given in paragraph 5(1) of Schedule 5A;

"registry administrator" has the meaning given in article 8A; ]<sup>19</sup>

"regulated activity" has the meaning given in paragraph 3(1) of Schedule 2;

"regulator" must be construed in accordance with articles 9 to 13;

"relevant Northern Ireland electricity generator" means an installation within the meaning of GGETSR 2012 to which those Regulations continue to apply to regulate the carrying out of regulated activities at the installation on or after 1st January 2021;

"reportable emissions", in relation to an installation, means the total specified emissions (in tonnes of carbon dioxide equivalent<sup>20</sup>) from the regulated activities carried out at the installation;

"scheme year" means the calendar year beginning on 1st January 2021 or any of the 9 subsequent calendar years; and a reference to a scheme year described by a calendar year (for example, the "2021 scheme year") is a reference to the scheme year beginning on 1st January of that year;

"SEPA" means the Scottish Environment Protection Agency<sup>21</sup>;

"specified emissions" has the meaning given in paragraph 3(7) of Schedule 2;  
 "surrender", in relation to an allowance, means use the allowance to account for reportable emissions or aviation emissions in a particular scheme year [ in accordance with article 27 or 34 ]<sup>22</sup>;  
 "surrender condition" has the meaning given in paragraph 4(3) of Schedule 6;  
 "trading period" means the period beginning on 1st January 2021 and ending on 31st December 2030;  
 "UK coastal waters" has the meaning given in section 89(2) of CCA 2008;  
 "UK ETS" has the meaning given in article 16(1);  
 "UK ETS authority" has the meaning given in article 14;  
 "UK sector of the continental shelf" has the meaning given in section 89(2) of CCA 2008;  
 "ultra-small emitter" must be construed in accordance with paragraph 2 of Schedule 8;  
 "ultra-small emitter list for 2021-2025" has the meaning given in paragraph 2(2) of Schedule 8;  
 "ultra-small emitter list for 2026-2030" has the meaning given in paragraph 3(5) of Schedule 8;  
 "Verification Regulation 2012" means Commission Regulation (EU) No 600/2012 of 21 June 2012 on the verification of greenhouse gas emission reports and tonne-kilometre reports and the accreditation of verifiers pursuant to Directive 2003/87/EC of the European Parliament and of the Council<sup>23</sup>;  
 "Verification Regulation 2018" means Commission Implementing Regulation (EU) 2018/2067 of 19 December 2018 on the verification of data and on the accreditation of verifiers pursuant to Directive 2003/87/EC of the European Parliament and of the Council<sup>24</sup> [ (disregarding any amendments adopted after 11th November 2020) and, except in article 25 and Schedule 5, it means that Regulation as given effect subject to modifications by article 25 ]<sup>25</sup> [ ; ]<sup>26</sup>  
 [ "verification report" has the same meaning as in the Verification Regulation 2018. ]<sup>26</sup>

(2) For the purposes of this Order, the amount of an installation's reportable emissions (including reportable emissions within the meaning of GGETSR 2012) from biomass must be treated as zero where the emission factor of the biomass under the Monitoring and Reporting Regulation 2012 or the Monitoring and Reporting Regulation 2018 is zero.

[ (2A) For the purposes of this Order, the amount of an aircraft operator's aviation emissions from biofuel must be treated as zero where the emission factor of the biofuel under the Monitoring and Reporting Regulation 2018<sup>28</sup> is zero. ]<sup>27</sup>

(3) For the purposes of this Order, an installation has ceased operation if—

- (a) a regulated activity is no longer being carried out at the installation; and
- (b) it is technically impossible to resume operation.

(4) For the purposes of this Order, the question of whether any waters are adjacent to Northern Ireland, Scotland or Wales must be determined in accordance with—

- (a) any Order in Council made under section 98(8) of the Northern Ireland Act 1998;
- (b) any Order in Council made under section 126(2) of the Scotland Act 1998;
- (c) any Order in Council made under sections 58 and 158(4), or order made under section 158(3), of the Government of Wales Act 2006<sup>29</sup>.

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**Notes**

- <sup>1</sup> Definitions inserted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.5(2)(a) (December 31, 2020)
- <sup>2</sup> Definition inserted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.5(2)(b) (December 31, 2020)
- <sup>3</sup> Definition inserted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.5(2)(c) (December 31, 2020)
- <sup>4</sup> Definition inserted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.5(2)(d) (December 31, 2020)
- <sup>5</sup> Definition inserted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.5(2)(e) (December 31, 2020)
- <sup>6</sup> Treaty Series No. 8 (1953); Cmd 8742.
- <sup>7</sup> S.R. 2013 No. 160.
- <sup>8</sup> OJ No. L 275, 25.10.2003, p. 32.
- <sup>9</sup> Section 24 was amended by section 3(1) of the Civil Aviation (Eurocontrol) Act 1983 (c. 11).
- <sup>10</sup> Definitions inserted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.5(2)(f) (December 31, 2020)
- <sup>11</sup> Definitions inserted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.5(2)(g) (December 31, 2020)
- <sup>12</sup> To which there are amendments not relevant to this Order.
- <sup>13</sup> OJ No. L 181, 12.7.2012, p. 30.
- <sup>14</sup> OJ No. L 334, 31.12.2018, p. 1.
- <sup>15</sup> Words inserted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.5(2)(h) (December 31, 2020)
- <sup>16</sup> The Natural Resources Body for Wales was established by article 3 of S.I. 2012/1903 (W.230).
- <sup>17</sup> Definition inserted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.5(2)(i) (December 31, 2020)
- <sup>18</sup> Words inserted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.5(2)(j) (December 31, 2020)
- <sup>19</sup> Definitions inserted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.5(2)(k) (December 31, 2020)
- <sup>20</sup> Section 93(2) of the Climate Change Act 2008 defines "tonne of carbon dioxide equivalent".
- <sup>21</sup> The Scottish Environment Protection Agency was established by section 20 of the Environment Act 1995 (c. 25).
- <sup>22</sup> Words inserted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.5(2)(l) (December 31, 2020)
- <sup>23</sup> OJ No. L 181, 12.7.2012, p. 1.
- <sup>24</sup> Commission Implementing Regulation (EU) 2018/2067 is amended prospectively by S.I. 2019/916 with effect from IP completion day and is further amended by this Order.
- <sup>25</sup> Words inserted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.5(2)(m) (December 31, 2020)
- <sup>26</sup> Definition inserted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.5(2)(n) (December 31, 2020)
- <sup>27</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021/1455 Pt 2 art.5(2) (February 7, 2022)
- <sup>28</sup> "Monitoring and Reporting Regulation 2018" is defined in article 4(1) of S.I. 2020/1265 as Commission Implementing Regulation (EU) 2018/2066 of 19 December 2018. Article 24 of that Order provides that the Regulation has effect for the purposes of the UK Emissions Trading Scheme, subject to modifications set out in Schedule 4 to that Order. For provision for biofuels, see paragraph 27 of that Schedule, as substituted by this Order.



- <sup>29</sup> Section 58 was amended by paragraph 6(3) of Schedule 4 to the Marine and Coastal Access Act 2009 (c. 23) and sections 21(1) and 49 of the Wales Act 2017 (c. 4). Section 158(3) was substituted by section 43(3) of the Marine and Coastal Access Act 2009.

England, Scotland and Wales

## [ 4.— Interpretation

### (1) In this Order—

"2021-2025 allocation period" means the 2021, 2022, 2023, 2024 and 2025 scheme years;

"2026-2030 allocation period" means the 2026, 2027, 2028, 2029 and 2030 scheme years;

"account" means account in the registry;

"Activity Level Changes Regulation" means Commission Implementing Regulation (EU) 2019/1842 of 31 October 2019, as it forms part of domestic law;

"aerodrome" means a defined area (including any buildings, installations and equipment) on land or water or on a fixed, fixed offshore or floating structure to be used either wholly or in part for the arrival, departure and surface movement of aircraft;

"aircraft operator" has the meaning given in article 6;

"aircraft operator holding account" means an aircraft operator holding account opened under paragraph 13(3) of Schedule 5A;

"allocation period" means—

(a) the 2021-2025 allocation period; or

(b) the 2026-2030 allocation period;

"allocation table" means an allocation table for the 2021-2025 allocation period or the 2026-2030 allocation period referred to in article 34A;

"allowance" means an allowance created under this Order (see article 18);

"aviation activity" means an activity set out in paragraph 1 of Schedule 1;

"aviation allocation table" means the aviation allocation table for the 2021-2025 allocation period referred to in article 34N;

"aviation emissions" means emissions of carbon dioxide arising from an aviation activity;

"carbon price", in relation to a scheme year, has the meaning given in article 46;

"CCA 2008" means the Climate Change Act 2008;

"central account" has the meaning given in paragraph 9(2) of Schedule 5A;

"the Chicago Convention" means the Convention on International Civil Aviation which was, on 7th December 1944, signed on behalf of the Government of the United Kingdom at the International Civil Aviation Conference held at Chicago<sup>2</sup>;

"chief inspector" means the chief inspector constituted under regulation 8(3) of the Pollution Prevention and Control (Industrial Emissions) Regulations (Northern Ireland) 2013<sup>3</sup>;

"commercial air transport operator" means a person that, for remuneration, provides scheduled or non-scheduled air transport services to the public for the carriage of passengers, freight or mail and holds an air operator certificate (AOC) or equivalent document as required by Part I of Annex 6 to the Chicago Convention;

"Directive" means Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a system for greenhouse gas emission allowance trading within the Union and amending Council Directive 96/61/EC<sup>4</sup>;



"emission factor" has the same meaning as in the Monitoring and Reporting Regulation 2018;

"emissions monitoring plan" has the meaning given in article 28(1);

"EU ETS" means the system for greenhouse gas emission allowance trading established by the Directive;

"Eurocontrol" has the meaning given in section 24 of the Civil Aviation Act 1982<sup>5</sup>;

"excluded flights" means flights set out in paragraph 2 of Schedule 1;

"FA installation" , "FA installation for the 2021-2025 allocation period" and "FA installation for the 2026-2030 allocation period" must be construed in accordance with article 4A;

"flight" means one flight sector that is a flight or one of a series of flights which commences at a parking place of the aircraft and terminates at a parking place of the aircraft;

"free allocation" means the allocation of allowances free of charge under Part 4A;

"free allocation conditions" means the conditions referred to in paragraph 4(6) of Schedule 6;

"Free Allocation Regulation" means Commission Delegated Regulation (EU) 2019/331 of 19 December 2018, as it forms part of domestic law;

"full-scope flights" means flights departing from, or arriving in, an aerodrome situated in the United Kingdom, Gibraltar, Switzerland or an EEA state, other than excluded flights;

"GGETSR 2012" means the Greenhouse Gas Emissions Trading Scheme Regulations 2012<sup>6</sup>;

"GGETSR emissions plan" means an emissions plan as defined in regulation 20 of the GGETSR 2012;

"greenhouse gas emissions permit" means a greenhouse gas emissions permit—

(a) issued under paragraph 3 or 9 of Schedule 6; or

(b) converted under paragraph 24 or 26 of Schedule 7 or paragraph 1(4) of Schedule 11;

"hospital and small emitter list for 2021-2025" has the meaning given in paragraph 3(2) of Schedule 7;

"hospital and small emitter list for 2026-2030" has the meaning given in paragraph 5(4)(b) of Schedule 7;

"hospital or small emitter" must be construed in accordance with paragraphs 3 and 4 of Schedule 7;

"hospital or small emitter permit" means a hospital or small emitter permit—

(a) issued under paragraph 9 of Schedule 7; or

(b) converted under paragraph 10 of Schedule 7 or paragraph 1(3) of Schedule 11;

"installation" must be construed in accordance with Schedule 2;

"monitoring and reporting conditions" means—

(a) in relation to a greenhouse gas emissions permit, the conditions referred to in paragraph 4(2) of Schedule 6;

(b) in relation to a hospital or small emitter permit, the conditions referred to in paragraph 11(2) of Schedule 7;

"Monitoring and Reporting Regulation 2012" means Commission Regulation (EU) No. 601/2012 of 21 June 2012 on the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87/EC of the European Parliament and of the Council<sup>7</sup>;

"Monitoring and Reporting Regulation 2018" means Commission Implementing Regulation (EU) 2018/2066 of 19 December 2018 on the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87/EC of the European Parliament and of the Council<sup>8</sup> (disregarding any amendments adopted after 11th November 2020) and, except in article

24 and Schedule 4, it means that Regulation as given effect subject to modifications by article 24;

"non-commercial air transport operator" means a person who operates flights and is not a commercial air transport operator;

"NRW" means the Natural Resources Body for Wales<sup>9</sup>;

"operator", in relation to an installation, has the meaning given in article 5;

"operator holding account" means an operator holding account for an installation opened under paragraph 11(4) or 12(3) of Schedule 5A;

"outermost region" means—

- (a) the Canary Islands;
- (b) French Guiana;
- (c) Guadeloupe;
- (d) Mayotte;
- (e) Martinique;
- (f) Réunion;
- (g) Saint-Martin;
- (h) the Azores; or
- (i) Madeira;

"permit" means—

- (a) a greenhouse gas emissions permit; or
- (b) a hospital or small emitter permit,

and a reference to a permit includes the monitoring plan (see paragraph 4(1)(f) of Schedule 6 and paragraph 11(1)(g) of Schedule 7) and, in the case of a greenhouse gas emissions permit, any monitoring methodology plan (see paragraph 4(1)(hb) and (7) of Schedule 6);

"registry" has the meaning given in paragraph 5(1) of Schedule 5A;

"registry administrator" has the meaning given in article 8A;

"regulated activity" has the meaning given in paragraph 3(1) of Schedule 2;

"regulator" must be construed in accordance with articles 9 to 13;

"relevant Northern Ireland electricity generator" means an installation within the meaning of GGETSR 2012 to which those Regulations continue to apply to regulate the carrying out of regulated activities at the installation on or after 1st January 2021;

"reportable emissions", in relation to an installation, means the total specified emissions (in tonnes of carbon dioxide equivalent<sup>10</sup>) from the regulated activities carried out at the installation;

"scheme year" means the calendar year beginning on 1st January 2021 or any of the 9 subsequent calendar years; and a reference to a scheme year described by a calendar year (for example, the "2021 scheme year") is a reference to the scheme year beginning on 1st January of that year;

"SEPA" means the Scottish Environment Protection Agency<sup>11</sup>;

"specified emissions" has the meaning given in paragraph 3(7) of Schedule 2;

"surrender", in relation to an allowance, means use the allowance to account for reportable emissions or aviation emissions in a particular scheme year in accordance with article 27 or 34;

"surrender condition" has the meaning given in paragraph 4(3) of Schedule 6;

"trading period" means the period beginning on 1st January 2021 and ending on 31st December 2030;

"UK coastal waters" has the meaning given in section 89(2) of CCA 2008;

"UK ETS" has the meaning given in article 16(1);

"UK ETS authority" has the meaning given in article 14;

"UK sector of the continental shelf" has the meaning given in section 89(2) of CCA 2008;

"ultra-small emitter" must be construed in accordance with paragraph 2 of Schedule 8;

"ultra-small emitter list for 2021-2025" has the meaning given in paragraph 2(2) of Schedule 8;

"ultra-small emitter list for 2026-2030" has the meaning given in paragraph 3(5) of Schedule 8;

"Verification Regulation 2012" means Commission Regulation (EU) No 600/2012 of 21 June 2012 on the verification of greenhouse gas emission reports and tonne-kilometre reports and the accreditation of verifiers pursuant to Directive 2003/87/EC of the European Parliament and of the Council<sup>12</sup>;

"Verification Regulation 2018" means Commission Implementing Regulation (EU) 2018/2067 of 19 December 2018 on the verification of data and on the accreditation of verifiers pursuant to Directive 2003/87/EC of the European Parliament and of the Council<sup>13</sup> (disregarding any amendments adopted after 11th November 2020) and, except in article 25 and Schedule 5, it means that Regulation as given effect subject to modifications by article 25;

"verification report" has the same meaning as in the Verification Regulation 2018.

(2) For the purposes of this Order, the amount of an installation's reportable emissions (including reportable emissions within the meaning of GGETSR 2012) from biomass must be treated as zero where the emission factor of the biomass under the Monitoring and Reporting Regulation 2012 or the Monitoring and Reporting Regulation 2018 is zero.

(2A) For the purposes of this Order, the amount of an aircraft operator's aviation emissions from biofuel must be treated as zero where the emission factor of the biofuel under the Monitoring and Reporting Regulation 2018<sup>14</sup> is zero.

(3) For the purposes of this Order, an installation has ceased operation if—

- (a) a regulated activity is no longer being carried out at the installation; and
- (b) it is technically impossible to resume operation.

(4) For the purposes of this Order, the question of whether any waters are adjacent to Northern Ireland, Scotland or Wales must be determined in accordance with—

- (a) any Order in Council made under section 98(8) of the Northern Ireland Act 1998;
- (b) any Order in Council made under section 126(2) of the Scotland Act 1998;
- (c) any Order in Council made under sections 58 and 158(4), or order made under section 158(3), of the Government of Wales Act 2006<sup>15</sup>.

]<sup>1</sup>

## Notes

<sup>1</sup> Word inserted by Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 3) Order 2022/1336 art.3 (January 1, 2023)

<sup>2</sup> Treaty Series No. 8 (1953); Cmd 8742.

<sup>3</sup> S.R. 2013 No. 160.

<sup>4</sup> OJ No. L 275, 25.10.2003, p. 32.

<sup>5</sup> Section 24 was amended by section 3(1) of the Civil Aviation (Eurocontrol) Act 1983 (c. 11).

<sup>6</sup> To which there are amendments not relevant to this Order.

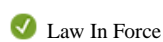
- <sup>7</sup> OJ No. L 181, 12.7.2012, p. 30.
- <sup>8</sup> OJ No. L 334, 31.12.2018, p. 1.
- <sup>9</sup> The Natural Resources Body for Wales was established by article 3 of S.I. 2012/1903 (W.230).
- <sup>10</sup> Section 93(2) of the Climate Change Act 2008 defines "tonne of carbon dioxide equivalent".
- <sup>11</sup> The Scottish Environment Protection Agency was established by section 20 of the Environment Act 1995 (c. 25).
- <sup>12</sup> OJ No. L 181, 12.7.2012, p. 1.
- <sup>13</sup> Commission Implementing Regulation (EU) 2018/2067 is amended prospectively by S.I. 2019/916 with effect from IP completion day and is further amended by this Order.
- <sup>14</sup> "Monitoring and Reporting Regulation 2018" is defined in article 4(1) of S.I. 2020/1265 as Commission Implementing Regulation (EU) 2018/2066 of 19 December 2018. Article 24 of that Order provides that the Regulation has effect for the purposes of the UK Emissions Trading Scheme, subject to modifications set out in Schedule 4 to that Order. For provision for biofuels, see paragraph 27 of that Schedule, as substituted by this Order.
- <sup>15</sup> Section 58 was amended by paragraph 6(3) of Schedule 4 to the Marine and Coastal Access Act 2009 (c. 23) and sections 21(1) and 49 of the Wales Act 2017 (c. 4). Section 158(3) was substituted by section 43(3) of the Marine and Coastal Access Act 2009.

### Commencement

Pt 1 art. 4(1)-(4)(c): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

### Extent

Pt 1 art. 4(1)-(4)(c): United Kingdom



Law In Force

### [ 4A.— Meaning of FA installation, etc.

- (1) For the purposes of this Order, an installation is an "FA installation" if the installation is—
- (a) an FA installation for the 2021-2025 allocation period; or
  - (b) an FA installation for the 2026-2030 allocation period.
- (2) For the purposes of this Order, an installation is an FA installation for the 2021-2025 allocation period from—
- (a) the date of publication of the allocation table for the 2021-2025 allocation period (including an updated allocation table) that first includes an entry for the installation; or
  - (b) if earlier, the date on which the regulator gives notice of the final annual amount of allowances to be allocated in respect of the installation for any scheme year in the 2021-2025 allocation period under—
    - (i) article 34H(7) (installations: errors in applications for free allocation, etc.);
    - [(ia) paragraph 4(7) of Schedule 8A (former hospital or small emitters or ultra-small emitters); ]<sup>2</sup>
    - (ii) Article 18a(9) of the Free Allocation Regulation (new entrants);
    - (iii) Article 25(9) of that Regulation (mergers and splits).
- (3) An installation ceases to be an FA installation for the 2021-2025 allocation period at the earliest of—
- (a) the end of the 2025 scheme year;

- (b) if the operator of the installation gives a renunciation notice under Article 24 of the Free Allocation Regulation in respect of the installation as a whole, the end of the scheme year in which the renunciation notice is given;
- (c) the date on which, following the partial transfer under paragraph 9 of Schedule 6 of the greenhouse gas emissions permit of an installation that is an FA installation, the regulator gives notice to the transferring operator (within the meaning of that paragraph) under Article 25(9)(b) of the Free Allocation Regulation that the installation is not an FA installation for the 2021-2025 allocation period;
- (d) if the installation's permit is surrendered under paragraph 11(1) of Schedule 6 or revoked under paragraph 12(1) of that Schedule, the end of the scheme year in which the installation ceases operation;
- (e) if the installation's permit is surrendered under paragraph 11(2) of Schedule 6 or revoked under paragraph 12(3) of that Schedule, the end of the scheme year in which the surrender or revocation takes effect;
- (f) the date on which, following the inclusion of an entry for the installation in the allocation table for the 2021-2025 allocation period in error, the regulator gives notice to the operator under article 34H(7)(c) that the installation is not an FA installation for the 2021-2025 allocation period.

(4) For the purposes of this Order, an installation is an FA installation for the 2026-2030 allocation period from—

- (a) the date of publication of the allocation table for the 2026-2030 allocation period (including an updated allocation table) that first includes an entry for the installation; or
- (b) if earlier, the date on which the regulator gives notice of the final annual amount of allowances to be allocated in respect of the installation for any scheme year in the 2026-2030 allocation period under—
  - (i) article 34H(7) (installations: errors in applications for free allocation, etc.);
  - [(ia) paragraph 4(7) of Schedule 8A (former hospital or small emitters or ultra-small emitters); ]<sup>3</sup>
  - (ii) Article 18a(9) of the Free Allocation Regulation (new entrants);
  - (iii) Article 25(9) of that Regulation (mergers and splits).

(5) An installation ceases to be an FA installation for the 2026-2030 allocation period at the earliest of—

- (a) the end of the 2030 scheme year;
- (b) if the operator of the installation gives a renunciation notice under Article 24 of the Free Allocation Regulation on or after 1st January 2025 in respect of the installation as a whole, the end of the scheme year in which the renunciation notice is given;
- (c) the date on which, following the partial transfer under paragraph 9 of Schedule 6 of the greenhouse gas emissions permit of an installation that is a FA installation, the regulator gives notice to the transferring operator (within the meaning of that paragraph) under Article 25(9)(b) of the Free Allocation Regulation that the installation is not an FA installation for the 2026-2030 allocation period;
- (d) if the installation's permit is surrendered under paragraph 11(1) of Schedule 6 or revoked under paragraph 12(1) of that Schedule, the end of the scheme year in which the installation ceases operation;

- (e) if the installation's permit is surrendered under paragraph 11(2) of Schedule 6 or revoked under paragraph 12(3) of that Schedule, the end of the scheme year in which the surrender or revocation takes effect;
- (f) the date on which, following the inclusion of an entry for the installation in the allocation table for the 2026-2030 allocation period in error, the regulator gives notice to the operator under article 34H(7)(c) that the installation is not an FA installation for the 2026-2030 allocation period.

]<sup>1</sup>

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#### Notes

- <sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.6 (December 31, 2020)
- <sup>2</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021/1455 Pt 2 art.6(2) (February 7, 2022)
- <sup>3</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021/1455 Pt 2 art.6(3) (February 7, 2022)

#### Extent

Pt 1 art. 4A(1)-(5)(f): United Kingdom

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 Law In Force

### 5.— Meaning of operator

- (1) In this Order, the "operator" of an installation is the person who has control over its operation.
- (2) But where—
  - (a) a regulated activity has not begun to be carried out at an installation, the operator of the installation is the person who will have control over its operation when a regulated activity is carried out at the installation;
  - (b) a regulated activity is no longer carried out at an installation, the operator of the installation is the person who holds the permit for the installation or, if no permit authorises a regulated activity to be carried out at the installation, the person who had control over its operation immediately before regulated activities ceased to be carried out at the installation;
  - (c) the holder of a permit for an installation ceases to have control over its operation, the operator of the installation is the permit holder.

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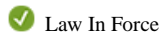
#### Commencement

Pt 1 art. 5(1)-(2)(c): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

#### Extent

Pt 1 art. 5(1)-(2)(c): United Kingdom

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Law In Force

## **6.— Meaning of aircraft operator**

(1) In this Order, a person is an aircraft operator in relation to a scheme year, where in respect of that year that person—

- (a) performs an aviation activity; and
- (b) is not exempt under article 7 or 8.

(2) For the purposes of paragraph (1)(a), an aviation activity is performed by the person who operates the aircraft at the time of the flight, or where that person is not known, the owner of that aircraft is deemed to be the person that performed the aviation activity.

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### **Commencement**

Pt 1 art. 6(1)-(2): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

### **Extent**

Pt 1 art. 6(1)-(2): United Kingdom

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Law In Force

## **7.— Exempt commercial air transport operators**

(1) A commercial air transport operator is not an aircraft operator for the purposes of this Order in relation to a scheme year, where in respect of that year it operates—

- (a) less than 243 full-scope flights per period for 3 consecutive 4-month periods; or
- (b) full-scope flights with total annual emissions of less than 10,000 tonnes of carbon dioxide.

(2) In this article, "4-month period" means any of the following periods—

- (a) January to April;
- (b) May to August;
- (c) September to December.

(3) For the purposes of this article, a full-scope flight is taken to have occurred in the 4-month period that included its local time of departure.

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### **Commencement**

Pt 1 art. 7(1)-(3): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

### **Extent**

Pt 1 art. 7(1)-(3): United Kingdom

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✓ Law In Force

## 8. Exempt non-commercial air transport operators

A non-commercial air transport operator is not an aircraft operator for the purposes of this Order in relation to a scheme year, where in respect of that year it operates full-scope flights with total annual emissions of less than 1,000 tonnes of carbon dioxide.

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### Commencement

Pt 1 art. 8: November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

### Extent

Pt 1 art. 8: United Kingdom

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✓ Law In Force

## [ 8A.— Meaning of registry administrator

(1) A reference in this Order to the "registry administrator" is a reference to—

- (a) the chief inspector;
- (b) the Environment Agency<sup>2</sup>;
- (c) NRW<sup>3</sup>;
- (d) the Secretary of State; and
- (e) SEPA<sup>4</sup>.

(2) Functions conferred or imposed by this Order on the "registry administrator" may be exercised—

- (a) by all of the persons referred to in paragraph (1) jointly; or
- (b) by one of the persons referred to in paragraph (1) (or by more than one of the persons referred to in paragraph (1) jointly) on behalf of the other persons referred to in paragraph (1) with their agreement.

] <sup>1</sup>

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### Notes

<sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.7 (December 31, 2020)

<sup>2</sup> The Environment Agency was established by section 1 of the Environment Act 1995 (c. 25).

<sup>3</sup> "NRW" is defined in article 4(1) of S.I. 2020/1265 as the "Natural Resources Body for Wales", which was established by article 3 of S.I. 2012/1903 (W.230).

<sup>4</sup> "SEPA" is defined in article 4(1) of S.I. 2020/1265 as the "Scottish Environment Protection Agency", which was established by section 20 of the Environment Act 1995.

### Extent

Pt 1 art. 8A(1)-(2)(b): United Kingdom

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## 9.— Meaning of regulator

(1) Each of the following is a "regulator" for the purposes of this Order—

- (a) the chief inspector;
- (b) the Environment Agency<sup>1</sup>;
- (c) NRW;
- (d) the Secretary of State;
- (e) SEPA.

(2) In this Order, "regulator" means—

- (a) in relation to an installation, the regulator determined in accordance with article 10;
- (b) in relation to an aircraft operator, the regulator determined in accordance with articles 11 to 13.

[ (2A) Articles 11 to 13 apply for the purpose of determining the regulator of a person other than an aircraft operator in relation to—

- (a) monitoring and reporting of the person's aviation emissions;
- (b) free allocation to the person under Chapter 2 of Part 4A (aviation free allocation);
- (c) the opening, operation or closure of the person's aircraft operator holding account,

as if references to "aircraft operator" were to the person.

] <sup>2</sup>

(3) Each regulator is an administrator of the UK ETS for the purposes of paragraph 21 of Schedule 2 to CCA 2008.

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### Notes

<sup>1</sup> The Environment Agency was established by section 1 of the Environment Act 1995 (c. 25).

<sup>2</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.8(2) (December 31, 2020)

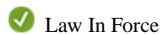
### Commencement

Pt 1 art. 9(1)-(3): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

### Extent

Pt 1 art. 9(1)-(3): United Kingdom

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## 10.— Meaning of regulator: installations

(1) This article applies for the purposes of article 9.

(2) The regulator, in relation to an installation set out in column 1 of table A, is the regulator set out in the corresponding entry in column 2.

**Table A**

<b>Column 1 Installation</b>	<b>Column 2 Regulator</b>
Installation in— (a) England; (b) the territorial sea adjacent to England, except where the installation is used for a purpose referred to in paragraph (3)	Environment Agency
Installation in— (a) Northern Ireland; (b) controlled waters adjacent to Northern Ireland; (c) the territorial sea (other than controlled waters) adjacent to Northern Ireland, except where the installation is used for a purpose referred to in paragraph (3)(a)	Chief inspector
Installation in— (a) Scotland; (b) controlled waters adjacent to Scotland; (c) the territorial sea (other than controlled waters) adjacent to Scotland, except where the installation is used for a purpose referred to in paragraph (3)(a)	SEPA
Installation in— (a) Wales; (b) the territorial sea adjacent to Wales	NRW
Installation in— (a) the territorial sea adjacent to England, where the installation is used for a purpose referred to in paragraph (3); (b) the territorial sea (other than controlled waters) adjacent to Northern Ireland and Scotland, where the installation is used for a purpose referred to in paragraph (3)(a); (c) the UK sector of the continental shelf	Secretary of State

## (3) The purposes are—

- (a) a purpose connected with the exploration for, or exploitation of, petroleum (within the meaning of section 1 of the Petroleum Act 1998);
- (b) a purpose connected with an activity referred to in section 2(3) of the Energy Act 2008 (unloading and storage of combustible gas);
- (c) a purpose connected with an activity referred to in section 17(2) of that Act (storage of carbon dioxide).

## (4) In this article—

"controlled waters" means the part of the territorial sea that is between the landward limit of the territorial sea and the line that is 3 nautical miles seaward of the landward limit of the territorial sea;

"territorial sea" means the territorial sea of the United Kingdom;

"territorial sea adjacent to England" means the part of the territorial sea that is not adjacent to Northern Ireland, Scotland or Wales.

(5) In this article, a reference to England, Northern Ireland, Scotland or Wales includes a reference to waters adjacent to England or, as the case may be, Northern Ireland, Scotland or Wales that are landward of the landward limit of the territorial sea.

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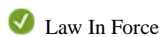
**Commencement**

Pt 1 art. 10(1)-(5): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

**Extent**

Pt 1 art. 10(1)-(5): United Kingdom

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Law In Force

**11.— Meaning of regulator: aircraft operators**

- (1) This article applies for the purposes of article 9.
- (2) Subject to articles 12 and 13 the regulator of an aircraft operator is—
- (a) the Environment Agency, where the aircraft operator—
    - (i) has its registered office or place of residence in England; or
    - (ii) does not have a registered office or a place of residence in the United Kingdom;
  - (b) NRW, where the aircraft operator has its registered office or place of residence in Wales;
  - (c) SEPA, where the aircraft operator has its registered office or place of residence in Scotland;
  - (d) the chief inspector, where the aircraft operator has its registered office or place of residence in Northern Ireland.

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**Commencement**

Pt 1 art. 11(1)-(2)(d): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

**Extent**

Pt 1 art. 11(1)-(2)(d): United Kingdom

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Law In Force

**12.— Aircraft operator: change in regulator**

- (1) This paragraph applies where—
- (a) an aircraft operator ("A") does not have a registered office or a place of residence in the United Kingdom;
  - (b) "B" is the regulator of A; and
  - (c) a different regulator ("C") is satisfied that the highest percentage of aviation emissions of A in the 2023 and 2024 scheme years is attributable to flights departing from aerodromes situated in the area of C.
- (2) Where paragraph (1) applies, on or before 30th June 2025, C must give notice to—
- (a) A;

- (b) B; and
  - (c) the UK ETS authority,
- that C is the regulator of A from the beginning of the 2026-2030 allocation period.
- (3) A notice under paragraph (2) must be accompanied by evidence demonstrating that the highest percentage of aviation emissions of A in the 2023 and 2024 scheme years is attributable to flights departing from aerodromes situated in the area of C.
- (4) In this article, "area" in relation to a regulator, means—
- (a) in respect of the Environment Agency, England;
  - (b) in respect of the NRW, Wales;
  - (c) in respect of the SEPA, Scotland;
  - (d) in respect of the chief inspector, Northern Ireland.

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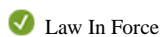
#### Commencement

Pt 1 art. 12(1)-(4)(d): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

#### Extent

Pt 1 art. 12(1)-(4)(d): United Kingdom

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Law In Force

### 13.— Aircraft operator: change in registered office

- (1) Where—
- (a) an aircraft operator ("A") with a registered office or a place of residence in the area of a regulator, in the course of the 2021-2025 allocation period, changes the address of its registered office or place of residence to the area of a different regulator ("R"); and
  - (b) A's registered office or place of residence is in the area of R at the end of the 2021-2025 allocation period,
- R is the regulator of A from the beginning of the 2026-2030 allocation period.
- (2) Where—
- (a) an aircraft operator ("B") which did not have a registered office or a place of residence in the United Kingdom at the beginning of the 2021-2025 allocation period acquires a registered office or a place of residence in the United Kingdom in the course of that period; and
  - (b) at the end of the 2021-2025 allocation period that registered office or place of residence is in the area of a regulator ("S") who is not the regulator of B in that allocation period,
- S is the regulator of B from the beginning of the 2026-2030 allocation period.
- (3) In this article "area" has the same meaning as in article 12.

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**Commencement**

Pt 1 art. 13(1)-(3): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

**Extent**

Pt 1 art. 13(1)-(3): United Kingdom

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✓ Law In Force

**14.— Meaning of UK ETS authority, etc.**

(1) A reference in this Order to the "UK ETS authority" is a reference to all of the national authorities<sup>1</sup>.

(2) Functions conferred or imposed by this Order on the "UK ETS authority" may be exercised—  
(a) by all of the national authorities jointly; or  
(b) by one of the national authorities (or by more than one of the national authorities jointly) on behalf of the other national authorities with their agreement.

(3) Where this Order provides for a person to do anything in relation to the "UK ETS authority" (for example, to give a notice to the UK ETS authority), it is sufficient for the person to do it in relation to any of the national authorities.

(4) Each national authority is an administrator of the UK ETS for the purposes of paragraph 21 of Schedule 2 to CCA 2008.

[ (5) In this article, a reference to this Order includes a reference to the Monitoring and Reporting Regulation 2018, the Verification Regulation 2018, the Free Allocation Regulation and the Activity Level Changes Regulation. ]<sup>2</sup>

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**Notes**

<sup>1</sup> Section 95(1) of the Climate Change Act 2008 defines "national authority".

<sup>2</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.9(2) (December 31, 2020)

**Commencement**

Pt 1 art. 14(1)-(4): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

**Extent**

Pt 1 art. 14(1)-(5): United Kingdom

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✓ Law In Force

**15.— Applications, notices, etc.**

(1) Part 1 of Schedule 3 (which makes provision in relation to applications, notices and reports submitted to a regulator) has effect.

(2) Part 2 of Schedule 3 (which makes provision in relation to notices given by a regulator, a national authority or the UK ETS authority) has effect.

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**Commencement**

Pt 1 art. 15(1)-(2): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

**Extent**

Pt 1 art. 15(1)-(2): United Kingdom

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## **PART 2**

### **Basic elements of the UK ETS**

#### **CHAPTER 1**

##### **Establishment of the UK ETS and requirement for review**

✓ Law In Force

#### **16.— UK Emissions Trading Scheme**

(1) This Order establishes a trading scheme, known as the "UK Emissions Trading Scheme" or "UK ETS".

(2) The purpose of the UK ETS is to limit, or encourage the limitation of, the emission of greenhouse gases<sup>1</sup> in the trading period from the carrying out of—

- (a) regulated activities by operators of installations; and
- (b) aviation activities by aircraft operators.

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**Notes**

<sup>1</sup> Section 92(1) of the Climate Change Act 2008 defines "greenhouse gas".

**Commencement**

Pt 2(1) art. 16(1)-(2)(b): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

**Extent**

Pt 2(1) art. 16(1)-(2)(b): United Kingdom

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✓ Law In Force

#### **17.— Review of UK ETS**

(1) The UK ETS authority must before each review date—



- (a) carry out a review of the operation of the UK ETS;
  - (b) publish a report setting out the conclusions of the review.
- (2) The review dates are 31st December 2023 and 31st December 2028.
- (3) The report must in each case—
- (a) review the operation of the UK ETS (including assessing the extent to which the purpose of the UK ETS is being achieved);
  - (b) make any recommendations that the UK ETS authority considers appropriate as to the future operation and purpose of the UK ETS.

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**Commencement**

Pt 2(1) art. 17(1)-(3)(b): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))


**Extent**

Pt 2(1) art. 17(1)-(3)(b): United Kingdom

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## CHAPTER 2

### Allowances and caps

 Law In Force

#### 18.— Allowances

- (1) The UK ETS authority may [create allowances in the registry]<sup>1</sup> for the purposes of the UK ETS.
- (2) An allowance is an allowance to emit 1 tonne of carbon dioxide equivalent.
- [(3) Allowances may be held only in accounts in the registry.]<sup>2</sup>

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**Notes**

<sup>1</sup> Words substituted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.10(2) (December 31, 2020)

<sup>2</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.10(3) (December 31, 2020)

**Commencement**

Pt 2(2) art. 18(1)-(2): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

**Extent**

Pt 2(2) art. 18(1)-(3): United Kingdom

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✓ Law In Force

## 19. Cap for trading period

The number of allowances created in the trading period may not exceed the sum of—

- (a) 736,013,432 multiplied by the 2021-2025 hospital and small emitter reduction factor; and
- (b) 630,152,247 multiplied by the 2026-2030 hospital and small emitter reduction factor.

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### Commencement

Pt 2(2) art. 19(a)-(b): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

### Extent

Pt 2(2) art. 19(a)-(b): United Kingdom

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✓ Law In Force

## 20.— Cap for scheme years

[ (1) The number of allowances created in a scheme year may not exceed the sum of—

- (a) the base for the scheme year multiplied by—
  - (i) if the scheme year is in the 2021-2025 allocation period, the 2021-2025 hospital and small emitter reduction factor;
  - (ii) if the scheme year is in the 2026-2030 allocation period, the 2026-2030 hospital and small emitter reduction factor; and
- (b) the balance of allowances in the new entrants' reserve on 1st January in the scheme year (see article 34G for the new entrants' reserve).

] <sup>1</sup>

(2) Paragraph (1) is subject to any direction given by the UK ETS authority for the creation of allowances for allocation under regulations made by the Treasury under the Finance Act 2020 [ 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<sup>3</sup> ] <sup>2</sup>.

(3) But such a direction may not override article 19.

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### Notes

<sup>1</sup> Substituted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art. 11(2) (December 31, 2020)

<sup>2</sup> Words inserted by Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2022/1173 Pt 2 art. 5(2) (January 1, 2023)

<sup>3</sup> See Article 16a(2)(b) of EUR 2019/331, which refers to the "flexible share".

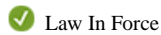
### Commencement

Pt 2(2) art. 20(1)-(3): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

### Extent

Pt 2(2) art. 20(1)-(3): United Kingdom

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## 21.— Cap: hospital and small emitter reduction factors

- (1) This article applies for the purposes of articles 19 and 20.
- (2) The 2021-2025 hospital and small emitter reduction factor is  $(RE_1 - SI_1)/RE_1$ , where—  
 $RE_1$  is the total reportable emissions (within the meaning of GGETSR 2012) in 2016, 2017 and 2018 of all installations (within the meaning of GGETSR 2012) and all UK aircraft operators (within the meaning of GGETSR 2012);  
 $SI_1$  is the total reportable emissions (within the meaning of GGETSR 2012) in 2016, 2017 and 2018 of all installations included in the hospital and small emitter list for 2021-2025.
- (3) The 2026-2030 hospital and small emitter reduction factor is  $(RE_2 - SI_2)/RE_2$ , where—  
 $RE_2$  is the total reportable emissions and the total aviation emissions, expressed in tonnes, in the 2021, 2022 and 2023 scheme years of all installations and all aircraft operators;  
 $SI_2$  is the total reportable emissions in the 2021, 2022 and 2023 scheme years of all installations included in the hospital and small emitter list for 2026-2030.
- (4) In this article, a reference to reportable emissions or aviation emissions is a reference to reportable emissions or aviation emissions—
  - (a) verified [as satisfactory] <sup>1</sup> in accordance with the Verification Regulation 2012 or the Verification Regulation 2018;
  - [ (aa) determined under regulation 44 of GGETSR 2012 or article 45 of this Order; ] <sup>2</sup>
  - (b) where relevant, set out in an emissions report accompanied by the notice or declaration referred to in paragraph 3(8)(b)(ii) of Schedule 5 to GGETSR 2012 or paragraph 11(2)(b)(ii) of Schedule 7 to this Order; or
  - (c) where relevant, considered to be verified under regulation 35(7) of GGETSR 2012 or article 33(2) of this Order.

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### Notes

- <sup>1</sup> Words inserted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.12(2)(a) (December 31, 2020)
- <sup>2</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.12(2)(b) (December 31, 2020)

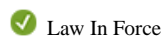
### Commencement

Pt 2(2) art. 21(1)-(4)(c): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

### Extent

Pt 2(2) art. 21(1)-(4)(c): United Kingdom

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## 22. Cap: base for scheme years

For the purposes of article 20, the base for a scheme year set out in column 1 of table B is the value set out in the corresponding entry in column 2.

**Table B**

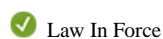
<i>Column 1 Scheme year</i>	<i>Column 2 Base</i>
2021	155,671,581
2022	151,437,134
2023	147,202,686
2024	142,968,239
2025	138,733,792
2026	134,499,344
2027	130,264,897
2028	126,030,449
2029	121,796,002
2030	117,561,555

### Commencement

Pt 2(2) art. 22: November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

### Extent

Pt 2(2) art. 22: United Kingdom



## 23. Trading in allowances

Allowances may be traded, except where prohibited by other legislation.

### Commencement

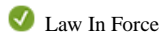
Pt 2(2) art. 23: November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

### Extent

Pt 2(2) art. 23: United Kingdom

## CHAPTER 3

### Monitoring, reporting and verification



## 24. Monitoring and reporting of emissions

[ The Monitoring and Reporting Regulation 2018 ]<sup>1</sup> has effect for the purpose of the UK ETS, subject to the modifications in Schedule 4 and to Part 4 (see also paragraph 13 of Schedule 7 which makes further modifications in relation to hospitals and small emitters and paragraph 5 of Schedule 8 which makes further modifications in relation to ultra-small emitters).

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### Notes

- <sup>1</sup> Words substituted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.13(2) (December 31, 2020)

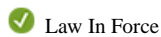
### Commencement

Pt 2(3) art. 24: November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

### Extent

Pt 2(3) art. 24: United Kingdom

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## [ 25. Verification of data and accreditation of verifiers

The Verification Regulation 2018 has effect for the purpose of the UK ETS, subject to the modifications in Schedule 5 (see also paragraph 4 of Schedule 8 which makes further modifications in relation to ultra-small emitters). ]<sup>1</sup>

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### Notes

- <sup>1</sup> Substituted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.14 (December 31, 2020)

### Commencement

Pt 2(3) art. 25: December 31, 2020 shall come into force immediately after IP completion day (2020 c. 1 Pt 5 s. 39(1); SI 2020/1265 Pt 1 art. 2(2))

### Extent

Pt 2(3) art. 25: United Kingdom

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## [ CHAPTER 4

### Registry ]<sup>1</sup>

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### Notes

- <sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.15 (December 31, 2020)
-

✓ Law In Force

## [ 25A. Registry

Schedule 5A (registry) has effect. ]<sup>1</sup>

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### Notes

<sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.15 (December 31, 2020)

### Extent

Pt 2(4) art. 25A: United Kingdom

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## PART 3

### Installations

✓ Law In Force

## 26.— Installations: requirement for permit to carry out regulated activity

(1) No person may carry out a regulated activity at an installation in a scheme year unless the operator of the installation holds a greenhouse gas emissions permit or a hospital or small emitter permit for the installation that authorises the regulated activity to be carried out.

(2) Paragraph (1) does not apply to a regulated activity carried out at an installation in a scheme year for which the installation is an ultra-small emitter.

(3) Schedule 6 (which provides for applications for greenhouse gas emissions permits and generally for permits) has effect.

(4) Schedule 7 (which provides for hospitals and small emitters) has effect.

(5) Schedule 8 (which provides for ultra-small emitters) has effect.

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### Commencement

Pt 3 art. 26(1)-(5): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

### Extent

Pt 3 art. 26(1)-(5): United Kingdom

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✓ Law In Force

## 27. Installations: requirement to surrender allowances

Where the operator of an installation holds a greenhouse gas emissions permit, the operator must surrender allowances in accordance with the surrender condition of the permit for each scheme year (or part of a scheme year) that the permit is in force.

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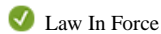
**Commencement**

Pt 3 art. 27: November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

**Extent**

Pt 3 art. 27: United Kingdom

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**[ 27A.— Installations: information to be submitted before 2026-2030 allocation period where no application for free allocation, etc. is made**

(1) This article applies where the operator of an installation referred to in paragraph (2) does not make an application under any of the following—

- (a) paragraph 5 of Schedule 7 (hospital or small emitter status for 2026-2030 allocation period);
- (b) paragraph 3 of Schedule 8 (ultra-small emitter status for 2026-2030 allocation period);
- (c) Article 4 of the Free Allocation Regulation (free allocation in 2026-2030 allocation period).

(2) The installations are—

- (a) an installation for which a permit is issued on or before 30th June 2024;
- (b) an installation that is an ultra-small emitter for the 2024 scheme year;
- (c) an installation for which an application for a permit has been made but not yet determined.

(3) The operator must submit the following to the regulator—

- (a) details of the installation, including details of any permit in force;
- (b) activity information (that is to say, the information set out in section 1.3 of Annex 4 to the Free Allocation Regulation);
- (c) details of eligibility for free allocation (that is to say, the information set out in section 1.4 of Annex 4 to the Free Allocation Regulation);
- (d) a statement that the operator is not applying for free allocation in the 2026-2030 allocation period under Article 4 of the Free Allocation Regulation.

(4) The information referred to in paragraph (3) must be submitted in the period beginning on 1st April 2024 and ending on 30th June 2024.

(5) The regulator must send the information submitted by the operator to the UK ETS authority on or before 30th September 2024.

] <sup>1</sup>

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**Notes**

<sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.16 (December 31, 2020)

**Extent**

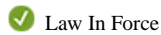
Pt 3 art. 27A(1)-(5): United Kingdom

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## PART 4

### Aviation



Law In Force

#### 28.— Application for emissions monitoring plans

(1) An aircraft operator must [, and any other person may,]<sup>1</sup> apply to the regulator for a plan setting out how the [applicant's]<sup>2</sup> aviation emissions are to be monitored for the purposes of this Order ("an emissions monitoring plan").

(2) [A person who]<sup>3</sup> has previously been issued with an emissions monitoring plan or a GGETSR emissions plan may not make an application under paragraph (1) without the agreement of the regulator (but see article 29(3)).

(3) An application under paragraph (1) is the means by which [a monitoring plan is submitted]<sup>4</sup> to the regulator for approval under Article 12 of the Monitoring and Reporting Regulation 2018 [; and where such an application is made by a person who is not an aircraft operator, Articles 12 and 13 of, and Annex 1 to, that Regulation have effect as if "aircraft operator" included such an applicant]<sup>5</sup>.

(4) An aircraft operator must comply with the requirement in paragraph (1) before the end of the period of 42 days commencing with the day it becomes an aircraft operator.

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#### Notes

<sup>1</sup> Words inserted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021/1455 Pt 2 art.7(2)(a) (February 7, 2022)

<sup>2</sup> Words substituted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021/1455 Pt 2 art.7(2)(b) (February 7, 2022)

<sup>3</sup> Words substituted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021/1455 Pt 2 art.7(3) (February 7, 2022)

<sup>4</sup> Words substituted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021/1455 Pt 2 art.7(4)(a) (February 7, 2022)

<sup>5</sup> Words inserted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021/1455 Pt 2 art.7(4)(b) (February 7, 2022)

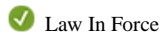
#### Commencement

Pt 4 art. 28(1)-(4): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

#### Extent

Pt 4 art. 28(1)-(4): United Kingdom

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Law In Force

## **29.— Issue of emissions monitoring plans**

- (1) If an aircraft operator [ or other person ]<sup>1</sup> applies for an emissions monitoring plan in accordance with article 28(1) and (2), the regulator must issue the emissions monitoring plan unless—
- (a) the regulator is not satisfied that the application complies with the Monitoring and Reporting Regulation 2018; and
  - (b) the [ applicant ]<sup>2</sup> has not agreed to amendments of the application required to satisfy the regulator that the application does so comply.
- (2) An emissions monitoring plan issued under paragraph (1) replaces any emissions monitoring plan previously issued to the [ applicant ]<sup>3</sup>.
- (3) The regulator may issue an emissions monitoring plan to a person who was a UK administered operator for the purpose of GGETSR 2012 and held a GGETSR emissions plan.
- (4) Subject to paragraph (5), an emissions monitoring plan issued under paragraph (3) must be in substantially the same terms as the GGETSR emissions plan.
- (5) An emissions monitoring plan must contain any conditions that the regulator considers necessary to give proper effect to the Monitoring and Reporting Regulation 2018 and the Verification Regulation 2018.

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### **Notes**

- <sup>1</sup> Words inserted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021/1455 Pt 2 art.8(2)(a) (February 7, 2022)
- <sup>2</sup> Words substituted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021/1455 Pt 2 art.8(2)(b) (February 7, 2022)
- <sup>3</sup> Words substituted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021/1455 Pt 2 art.8(3) (February 7, 2022)

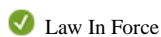
### **Commencement**

Pt 4 art. 29(1)-(5): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

### **Extent**

Pt 4 art. 29(1)-(5): United Kingdom

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Law In Force

## **30.— Refusal of application for emissions monitoring plans**

- (1) If the regulator refuses an application for an emissions monitoring plan the regulator must give notice to the applicant.
- (2) A notice under paragraph (1) must state—
- (a) the reasons for the decision; and
  - (b) if amendments of the application are required in order for an emissions monitoring plan to be issued, the nature of those amendments.

(3) An aircraft operator who is given a notice under paragraph (1) must make a revised application to the regulator before the end of the period of 31 days beginning with the day that the notice was given.

(4) Article 29 and this article apply to a revised application [ to which paragraph (5) applies ]<sup>1</sup> as they apply to the original application, but for the purposes of such a revised application, the references to the period of 2 months in paragraph 2 of Schedule 3 are to be read as references to a period of 24 days.

[ (5) This paragraph applies to—

- (a) a revised application under paragraph (3);
- (b) where the regulator refuses an application for an emissions monitoring plan by a person who is not an aircraft operator, a revised application made by the person before the end of the period of 31 days beginning with the day on which the notice under paragraph (1) is given.

] <sup>2</sup>

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#### Notes

<sup>1</sup> Words substituted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021/1455 Pt 2 art.9(2) (February 7, 2022)

<sup>2</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021/1455 Pt 2 art.9(3) (February 7, 2022)

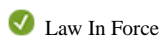
#### Commencement

Pt 4 art. 30(1)-(4): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

#### Extent

Pt 4 art. 30(1)-(5)(b): United Kingdom

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Law In Force

### 31.— Variation of emissions monitoring plans

(1) An aircraft operator—

- (a) may apply to the regulator to vary its emissions monitoring plan;
- (b) must apply to the regulator to vary its emissions monitoring plan where required to do so by a condition of the emissions monitoring plan.

(2) A variation applied for under paragraph (1) is given effect by the regulator giving notice to the aircraft operator.

(3) Paragraphs (1) and (2) do not affect the operation of any condition of an emissions monitoring plan that allows an aircraft operator to make a variation without applying to the regulator.

(4) The regulator may, by giving notice to an aircraft operator, make any variation of the aircraft operator's emissions monitoring plan that the regulator considers necessary in consequence of a report made by the aircraft operator under Article 69(4) of the Monitoring and Reporting Regulation 2018.

(5) The regulator may, by giving notice to an aircraft operator, vary the aircraft operator's emissions monitoring plan where the aircraft operator has failed to comply with a requirement in the emissions monitoring plan to make or apply for such a variation.

(6) The regulator may, by giving notice to an aircraft operator, vary the aircraft operator's emissions monitoring plan by modifying, adding or removing a condition if the regulator considers it necessary to do so to give proper effect to the Monitoring and Reporting Regulation 2018 or the Verification Regulation 2018.

(7) In this article references to an aircraft operator include any person who has been issued with an emissions monitoring plan.

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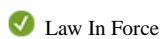
**Commencement**

Pt 4 art. 31(1)-(7): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

**Extent**

Pt 4 art. 31(1)-(7): United Kingdom

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Law In Force

**32.— Monitoring emissions and emissions monitoring plan conditions**

(1) Each aircraft operator must monitor its aviation emissions in accordance with-

- (a) the Monitoring and Reporting Regulation 2018; and
- (b) its emissions monitoring plan, including any written procedures required by Article 12 of the Monitoring and Reporting Regulation 2018.

(2) Each aircraft operator must comply with any condition included in its emissions monitoring plan under article 29(5) or 31(6).

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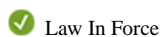
**Commencement**

Pt 4 art. 32(1)-(2): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

**Extent**

Pt 4 art. 32(1)-(2): United Kingdom

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Law In Force

**33.— Reporting aviation emissions**

(1) A person who is an aircraft operator in relation to a scheme year must prepare a report of its aviation emissions for that scheme year in accordance with the Monitoring and Reporting Regulation 2018 ; the report must be verified [ as satisfactory ]<sup>1</sup> in accordance with the Verification Regulation 2018.

(2) The obligation for the report to be [ verified as satisfactory in accordance ]<sup>2</sup> with the Verification Regulation 2018 does not apply, and the aviation emissions stated in the report are considered to be verified, where the person required to prepare the report in relation to a scheme year—

(a) had emissions of carbon dioxide for that scheme year amounting to either—

(i) less than 25,000 tonnes from full-scope flights; or

(ii) less than 3,000 tonnes from aviation activity; and

(b) determined its emissions using the small emitters tool approved under Commission Regulation (EU) No 606/2010, the tool having been populated with data by Eurocontrol.

(3) The report prepared under paragraph (1) [ (and the verification report) ]<sup>3</sup> must be submitted to the regulator on or before 31st March in the year following the scheme year to which it relates.

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#### Notes

<sup>1</sup> Words inserted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.17(2) (December 31, 2020)

<sup>2</sup> Words substituted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.17(3) (December 31, 2020)

<sup>3</sup> Words inserted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.17(4) (December 31, 2020)


#### Commencement

Pt 4 art. 33(1)-(3): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

#### Extent

Pt 4 art. 33(1)-(3): United Kingdom

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 Law In Force

### 34.— Surrender of allowances by aircraft operators

(1) A person who is an aircraft operator in relation to a scheme year must surrender, on or before 30th April in the following year, an amount of allowances equal to its aviation emissions in that scheme year (expressed in tonnes).

(2) Where an aircraft operator's aviation emissions in a scheme year (the "non-compliance year") exceeds the allowances surrendered on or before 30th April in the following year, the aircraft operator's aviation emissions in the relevant scheme year must be treated as being increased by the difference.

(3) In paragraph (2), the relevant scheme year means—

(a) the scheme year following the non-compliance year; or

(b) if the failure to comply with paragraph (1) results from an error in the verified emissions report submitted by the aircraft operator, the scheme year in which the error is discovered.

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**Commencement**

Pt 4 art. 34(1)-(3)(b): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

**Extent**

Pt 4 art. 34(1)-(3)(b): United Kingdom

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**[ PART 4A****Free Allocation**

**] <sup>1</sup>**

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**Notes**

- <sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.18 (December 31, 2020)
- 

**[ CHAPTER 1****Installations ] <sup>1</sup>**

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**Notes**

- <sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.18 (December 31, 2020)
- 

 Law In Force

**[ 34A.— Allocation tables**

- (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).

] <sup>1</sup>

#### Notes

- <sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.18 (December 31, 2020)

#### Extent

Pt 4A(1) art. 34A(1)-(8)(b)(iii): United Kingdom





### **[ 34B.— Allocation tables: supplementary**

- (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 [ or under paragraph 4 of Schedule 8A to this Order ]<sup>2</sup>, 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.
- ] <sup>1</sup>**

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#### **Notes**

- <sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.18 (December 31, 2020)
- <sup>2</sup> Words inserted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021/1455 Pt 2 art.10(2) (February 7, 2022)

#### **Amendments Pending**

Pt 4A(1) art. 34B(3A): added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2023/850, Pt 2 art. 5(2) (January 1, 2024)

#### **Extent**

Pt 4A(1) art. 34B(1)-(7): United Kingdom

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### [ 34C.— Allocation tables: updates

(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.) [;]<sup>2</sup>
- [(g) paragraph 4 of Schedule 8A to this Order (former hospital or small emitters and ultra-small emitters).]<sup>2</sup>

(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.)

] <sup>1</sup>

#### Notes

<sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.18 (December 31, 2020)

<sup>2</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021/1455 Pt 2 art.11(2) (February 7, 2022)

#### Amendments Pending

Pt 4A(1) art. 34C(1)(h)-(i): added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2023/850, Pt 2 art. 6(2) (January 1, 2024)

#### Proposed Draft Amendments

Pt 4A(1) art. 34C(1)(j): added by Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2023 (Draft) Pt 2 art. 5(2) (Published, September 19, 2023) (January 1, 2024)

#### Extent

Pt 4A(1) art. 34C(1)-(2): United Kingdom



### [ 34D.— Allocation tables: publication, etc.

(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).

] <sup>1</sup>

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#### Notes

<sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.18 (December 31, 2020)

#### Extent

Pt 4A(1) art. 34D(1)-(5): United Kingdom

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 Law In Force

#### [ 34E.— Allocation of allowances

(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).

] <sup>1</sup>

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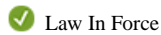
#### Notes

<sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.18 (December 31, 2020)

#### Extent

Pt 4A(1) art. 34E(1)-(4)(c): United Kingdom

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Law In Force

### **[ 34F.— No allocation unless monitoring methodology plan approved**

(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.

] <sup>1</sup>

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#### **Notes**

<sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.18 (December 31, 2020)

#### **Extent**

Pt 4A(1) art. 34F(1)-(2): United Kingdom

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Law In Force With Amendments Pending

### **[ 34G.— New entrants' reserve**

(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, in chronological order of the date (and, where relevant, time)—

(a) where the historical activity level was determined under Article 15 of the Free Allocation Regulation<sup>3</sup>, of the approval by the UK ETS authority of the final annual number of allowances to be allocated in respect of the installation under paragraph 4 of Schedule 8A (free allocation for former hospital or small emitters and ultra-small emitters);

(b) where the historical activity level was determined under Article 17(1) of the Free Allocation Regulation or Article 3a(2) of the Activity Level Changes Regulation<sup>4</sup>, on which the operator submitted sufficient information to enable the historical activity level of the sub-installation to be determined.

]²

(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.

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#### Notes

- <sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.18 (December 31, 2020)
- <sup>2</sup> Substituted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021/1455 Pt 2 art.12(2) (February 7, 2022)
- <sup>3</sup> EUR 2019/331, amended by S.I. 2020/1557 and article 30 of this Order. ("Free Allocation Regulation" is defined in article 4(1) of S.I. 2020/1265.)
- <sup>4</sup> EUR 2019/1842, amended by S.I. 2020/1557. ("Activity Level Changes Regulation" is defined in article 4(1) of S.I. 2020/1265..)

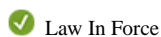
#### Amendments Pending

Pt 4A(1) art. 34G(4)(b): words inserted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2023/850, Pt 2 art. 7(2) (January 1, 2024)

#### Extent

Pt 4A(1) art. 34G(1)-(8): United Kingdom

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Law In Force

#### [ 34H.— Installations: errors in applications for free allocation, etc.

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

- (a) either—
  - (i) 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

- (ii) 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; or
  - (b) there has been a failure to include an entry for an installation in an allocation table.
- ]<sup>2</sup>
- (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 or other report]<sup>3</sup> 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 there is a relevant error and, as a result of the relevant error, the circumstances referred to in paragraph (1)(a) or (b) apply in relation to the installation]<sup>4</sup>, 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.

] <sup>1</sup>

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#### Notes

- <sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.18 (December 31, 2020)
- <sup>2</sup> Substituted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021/1455 Pt 2 art.13(2) (February 7, 2022)
- <sup>3</sup> Words substituted by Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2022/1173 Pt 2 art.6(2) (January 1, 2023)
- <sup>4</sup> Words substituted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021/1455 Pt 2 art.13(3) (February 7, 2022)

#### Extent

Pt 4A(1) art. 34H(1)-(8): United Kingdom

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 Law In Force

### [ 34HA Free allocation for former hospital or small emitters and ultra-small emitters

Schedule 8A (free allocation for former hospital or small emitters and ultra-small emitters) has effect. ] <sup>1</sup>

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#### Notes

- <sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021/1455 Pt 2 art.14 (February 7, 2022)

#### Extent

Pt 4A(1) art. 34HA: United Kingdom

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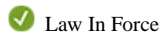
## [ CHAPTER 2

Aviation ] <sup>1</sup>

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#### Notes

- <sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.18 (December 31, 2020)
-



Law In Force

### [ 34I.— Interpretation

#### (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.

] <sup>1</sup>

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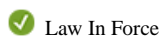
#### Notes

<sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.18 (December 31, 2020)

#### Extent

Pt 4A(2) art. 34I(1)-(2)(b): United Kingdom

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Law In Force

### [ 34J.— Meaning of historical aviation activity level and attributable

#### (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 number of tonne-kilometres of Annex 1 activities performed by the person in 2014 ]<sup>2</sup> and the person's threshold figure.

(2) In this article, a person's—

(a)-(b) [...] <sup>3</sup>

[ "aviation activity ratio" means the number of tonne-kilometres of aviation activity performed by the person in 2014 divided by the number of tonne-kilometres of Annex 1 activities performed by the person in 2014; ] <sup>4</sup>

"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.

] <sup>1</sup>

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## Notes

<sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.18 (December 31, 2020)

<sup>2</sup> Words substituted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021/1455 Pt 2 art.15(2) (February 7, 2022)

<sup>3</sup> Definitions revoked by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021/1455 Pt 2 art.15(3)(a) (February 7, 2022)

<sup>4</sup> Definition substituted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021/1455 Pt 2 art.15(3)(b) (February 7, 2022)

## Extent

Pt 4A(2) art. 34J(1)-(4)(b): United Kingdom

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Law In Force With Amendments Pending

## [ 34K. Aviation: entitlement to free allocation in 2021-2025 allocation period

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.

]<sup>1</sup>

#### Notes

- <sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.18 (December 31, 2020)

#### Proposed Draft Amendments


Pt 4A(2) art. 34K: amended by Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2023 (Draft)  
Pt 2 art. 6 (Published, September 19, 2023) (January 1, 2024)

#### Extent

Pt 4A(2) art. 34K(a)-(b): United Kingdom

The text of this provision varies depending on jurisdiction or other application. See parallel texts relating to:

[Northern Ireland](#) | [England, Scotland and Wales](#)

 Law In Force

Northern Ireland

### [ 34L.— Application for aviation free allocation entitlement

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

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

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

(a) for each person on whose historical aviation activity level the applicant relies, a statement as to whether it is the person's historical aviation activity level within article 34J(1)(a), (b) or (c);

(b) verified tonne-kilometre data as follows—

(i) where the applicant relies on a person's historical aviation activity level within article 34J(1)(a), verified tonne-kilometre data for the person's Annex 1 activities performed in 2010;

(ii) where the applicant relies on a person's historical aviation activity level within article 34J(1)(b), verified tonne-kilometre data for the person's Annex 1 activities performed in 2014;

- (iii) where the applicant relies on a person's historical aviation activity level within article 34J(1)(c), verified tonne-kilometre data for the person's Annex 1 activities performed in 2010 and 2014;
  - (c) if there has been no business reorganisation affecting an aviation activity included in the verified tonne-kilometre data, a statement of that fact;
  - (d) if there has been a business reorganisation affecting an aviation activity included in the verified tonne-kilometre data, evidence of that business reorganisation;
  - (e) where the application relies on a person's historical aviation activity level within article 34J(1)(b) or (c), the other information that was included in the person's special reserve application and evidence that the application was successful.
- (4) In this article, "verified tonne-kilometre data" means—
  - (a) a tonne-kilometre data report containing the information set out in section 3 of Annex 10 to Commission Regulation (EU) 2018/2066 (as it has effect in EU law), together with a verification report in relation to it containing the information set out in Article 27 of Commission Implementing Regulation (EU) 2018/2067 (as it has effect in EU law); or
  - (b) where paragraph (5) applies, the items submitted to the regulator under that paragraph.
- (5) This paragraph applies where—
  - (a) the applicant submits to the regulator the same items as the applicant submitted for the purpose of an application for free allocation of allowances under the EU ETS;
  - (b) the previously submitted data included in the items referred to in sub-paragraph (a) was produced and verified in accordance with whichever of the following applied in relation to that previous submission—
    - (i) Commission Decision 2007/589/EC of 18 July 2007 establishing guidelines for the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87/EC of the European Parliament and of the Council<sup>2</sup>;
    - (ii) the Monitoring and Reporting Regulation 2012 and the Verification Regulation 2012; and
  - (c) the applicant submits to the regulator a statement from the competent authority to which the data was submitted for the purpose of the application referred to in sub-paragraph (a) confirming that the data was not altered before the free allocation was calculated.
- (6) An application under this article must be submitted to the regulator on or before 31st March 2021.

J<sup>1</sup>

## Notes

<sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.18 (December 31, 2020)

<sup>2</sup> 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.

**[ 34L.— Application for aviation free allocation entitlement**

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

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

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

(a) for each person on whose historical aviation activity level the applicant relies, a statement as to whether it is the person's historical aviation activity level within article 34J(1)(a), (b) or (c);

(b) verified tonne-kilometre data as follows—

(i) where the applicant relies on a person's historical aviation activity level within article 34J(1)(a), verified tonne-kilometre data for the person's Annex 1 activities performed in 2010;

(ii) where the applicant relies on a person's historical aviation activity level within article 34J(1)(b), verified tonne-kilometre data for the person's Annex 1 activities performed in 2014;

(iii) where the applicant relies on a person's historical aviation activity level within article 34J(1)(c), verified tonne-kilometre data for the person's Annex 1 activities performed in 2010 and 2014;

(c) if there has been no business reorganisation affecting an aviation activity included in the verified tonne-kilometre data, a statement of that fact;

(d) if there has been a business reorganisation affecting an aviation activity included in the verified tonne-kilometre data, evidence of that business reorganisation;

(e) where the application relies on a person's historical aviation activity level within article 34J(1)(b) or (c), the other information that was included in the person's special reserve application and evidence that the application was successful.

(4) In this article, "verified tonne-kilometre data" means—

(a) a tonne-kilometre data report containing the information set out in section 3 of Annex 10 to Commission Regulation (EU) 2018/2066 (as it has effect in EU law), together with a verification report in relation to it containing the information set out in Article 27 of Commission Implementing Regulation (EU) 2018/2067 (as it has effect in EU law); or

(b) where paragraph (5) applies, the items submitted to the regulator under that paragraph.

(5) This paragraph applies where—

(a) the applicant submits to the regulator the same items as the applicant submitted for the purpose of an application for free allocation of allowances under the EU ETS;

(b) the previously submitted data included in the items referred to in sub-paragraph (a) was produced and verified in accordance with whichever of the following applied in relation to that previous submission—

(i) Commission Decision 2007/589/EC of 18 July 2007 establishing guidelines for the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87/EC of the European Parliament and of the Council<sup>2</sup>;

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

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

(6) Unless paragraph (7) applies, an application under this article must be submitted to the regulator on or before 31st March 2021.

[(7) A person who did not submit an application under this article on or before 31st March 2021 but who may be entitled to a free allocation of allowances on the basis of historical aviation activity level due to aviation activity within paragraph 1(1)(c) of Schedule 1 may submit an application under this article for a free allocation of allowances on or before 31st March 2023.

(8) An application made under paragraph (7) may not be made on the basis of historical aviation activity level due to any aviation activity other than aviation activity within paragraph 1(1)(c) of Schedule 1.]<sup>3</sup>

]¹

#### Notes

- <sup>1</sup> Words substituted by Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 3) Order 2022/1336 art.4(1)(a) (December 15, 2022)
- <sup>2</sup> 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.
- <sup>3</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 3) Order 2022/1336 art.4(1)(b) (December 15, 2022)

#### Extent

Pt 4A(2) art. 34L(1)-(6): United Kingdom

The text of this provision varies depending on jurisdiction or other application. See parallel texts relating to:  
[Northern Ireland](#) | [England, Scotland and Wales](#)

✓ Law In Force

Northern Ireland

#### [ 34M.— Processing of applications and calculation of aviation free allocation entitlement

(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.

] <sup>1</sup>

#### Notes

<sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.18 (December 31, 2020)

England, Scotland and Wales

#### [ 34M.— Processing of applications and calculation of aviation free allocation entitlement

(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—

- (i) for each scheme year in the 2021-2025 allocation period, or  
(ii) where the application is made in accordance with article 34L(7), for the 2023, 2024 and 2025 scheme years in that 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 [ in relation to flights departing from Great Britain and arriving in an aerodrome in Switzerland before that date ]<sup>2</sup> ; 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.

[(6A) The regulator must recalculate the aviation free allocation entitlement for the 2023, 2024 and 2025 scheme years in relation to each person who had made an application under article 34L ("A") before article 34L(7) came into force, to take into account any historical aviation activity level attributable to A due to aviation activity within paragraph 1(1)(c) of Schedule 1 immediately before 1st January 2021.

(6B) The regulator may, by notice submitted to A, request A to produce such information specified in the notice, within the reasonable period so specified, as may be necessary to enable the regulator to make the recalculation required under paragraph (6A).

(6C) The regulator must, as soon as reasonably practicable and in any event before 30th June 2023, submit the recalculation made under paragraph (6A) to the UK ETS authority, with—

- (a) sufficient information to identify A; and
- (b) any other information related to the recalculation which the regulator holds.

(6D) Paragraph (6C) does not apply if A fails, without reasonable excuse, to provide any information requested under paragraph (6B) within the period specified in the notice, or such later period as may be agreed with the regulator. ]<sup>3</sup>

(7) The UK ETS authority must—

- (a) approve the applicant's aviation free allocation entitlement [ or an increase in that entitlement following recalculation under paragraph (6A) ]<sup>4</sup>, making any corrections to the calculation referred to in paragraph (1)(b) [ or the recalculation referred to in paragraph (6A) ]<sup>5</sup> that the UK ETS authority considers appropriate;
- (b) inform the regulator accordingly.

] <sup>1</sup>


#### Notes

- <sup>1</sup> Substituted by Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 3) Order 2022/1336 art.4(2)(a) (December 15, 2022)
- <sup>2</sup> Words inserted by Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 3) Order 2022/1336 art.4(2)(b) (December 15, 2022)
- <sup>3</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 3) Order 2022/1336 art.4(2)(c) (December 15, 2022)
- <sup>4</sup> Words inserted by Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 3) Order 2022/1336 art.4(2)(d)(i) (December 15, 2022)
- <sup>5</sup> Words inserted by Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 3) Order 2022/1336 art.4(2)(d)(ii) (December 15, 2022)

#### Extent

Pt 4A(2) art. 34M(1)-(7)(b): United Kingdom

The text of this provision varies depending on jurisdiction or other application. See parallel texts relating to:  
[Northern Ireland](#) | [England, Scotland and Wales](#)

 Law In Force

Northern Ireland

#### [ 34N.— Aviation allocation table for 2021-2025 allocation period

- (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) [ of this Order or under article 29 of the Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021 (aviation: recalculation of aviation free allocation entitlement of certain applicants) ]<sup>2</sup> .

(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).

] <sup>1</sup>

#### Notes

<sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.18 (December 31, 2020)

<sup>2</sup> Words inserted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021/1455 Pt 2 art.16(2) (February 7, 2022)

England, Scotland and Wales

#### [ 34N.— Aviation allocation table for 2021-2025 allocation period

(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—

(a) article 34M(7)—

(i) of the applicant's aviation free allocation entitlement following an application made in reliance on article 34L(7);

(ii) of an increase in a person's aviation free allocation following a recalculation by the regulator under article 34M(6A); or

(b) 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).

]<sup>1</sup>

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#### Notes

<sup>1</sup> Substituted by Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 3) Order 2022/1336 art.4(3) (December 15, 2022)

#### Extent

Pt 4A(2) art. 34N(1)-(8): United Kingdom

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 Law In Force

### [ 34O.— Aviation: allocation of allowances for 2021-2025 allocation period

(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).

]<sup>1</sup>

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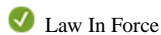
## Notes

- <sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.18 (December 31, 2020)

## Extent

Pt 4A(2) art. 34O(1)-(8): United Kingdom

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Law In Force

## [ 34P.— Permanent cessation of aviation activity

(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.

]¹

#### Notes

¹ Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.18 (December 31, 2020)

#### Extent

Pt 4A(2) art. 34P(1)-(2)(b): United Kingdom

✓ Law In Force

### [ 34Q.— Transfers of aviation free allocation entitlement

(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.

] <sup>1</sup>

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#### Notes

- <sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.18 (December 31, 2020)

#### Extent

Pt 4A(2) art. 34Q(1)-(8): United Kingdom

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 Law In Force

### [ 34R.— Errors in aviation allocation table

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

- (a) the number of allowances set out in the aviation allocation table as a person's aviation free allocation entitlement 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; or
- (b) there has been a failure to include an entry for a person with an aviation free allocation entitlement in the aviation allocation table.

] <sup>2</sup>

(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 [ there is a relevant error and, as a result of the relevant error, the circumstances referred to in paragraph (1)(a) or (b) apply in relation to the person ] <sup>3</sup> , 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).

] <sup>1</sup>

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#### Notes

- <sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.18 (December 31, 2020)
- <sup>2</sup> Substituted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021/1455 Pt 2 art.17(2) (February 7, 2022)
- <sup>3</sup> Substituted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021/1455 Pt 2 art.17(3) (February 7, 2022)

#### Extent

Pt 4A(2) art. 34R(1)-(6)(b): United Kingdom

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## [ CHAPTER 3

### Common provisions ] <sup>1</sup>

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#### Notes

- <sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.18 (December 31, 2020)
- 



Law In Force With Amendments Pending

### [ 34S.— Return of allowances: installations

- (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).

] <sup>1</sup>

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#### Notes

- <sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.18 (December 31, 2020)

#### Proposed Draft Amendments

Pt 4A(3) art. 34S(1)(b): words inserted by Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2023 (Draft) Pt 2 art. 7(2) (Published, September 19, 2023) (January 1, 2024)

#### Extent

Pt 4A(3) art. 34S(1)-(3): United Kingdom

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Law In Force With Amendments Pending

### [ 34T.— Return of allowances: aviation

(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.

] <sup>1</sup>

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#### Notes

- <sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.18 (December 31, 2020)

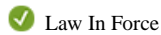
#### Proposed Draft Amendments

Pt 4A(3) art. 34T: amended by Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2023 (Draft) Pt 2 art. 8 (Published, September 19, 2023) (January 1, 2024)

#### Extent

Pt 4A(3) art. 34T(1)-(3)(b): United Kingdom

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Law In Force

**[ 34U.— Return of allowances: notice to registry administrator**

(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.

] <sup>1</sup>

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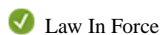
**Notes**

- <sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.18 (December 31, 2020)

**Extent**

Pt 4A(3) art. 34U(1)-(5): United Kingdom

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Law In Force

**[ 34V.— Return of allowances: notice to operator, etc.**

(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.

] <sup>1</sup>

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#### Notes

- <sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.18 (December 31, 2020)

#### Extent

Pt 4A(3) art. 34V(1)-(5): United Kingdom

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Law In Force With Amendments Pending

#### [ 34W.— Notice to withhold allowances

(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;

[ (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<sup>3</sup> that has not been determined or has been granted an extension of time to make such an application that has not expired; ]<sup>2</sup>

(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 (ga) ]<sup>4</sup> 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.

] <sup>1</sup>

## Notes

<sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.18 (December 31, 2020)

<sup>2</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2022/1173 Pt 2 art.7(2) (January 1, 2023)

<sup>3</sup> 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.

<sup>4</sup> Words substituted by Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2022/1173 Pt 2 art.7(3) (January 1, 2023)

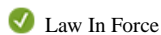
## Proposed Draft Amendments

Pt 4A(3) art. 34W: amended by Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2023 (Draft) Pt 2 art. 9 (Published, September 19, 2023) (January 1, 2024)

**Extent**

Pt 4A(3) art. 34W(1)-(6): United Kingdom

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**PART 5****Charging**

Law In Force

**35.— Charges**

(1) The regulator [or the registry administrator ]<sup>1</sup> may charge an applicant, operator, aircraft operator or any other person an amount as a means of recovering costs incurred by the regulator [or the registry administrator ]<sup>1</sup> in performing activities in accordance with or by virtue of this Order.

(2) The activities referred to in paragraph (1) include—

- (a) giving advice in relation to an application under or by virtue of this Order or any other advice in relation to the operation of the UK ETS;
- (b) considering an application under or by virtue of this Order;
- (c) issuing, varying, transferring, cancelling, surrendering or revoking a permit;
- (d) issuing or varying an emissions monitoring plan;
- (e) giving any notice or other document provided for by or under this Order;
- (f) receiving any notice or other document provided for by or under this Order;
- (g) monitoring compliance with this Order;
- (h) making a determination of emissions or aviation emissions under article 45 [ ; ]<sup>2</sup>
- [ (i) estimating the value of a parameter under article 34H(4) of this Order or Article 3(4) of the Activity Level Changes Regulation;
- (j) administering an account in the registry. ]<sup>2</sup>

(3) A charge under paragraph (1) may include an annual or other periodic charge to an operator or aircraft operator that does not relate to any specific activity.

(4) The regulator [or the registry administrator ]<sup>3</sup> may apply different charges for different categories of person in relation to the same activity.

(5) Payment of a charge is not received until the regulator [or, as the case may be, the registry administrator ]<sup>4</sup> has cleared funds for the full amount due and a charge, if unpaid, may be recovered by the regulator [or, as the case may be, the registry administrator ]<sup>4</sup> as a civil debt.

(6) The regulator [or the registry administrator ]<sup>5</sup> may require a charge to be paid before it carries out the activity to which the charge relates.

(7) If the regulator [or the registry administrator ]<sup>6</sup> does not require a charge to be paid in accordance with paragraph (6), it is payable on demand.

(8) [ Neither the regulator nor the registry administrator is ]<sup>7</sup> required to reimburse a charge where—  
(a) an activity is not completed; or

(b) the person liable to pay the charge does not remain within the scheme for all of the period in relation to which the charge is payable or has been calculated.

[ (9) In this article, a reference to this Order includes a reference to the Monitoring and Reporting Regulation 2018, the Verification Regulation 2018, the Free Allocation Regulation and the Activity Level Changes Regulation. ]<sup>8</sup>

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#### Notes

- <sup>1</sup> Words inserted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.19(2) (December 31, 2020)
- <sup>2</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.19(3) (December 31, 2020)
- <sup>3</sup> Words inserted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.19(4) (December 31, 2020)
- <sup>4</sup> Words inserted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.19(5) (December 31, 2020)
- <sup>5</sup> Words inserted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.19(6) (December 31, 2020)
- <sup>6</sup> Words inserted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.19(7) (December 31, 2020)
- <sup>7</sup> Words substituted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.19(8) (December 31, 2020)
- <sup>8</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.19(9) (December 31, 2020)

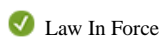
#### Commencement

Pt 5 art. 35(1)-(8)(b): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

#### Extent

Pt 5 art. 35(1)-(9): United Kingdom

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Law In Force

### [ 36.— Charging scheme: regulators

- (1) The regulator must publish a document (a "charging scheme") setting out the charges payable in accordance with article 35(1) or how they will be calculated.
- (2) Before publishing a charging scheme, the regulator must—
  - (a) bring the proposals to the attention of persons likely to be affected by them;
  - (b) specify the period within which representations or objections to the proposals may be made.
- (3) A charging scheme may not be published unless it has been approved by the appropriate national authority.
- (4) Where a proposed charging scheme is submitted for approval under paragraph (3), the appropriate national authority—
  - (a) must consider any representations or objections made under paragraph (2)(b);

(b) may make such modifications to the proposals as the appropriate national authority considers appropriate.

(5) If the regulator proposes to revise a charging scheme in a material way, paragraphs (2) to (4) apply to the revised charging scheme.

(6) Paragraphs (2) to (5) do not apply in relation to a charging scheme published by the Secretary of State.

(7) In this article, "appropriate national authority" means—

- (a) where the regulator is the Environment Agency, the Secretary of State;
- (b) where the regulator is the chief inspector, the Department of Agriculture, Environment and Rural Affairs.
- (c) where the regulator is SEPA, the Scottish Ministers;
- (d) where the regulator is NRW, the Welsh Ministers.

]<sup>1</sup>

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#### Notes

- <sup>1</sup> Art.36 and 36A substituted for art.36 by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.20 (December 31, 2020)

#### Commencement

Pt 5 art. 36(1)-(6): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

#### Extent

Pt 5 art. 36(1)-(7)(d): United Kingdom

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 Law In Force

#### [ 36A.— Charging scheme: registry administrator

(1) The registry administrator must publish a document (a "charging scheme") setting out the charges payable in accordance with article 35(1) or how they will be calculated.

(2) Before publishing a charging scheme, the registry administrator must—

- (a) bring the proposals to the attention of persons likely to be affected by them;
- (b) specify the period within which representations or objections to the proposals may be made.

(3) A charging scheme may not be published unless it has been approved by the UK ETS authority.

(4) Where a proposed charging scheme is submitted for approval under paragraph (3), the UK ETS authority—

- (a) must consider any representations or objections made under paragraph (2)(b);
- (b) may make such modifications to the proposals as the UK ETS authority considers appropriate.

(5) If the registry administrator proposes to revise a charging scheme in a material way, paragraphs (2) to (4) apply to the revised charging scheme.

]<sup>1</sup>

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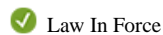
**Notes**

- <sup>1</sup> Art.36 and 36A substituted for art.36 by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.20 (December 31, 2020)

**Extent**

Pt 5 art. 36A(1)-(5): United Kingdom

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Law In Force

**[ 37.— Remittance of charges**

(1) The regulator must pay any charge received in accordance with a charging scheme under article 36 to the appropriate national authority (as defined in paragraph (7) of that article).

(2) Paragraph (1) does not apply to a charge received by the Secretary of State.

(3) The registry administrator must pay any charge received in accordance with a charging scheme under article 36A to the UK ETS authority.

] <sup>1</sup>

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**Notes**

- <sup>1</sup> Substituted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.21 (December 31, 2020)

**Commencement**

Pt 5 art. 37(1)-(4): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

**Extent**

Pt 5 art. 37(1)-(4): United Kingdom

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## **PART 6**

### **Monitoring compliance**



Law In Force

**38.— Authorised persons**

(1) The regulator may authorise a person to exercise, on behalf of the regulator and in accordance with the terms of the authorisation, the regulator's powers set out in this Part.

(2) In this Part, "authorised person" means a person authorised under—

- (a) paragraph (1); or
- (b) section 108(1) of the Environment Act 1995<sup>1</sup>.

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**Notes**

- <sup>1</sup> Section 108(1) was relevantly amended by section 46(2)(a) of the Regulatory Reform (Scotland) Act 2014 (asp 3).

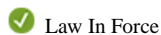
**Commencement**

Pt 6 art. 38(1)-(2)(b): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

**Extent**

Pt 6 art. 38(1)-(2)(b): United Kingdom

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Law In Force

**39.— Inspections**

- (1) The regulator [ or an authorised person<sup>2</sup> ]<sup>1</sup> may, at a reasonable time, inspect any premises and any thing in or on those premises in order to monitor compliance with this Order [ , the Monitoring and Reporting Regulation 2018, the Verification Regulation 2018, the Free Allocation Regulation or the Activity Level Changes Regulation ]<sup>3</sup> .
- (2) Reasonable prior notice must be given before exercising the powers in this article.
- (3) A person in control of the premises to which the regulator or authorised person reasonably requires access must allow the regulator or authorised person to have such access.
- (4) The regulator or authorised person may, when inspecting premises—
- (a) make any such examination and investigation as may be necessary;
  - (b) install or maintain monitoring equipment or other apparatus;
  - (c) request the production of any record;
  - (d) take measurements, photographs, recordings or copies of any thing;
  - (e) take samples of any articles or substances found in, or on, the premises and of the air, water or land in, on, or in the vicinity of, those premises;
  - (f) request any person at the premises to provide facilities or assistance to the extent that is within that person's control.
- (5) Except to the extent agreed by the person in control of a place or premises, the power referred to in paragraph (1) does not apply to—
- (a) a prohibited place for the purposes of the Official Secrets Act 1911; or
  - (b) any other premises to which the Crown restricts access on the ground of national security.

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**Notes**


- <sup>1</sup> Words inserted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2022/454 Pt 2 art.5(2) (April 14, 2022)
- <sup>2</sup> "Authorised person" is defined in article 38(2) of S.I. 2020/1265.
- <sup>3</sup> Words inserted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.22(2) (December 31, 2020)

**Commencement**

Pt 6 art. 39(1)-(5)(b): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

**Extent**Pt 6 art. 39(1)-(5)(b): United Kingdom

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 Law In Force**40.— Powers of entry, etc.**

(1) The regulator or an authorised person may—

- (a) enter any premises with a warrant issued in accordance with article 41, together with any equipment or material as may be required;
- (b) when entering premises by virtue of sub-paragraph (a)—
  - (i) be accompanied by an authorised person and, if considered appropriate, a constable;
  - (ii) direct that any part of the premises be left undisturbed for so long as may be necessary;
- (c) require any person believed to be able to give information relevant to an examination or investigation—
  - (i) to attend at a place and time specified by the regulator or authorised person;
  - (ii) to answer questions (in the absence of any person other than those whom the regulator or authorised person allows to be present and a person nominated by the person being asked questions);
  - (iii) to sign a declaration of truth of the answers given by that person;
- (d) require the production of—
  - (i) records required to be kept under this Order [ , the Monitoring and Reporting Regulation 2018, the Verification Regulation 2018, the Free Allocation Regulation or the Activity Level Changes Regulation ]<sup>1</sup> ;
  - (ii) other records which the regulator or authorised person considers it necessary to see for the purpose of an examination or investigation;
  - (iii) entries in a record referred to in this sub-paragraph;
- (e) inspect and take copies of the records and entries referred to in sub-paragraph (d).

(2) The powers in paragraph (1) may only be exercised where the regulator or an authorised person reasonably believes there has been a failure to comply with the requirements of this Order [ , the Monitoring and Reporting Regulation 2018, the Verification Regulation 2018, the Free Allocation Regulation or the Activity Level Changes Regulation ]<sup>2</sup> .

(3) Except to the extent agreed by the person in control of a place or premises, the powers referred to in paragraph (1) do not apply in relation to—

- (a) a prohibited place for the purposes of the Official Secrets Act 1911; or
- (b) any other premises to which the Crown restricts access on the ground of national security.

(4) It is an offence for a person—

- (a) to fail to comply with a requirement imposed pursuant to this article; [...]<sup>3</sup>
- (b) to prevent any other person from—
  - (i) appearing before the regulator or an authorised person; or
  - (ii) answering a question to which the regulator or authorised person requires an [ answer; or ]<sup>4</sup>



[ (c) intentionally to obstruct the regulator, or an authorised person, in the exercise of a power referred to in paragraph (1). ]<sup>5</sup>

- (5) A person guilty of an offence under paragraph (4) is liable—
- (a) on summary conviction in England and Wales, to a fine;
  - (b) on summary conviction in Scotland or in Northern Ireland, to a fine not exceeding the statutory maximum;
  - (c) on conviction on indictment, to a fine.

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#### Notes

- <sup>1</sup> Words inserted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.23(2) (December 31, 2020)
- <sup>2</sup> Words inserted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.23(3) (December 31, 2020)
- <sup>3</sup> Word revoked by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2022/454 Pt 2 art.6(2)(a) (April 14, 2022)
- <sup>4</sup> Word substituted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2022/454 Pt 2 art.6(2)(b) (April 14, 2022)
- <sup>5</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2022/454 Pt 2 art.6(2)(c) (April 14, 2022)


#### Commencement

Pt 6 art. 40(1)-(5)(c): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

#### Extent

Pt 6 art. 40(1)-(5)(c): United Kingdom

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 Law In Force

### 41.— Warrants

(1) A judge may issue a warrant in relation to any premises for the purpose of article 40(1)(a) where satisfied that—

- (a) there are reasonable grounds for the exercise of the power in that sub-paragraph; and
- (b) one or more of the conditions in paragraph (2) are fulfilled in relation to the premises.

(2) The conditions referred to in paragraph (1)(b) are that—

- (a) the exercise of the power by consent in relation to the premises has been refused;
- (b) a refusal of consent to the exercise of the power is reasonably expected;
- (c) the premises are unoccupied;
- (d) the occupier is temporarily absent from the premises and the case is one of urgency; or
- (e) a request for admission to the premises would defeat the purpose of the entry.

(3) A warrant in accordance with this article continues to have effect until the purpose for which it was issued has been fulfilled.

(4) In paragraph (1), "judge" means—

- (a) in England or Wales, a justice of the peace;
- (b) in Northern Ireland, a lay magistrate;

(c) in Scotland, a justice of the peace or sheriff.

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#### Commencement

Pt 6 art. 41(1)-(4)(c): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

#### Extent

Pt 6 art. 41(1)-(4)(c): United Kingdom

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 Law In Force

### 42.— Admissible evidence

- (1) An answer given by a person in compliance with article 40(1)(c)(ii) is admissible in evidence—
- (a) in England, Wales and Northern Ireland, against that person in any proceedings;
  - (b) in Scotland, against that person in criminal proceedings.

(2) In criminal proceedings in which the person referred to in paragraph (1) is charged with an offence, no evidence relating to the person's answer may be adduced and no question relating to it may be asked by, or on behalf of, the prosecution unless evidence relating to it has been adduced by, or on behalf of, the person.

- (3) Paragraph (2) does not apply to an offence under—
- (a) section 5 of the Perjury Act 1911;
  - (b) section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995<sup>1</sup>; or
  - (c) article 10 of the Perjury (Northern Ireland) Order 1979<sup>2</sup>.

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#### Notes

<sup>1</sup> Section 44(2) was amended by section 200(2)(b) of the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13).

<sup>2</sup> 1979 No. 1714 (N.I. 19).

#### Commencement

Pt 6 art. 42(1)-(3)(c): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

#### Extent

Pt 6 art. 42(1)-(3)(c): United Kingdom

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 Law In Force

### 43. Legal professional privilege

Nothing in this Part requires any person to produce a document which that person would be entitled to withhold the production of on grounds of legal professional privilege.

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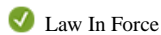
**Commencement**

Pt 6 art. 43: November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

**Extent**

Pt 6 art. 43: United Kingdom

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**PART 7****Enforcement****CHAPTER 1****Enforcement notices and determination of emissions by regulator**

Law In Force

**44.— Enforcement notices**

(1) Where the regulator considers that a person has contravened, is contravening or is likely to contravene a relevant requirement, the regulator may give notice (an "enforcement notice") to the person.

(2) In paragraph (1), "relevant requirement" means—

- (a) a requirement imposed on the person by or under—
  - (i) this Order [, except for Schedule 5A ]<sup>1</sup>[...] <sup>2</sup> ;
  - (ii) the Monitoring and Reporting Regulation 2018[ ; ]<sup>3</sup>
  - (iii)-(v) [...] <sup>4</sup>
  - [ (iii) the Verification Regulation 2018<sup>5</sup> ;
  - (iv) the Free Allocation Regulation<sup>6</sup> ;
  - (v) the Activity Level Changes Regulation<sup>7</sup> . ]<sup>3</sup>
- (b) a condition of a permit;
- (c) a condition of an emissions monitoring plan.

(2A) [...] <sup>8</sup>

[ (2A) Where the registry administrator considers that a person has contravened, is contravening or is likely to contravene a requirement imposed on the person by or under Schedule 5A, the registry administrator may give notice (an "enforcement notice") to the person. ]<sup>9</sup>

(3) An enforcement notice must set out—

- (a) the relevant requirement that the regulator [, or the requirement imposed by or under Schedule 5A that the registry administrator, ]<sup>10</sup>[...] <sup>11</sup> considers has been contravened, is being contravened or is likely to be contravened;
- (b) details of the contravention or likely contravention;

- (c) the steps that must be taken to remedy the contravention or to ensure that a contravention does not occur;
- (d) the period within which the steps must be taken;
- (e) information about rights of appeal.

(4) The person to whom the enforcement notice is given must comply with the requirements of the notice within the period set out in the notice.

(5) The regulator [ or the registry administrator ]<sup>12</sup> [...] <sup>13</sup> may withdraw an enforcement notice at any time by giving notice of the withdrawal to the person to whom the enforcement notice is given.

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#### Notes

- <sup>1</sup> Words inserted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2022/454 Pt 2 art.7(2)(a) (April 14, 2022)
- <sup>2</sup> Words revoked by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.24(2)(a) (April 14, 2022: amendment revoked and are re-made by SI 2022/454)
- <sup>3</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2022/454 Pt 2 art.7(2)(b) (April 14, 2022)
- <sup>4</sup> Revoked by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.24(2)(b) (April 14, 2022: amendment revoked and are re-made by SI 2022/454)
- <sup>5</sup> "Verification Regulation 2018" is defined in article 4(1) of S.I. 2020/1265 as Commission Implementing Regulation (EU) 2018/2067 of 19 December 2018. Article 25 of that Order provides that the Regulation has effect for the purposes of the UK Emissions Trading Scheme, subject to modifications set out in Schedule 5 to that Order.
- <sup>6</sup> EUR 2019/331, amended by S.I. 2020/1557 and 2021/1455. ("Free Allocation Regulation" is defined in article 4(1) of S.I. 2020/1265.)
- <sup>7</sup> EUR 2019/1842, amended by S.I. 2020/1557. ("Activity Level Changes Regulation" is defined in article 4(1) of S.I. 2020/1265.)
- <sup>8</sup> Revoked by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.24(3) (April 14, 2022: amendment revoked and are re-made by SI 2022/454)
- <sup>9</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2022/454 Pt 2 art.7(3) (April 14, 2022)
- <sup>10</sup> Words inserted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2022/454 Pt 2 art.7(4) (April 14, 2022)
- <sup>11</sup> Words revoked by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.24(4) (April 14, 2022: amendment revoked and are re-made by SI 2022/454)
- <sup>12</sup> Words inserted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2022/454 Pt 2 art.7(5) (April 14, 2022)
- <sup>13</sup> Words revoked by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.24(5) (April 14, 2022: amendment revoked and are re-made by SI 2022/454)

#### Commencement

Pt 7(1) art. 44(1)-(5): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

#### Extent

Pt 7(1) art. 44(1)-(5): United Kingdom

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#### **45.— Determination of reportable emissions or aviation emissions by regulator**

(1) The regulator must make a determination of emissions of an installation or an aircraft operator in either of the following circumstances—

- (a) if the operator of the installation fails to submit a report of the installation's reportable emissions in accordance with a condition of a permit included under paragraph 4(2)(b) of Schedule 6 or paragraph 11(2)(b) of Schedule 7;
- (b) if the aircraft operator fails to submit a report of aviation emissions in accordance with article 33.

(2) Where a verifier states in a verification report under the Verification Regulation 2018 that there are non-material misstatements in the annual emissions report of the operator of an installation or of an aircraft operator that have not been corrected by the operator or the aircraft operator before the verification report is issued—

- (a) the regulator must—
  - (i) assess the misstatements;
  - (ii) if the regulator considers it appropriate, make a determination of emissions of the installation or the aircraft operator; and
  - (iii) give notice to the operator or the aircraft operator as to whether or not corrections are required to the annual emissions report and, if corrections are required, set out the corrections in the notice; and
- (b) the operator or the aircraft operator must make the information referred to in sub-paragraph (a)(iii) available to the verifier.

(3) The regulator may make a determination of emissions of an installation or of an aircraft operator in any of the following circumstances—

- (a) [...]¹
- (b) if the operator of the installation fails to submit a report in accordance with paragraph 11(4)(b) of Schedule 6;
- (c) if the operator of the installation fails to submit a report in accordance with paragraph 12(5)(b) of Schedule 6;
- (d) if the regulator considers that the determination of emissions is necessary for the purpose of imposing, or considering whether to impose, a civil penalty under article 47.

(4) [...]²

(5) A regulator who makes a determination of emissions must give notice of the determination to the operator, the aircraft operator or the person on whom the civil penalty may be imposed.

(6) A notice of a determination of emissions determines for the purposes of this Order (including for calculating a civil penalty under article 47) the installation's reportable emissions or the aviation operator's aviation emissions for the period to which the determination relates.

(7) Where, after making a determination of emissions (including a rectified determination of emissions, or a further rectified determination of emissions, made under this paragraph), the regulator considers that there is an error in the determination, the regulator must—

- (a) withdraw any notice of the determination given under paragraph (5);
- (b) make a rectified determination of the emissions; and
- (c) give notice of the rectified determination in accordance with paragraph (5),

and paragraph (6) applies to a notice of the rectified determination as it does to the notice of the previous determination.

(8) For the purposes of this article, emissions must be determined on the basis of a set of assumptions designed to ensure that no under-estimation occurs.

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**Notes**

- <sup>1</sup> Revoked by Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2022/1173 Pt 2 art.8(2) (January 1, 2023)
- <sup>2</sup> Revoked by Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2022/1173 Pt 2 art.8(3) (January 1, 2023)

**Commencement**

Pt 7(1) art. 45(1)-(8): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

**Extent**

Pt 7(1) art. 45(1)-(8): United Kingdom

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## CHAPTER 2

### Civil penalties

✓ Law In Force

#### 46.— Carbon price

(1) This article applies for the purpose of determining the price (the "carbon price") per tonne of carbon dioxide equivalent for a scheme year.

(2) The carbon price for the 2021 scheme year is the sum of the relevant amount for each auction of allowances held in the period beginning on 1st January 2021 and ending on 11th November 2021 under regulations made by the Treasury under the Finance Act 2020 divided by the sum of the allowances sold at all those auctions.

(3) In paragraph (2), the relevant amount for an auction is the auction clearing price (that is to say, the price per allowance that, in accordance with the auction rules, each successful bidder must pay, irrespective of the original bid) multiplied by the number of allowances sold at the auction.

(4) The carbon price for the 2022 scheme year or any subsequent scheme year (the "relevant scheme year") is the average end of day settlement price, calculated over the relevant period, of the December futures contract for the relevant scheme year, as traded on the relevant carbon market exchange.

(5) For the purposes of paragraph (4), the "average" end of day settlement price is calculated by dividing the sum of the end of day settlement price for each day in the relevant period for which an end of day settlement price is published by the number of days in the relevant period for which an end of day settlement price is published.

(6) In paragraphs (4) and (5)—

"end of day settlement price", in relation to a futures contract, means the end of day settlement price per tonne of carbon dioxide equivalent published by the carbon market exchange on which the futures contract is traded;

"futures contract" means a futures contract for allowances;

"relevant carbon market exchange", in relation to a relevant scheme year, means the largest carbon market exchange as determined by volume of sales in the relevant period of the December futures contract for the relevant scheme year traded on the exchange;

"relevant period" means—

(a) in relation to the carbon price for the 2022 scheme year, the period beginning on 1st January 2021 and ending on 11th November 2021;

(b) in relation to the carbon price for the 2023 scheme year and any subsequent scheme year, the 12-month period ending on 11th November in the year preceding the relevant scheme year.

(7) The UK ETS authority must publish the carbon price for the 2021 scheme year on or before 30th November 2021.

(8) The UK ETS authority must publish the carbon price for subsequent scheme years on or before 30th November in the year preceding the scheme year.

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#### Commencement

Pt 7(2) art. 46(1)-(8): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

#### Extent

Pt 7(2) art. 46(1)-(8): United Kingdom

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Law In Force

### 47.— Penalty notices

(1) Where the regulator considers that a person is liable to a civil penalty under any of articles 50 to 68 the regulator may impose a civil penalty on the person.

(2) But where the regulator considers that a person is liable to a civil penalty under any of the following, the regulator must impose a civil penalty on the person—

(a) article 52 (failure to surrender allowances), but only if the person is liable to the excess emissions penalty referred to in article 52(2);

(b) article 54 (hospitals and small emitters: exceeding emissions target), except where paragraph (3) of that article applies;

(c) article 59 (ultra-small emitters: reportable emissions exceeding maximum amount).

(3) A civil penalty is imposed on a person by giving a notice (a "penalty notice") to the person.

(4) Where the civil penalty to which the person is liable consists of a non-escalating penalty only (or where the civil penalty consists of both a non-escalating penalty and a daily penalty, but the regulator decides not to impose a daily penalty), the penalty notice must set out—

(a) the grounds for liability;

(b) the amount of the non-escalating penalty (and, where relevant, how the amount is calculated);

- (c) the date by which the non-escalating penalty must be paid (the "due date"), which must not be less than 28 days after the day on which the notice is given;
  - (d) the person to whom payment must be made (which must be either the regulator or the appropriate national authority);
  - (e) how payment may be made;
  - (f) information about rights of appeal.
- (5) Where the civil penalty to which the person is liable consists of both a non-escalating penalty and a daily penalty and the regulator considers that the regulator may wish to impose a daily penalty, the regulator must, before giving a penalty notice to the person, first give a notice (an "initial notice") to the person.
- (6) The initial notice must set out—
- (a) the grounds for liability;
  - (b) the maximum amount of the non-escalating penalty that may be imposed;
  - (c) that the daily penalty that may be imposed begins to accrue on the day on which the initial notice is given;
  - (d) the maximum daily rate of the daily penalty and the maximum amount [ (if any) ]<sup>1</sup> of the daily penalty that may be imposed.
- (7) Where, after an initial notice is given to a person, the regulator considers that the total amount of the daily penalty to which the person is liable can be calculated (including where the daily penalty reaches its maximum amount), the regulator may give a penalty notice to the person.
- [ (7A) A penalty notice imposing a civil penalty that consists of a daily penalty under article 64A(2)(b) (for which there is no maximum) may be given at such intervals as the regulator considers appropriate. ]<sup>2</sup>
- (8) The penalty notice must set out—
- (a) the grounds for liability;
  - (b) the amount of the civil penalty (including how the amount is calculated), which may include—
    - (i) a non-escalating penalty; and
    - (ii) a daily penalty;
  - (c) the date by which the civil penalty must be paid (the "due date"), which must not be less than 28 days after the day on which the notice is given;
  - (d) the person to whom payment must be made (which must be either the regulator or the appropriate national authority);
  - (e) how payment may be made;
  - (f) information about rights of appeal.
- (9) The person to whom a penalty notice is given must pay the civil penalty set out in the notice to the person set out in the notice on or before the due date.
- (10) A civil penalty imposed by a penalty notice is recoverable by the regulator as a civil debt.
- (11) The regulator must, as soon as reasonably practicable—
- (a) inform the appropriate national authority of a penalty notice given by the regulator;
  - (b) pay all sums received or recovered under a penalty notice to the appropriate national authority.
- (12) In this article and article 48—



"appropriate national authority" means—

- (a) in the case of a penalty notice given by the chief inspector, the Department of Agriculture, Environment and Rural Affairs;
- (b) in the case of a penalty notice given by SEPA, the Scottish Ministers;
- (c) in the case of a penalty notice given by NRW, the Welsh Ministers;
- (d) in any other case, the Secretary of State;

"daily penalty" means a daily penalty set out in [articles 51(3)(b), 55(2)(b), 61(2)(b), 62(2)(b), 63(2)(b), 64(2)(b), 64A(2)(b), 65(2)(b) or 66(2)(b)]<sup>3</sup>;

"non-escalating penalty" means a civil penalty under articles 50 to 68 that is not a daily penalty.

(13) This article is subject to article 48.

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#### Notes

- <sup>1</sup> Words inserted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2022/454 Pt 2 art.8(2) (April 14, 2022)
- <sup>2</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2022/454 Pt 2 art.8(3) (April 14, 2022)
- <sup>3</sup> Word inserted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2022/454 Pt 2 art.8(4) (April 14, 2022)

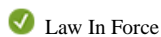
#### Commencement

Pt 7(2) art. 47(1)-(13): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

#### Extent

Pt 7(2) art. 47(1)-(13): United Kingdom

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Law In Force

### 48.— Penalty notices: supplementary

(1) Subject to paragraph (3), a penalty notice imposing a civil penalty under any of articles 50 to 68 (the "relevant provision") may set out—

- (a) a non-escalating penalty of an amount lower than the amount referred to in the relevant provision;
- (b) where the civil penalty consists of both a non-escalating penalty and a daily penalty—
  - (i) a daily penalty based on a daily rate of an amount lower than the amount referred to in the relevant provision; or
  - (ii) no daily penalty.

(2) Subject to paragraphs (3) and (4), the regulator may, by giving notice to the person to whom a penalty notice is given—

- (a) extend the due date for payment set out in the penalty notice;
- (b) amend the penalty notice by substituting a lower non-escalating penalty or a daily penalty based on a lower daily rate;
- (c) withdraw the penalty notice.

(3) Paragraphs (1) and (2) do not apply to—

- (a) a penalty notice imposing the excess emissions penalty referred to in article 52;
- (b) a penalty notice imposing a civil penalty under article 54, except where paragraph (3) of that article applies;
- (c) a penalty notice imposing a civil penalty under article 59.

(4) But the regulator may withdraw a penalty notice referred to in paragraph (3) if there is an error in the notice (including an error in the basis on which the civil penalty imposed by the notice is calculated).

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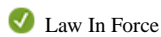
#### Commencement

Pt 7(2) art. 48(1)-(4): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

#### Extent

Pt 7(2) art. 48(1)-(4): United Kingdom

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Law In Force

### **49.— Regulator must publish names of persons subject to civil penalty under article 52**

(1) The regulator must publish the name of every person on whom the excess emissions penalty referred to in article 52 is imposed as soon as reasonably practicable after—

- (a) the expiry of the period for bringing an appeal against the penalty notice imposing the penalty; or
- (b) if an appeal is brought, the determination or withdrawal of the appeal.

(2) But paragraph (1) does not apply if, following an appeal, the person is found not to be liable to a civil penalty.

[ (3) This article is subject to article 75C (national security). ]<sup>1</sup>

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#### Notes

<sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.25(2) (December 31, 2020)

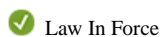
#### Commencement

Pt 7(2) art. 49(1)-(2): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

#### Extent

Pt 7(2) art. 49(1)-(3): United Kingdom

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Law In Force

### **50.— Installations: carrying out regulated activity without permit contrary to article 26**

(1) Where a regulated activity that is not authorised by a permit is carried out at an installation in a scheme year, contrary to article 26, the operator of the installation is (after the end of the scheme year) liable to a civil penalty.

- (2) Subject to paragraph (3), the civil penalty is  $CA + (RE \times CP)$ , where—  
 CA is an estimate of the costs avoided by the operator in the scheme year as a result of carrying out the regulated activity without the authorisation of a permit;  
 RE is an estimate of the installation's reportable emissions in the part of the scheme year during which a regulated activity that was not authorised by a permit was carried out;  
 CP is the carbon price for the scheme year.
- (3) When setting the amount of the civil penalty to be imposed, the regulator may increase the amount calculated under paragraph (2) by a factor designed to ensure that the amount of the civil penalty exceeds the value of any economic benefit that the operator has obtained as a result of failing to comply with article 26.
- (4) The regulator must—  
 (a) estimate CA and RE under paragraph (2); and  
 (b) exercise the regulator's functions under paragraph (3),  
 in accordance with a direction given by the relevant national authority under section 52 of CCA 2008.
- (5) This article is subject to paragraph 7(6)(b) of Schedule 8.

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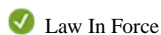
#### Commencement

Pt 7(2) art. 50(1)-(5): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

#### Extent

Pt 7(2) art. 50(1)-(5): United Kingdom

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Law In Force

### **51.— Installations: failure to comply with conditions of permit, etc.**

- (1) The operator of an installation is liable to the civil penalty referred to in paragraph (3) where the operator fails to comply (or to comply on time) with—  
 (a) a condition of a greenhouse gas emissions permit;  
 (b) a condition of a hospital or small emitter permit;  
 (c) a requirement of a surrender notice set out in paragraph 11(4)(b)(i) or (ii) of Schedule 6;  
 (d) a requirement of a revocation notice set out in paragraph 12(5)(b)(i) or (ii) of that Schedule.
- (2) But an operator is not liable to the civil penalty referred to in paragraph (3) where the failure to comply with a condition of a permit gives rise to liability for a civil penalty under—  
 (a) article 52;  
 (b) article 56.
- (3) The civil penalty is—  
 (a) £20,000; and  
 (b) a daily penalty at a daily rate of £500 for each day that the operator fails to comply with the condition or requirement, beginning with the day on which the initial notice is given, up to a maximum of £45,000.

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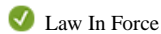
**Commencement**

Pt 7(2) art. 51(1)-(3)(b): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

**Extent**

Pt 7(2) art. 51(1)-(3)(b): United Kingdom

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Law In Force

**52.— Failure to surrender allowances**

(1) Subject to paragraphs (4) to (9), the operator of an installation or an aircraft operator is liable to the civil penalty (the "excess emissions penalty") referred to in paragraph (2) where—

(a) in the case of the operator, the operator fails to surrender sufficient allowances, contrary to—

(i) article 27;

(ii) the requirement of a surrender notice set out in paragraph 11(4)(b)(iii) of Schedule 6;

(iii) the requirement of a revocation notice set out in paragraph 12(5)(b)(iii) of that Schedule;

(b) in the case of the aircraft operator, the aircraft operator fails to surrender sufficient allowances, contrary to article 34.

(2) The excess emissions penalty is £100 multiplied by the inflation factor for each allowance that the operator or the aircraft operator fails to surrender.

(3) For the purpose of calculating the excess emissions penalty—

(a) under paragraph (1)(a)(i), a deemed increase in the installation's reportable emissions under paragraph 4(4) of Schedule 6 must be disregarded;

[(aa) under paragraph (1)(a)(ii), paragraph 11(4)(b)(iii)(bb) of Schedule 6 must be disregarded;

(ab) under paragraph (1)(a)(iii), paragraph 12(5)(b)(iii)(bb) of Schedule 6 must be disregarded;]<sup>1</sup>

(b) under paragraph (1)(b), a deemed increase in an aircraft operator's aviation emissions under article 34(2) must be disregarded.

(4) This paragraph applies where—

(a) the regulator becomes aware that an installation's reportable emissions (as determined by the regulator under article 45) in a scheme year exceed the installation's verified reportable emissions for that year; and

(b) the operator of the installation failed to surrender allowances equal to the difference—

(i) on or before 30th April in the year following the scheme year referred to in sub-paragraph (a); or

(ii) where the end date set out in a surrender notice under paragraph 11 of Schedule 6 or a revocation notice under paragraph 12 of that Schedule falls in the scheme year referred to in sub-paragraph (a), on or before the date set out in the notice for the surrender of allowances.

- (5) In paragraph (4), "verified reportable emissions" means reportable emissions—
- (a) verified in accordance with a condition of a permit included under paragraph 4(2)(b) of Schedule 6 (including for the purpose of complying with the requirements of a surrender notice under paragraph 11, or a revocation notice under paragraph 12, of that Schedule); or
  - (b) previously determined by the regulator under article 45.
- (6) Where paragraph (4) applies, the operator is liable to the civil penalty referred to in paragraph (10) (and not the excess emissions penalty) in respect of the failure to surrender allowances referred to in paragraph (4)(b).
- (7) This paragraph applies where the regulator becomes aware that—
- (a) an aircraft operator's aviation emissions (as determined by the regulator under article 45) in a scheme year exceed the aircraft operator's verified aviation emissions for that year; and
  - (b) the aircraft operator failed to surrender allowances equal to the difference on or before 30th April in the year following the scheme year referred to in sub-paragraph (a).
- (8) In paragraph (7), "verified aviation emissions" means aviation emissions—
- (a) verified under article 33(1);
  - (b) considered verified under article 33(2); or
  - (c) previously determined by the regulator under article 45.
- (9) Where paragraph (7) applies, the aircraft operator is liable to the civil penalty referred to in paragraph (10) (and not the excess emissions penalty) in respect of the failure to surrender allowances referred to in paragraph (7)(b).
- (10) The civil penalty is £20 multiplied by the inflation factor for each allowance that the operator or the aircraft operator failed to surrender.
- (11) For the purposes of this article, the inflation factor is  $(CPI_2 - CPI_1) / CPI_1$  or 1, whichever is greater, where—
- $CPI_2$  is the consumer prices index for the most recent March for which the consumer prices index is published when the penalty notice is given;
  - $CPI_1$  is the consumer prices index for March 2021.
- (12) In paragraph (11), "consumer prices index" means—
- (a) the all items consumer prices index published by the Statistics Board<sup>2</sup>; or
  - (b) if that index is not published for a month, any substituted index or index figures published for that month by the Statistics Board.

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**Notes**

<sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2022/454 Pt 2 art.9(2) (April 14, 2022)

<sup>2</sup> The Statistics Board was established by section 1 of the Statistics and Registration Service Act 2007 (c. 18).

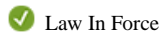
**Commencement**

Pt 7(2) art. 52(1)-(12)(b): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

**Extent**

Pt 7(2) art. 52(1)-(12)(b): United Kingdom

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Law In Force

**53.— Installations: failure to transfer or surrender allowances where underreporting discovered after transfer**

- (1) A person is liable to a civil penalty where the person fails—
- (a) to effect a transfer (or to effect a transfer on time) of allowances, contrary to paragraph 10(3) of Schedule 6 (transfer of permits: underreporting discovered after transfer);
  - (b) to surrender (or to surrender on time) allowances, contrary to paragraph 10(4) of that Schedule.
- (2) The civil penalty is £20 multiplied by the inflation factor for each allowance that the person failed to transfer or surrender.
- (3) In this article, "inflation factor" has the meaning given in article 52(11).

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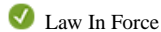
**Commencement**

Pt 7(2) art. 53(1)-(3): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

**Extent**

Pt 7(2) art. 53(1)-(3): United Kingdom

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Law In Force

**54.— Hospitals and small emitters: exceeding emissions target**

- (1) Where an installation's reportable emissions in a scheme year for which the installation is a hospital or small emitter exceed the installation's emissions target for that year, contrary to paragraph 19 of Schedule 7, the operator of the installation is liable to a civil penalty.
- (2) The civil penalty is  $(RE - ET) \times CP$ , where—
- RE is the installation's reportable emissions in the scheme year;
  - ET is the installation's emissions target for the scheme year; CP is the carbon price for the scheme year.
- (3) For the purposes of article 47(2)(b), this paragraph applies where the regulator considers that the installation's emissions target for the scheme year was incorrectly calculated.
- (4) In this article, "emissions target" has the meaning given in paragraph 1 of Schedule 7.

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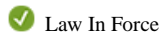
**Commencement**

Pt 7(2) art. 54(1)-(4): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

**Extent**

Pt 7(2) art. 54(1)-(4): United Kingdom

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Law In Force

**55.— Hospitals and small emitters: failure to pay civil penalty for exceeding emissions target**

(1) Where the operator of an installation fails to pay a civil penalty (the "first penalty") under article 54 on or before the due date set out in the penalty notice imposing the first penalty, the operator is liable to a further civil penalty.

(2) The further civil penalty is—

- (a) 10% of the first penalty; and
- (b) a daily penalty at a daily rate of £150 for each day that the operator fails to pay the first penalty beginning with the day on which the initial notice is given, up to a maximum of £13,500.

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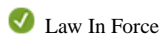
**Commencement**

Pt 7(2) art. 55(1)-(2)(b): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

**Extent**

Pt 7(2) art. 55(1)-(2)(b): United Kingdom

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Law In Force

**56.— Hospitals and small emitters: under-reporting of emissions**

(1) The operator of an installation is liable to a civil penalty where the installation has unreported emissions in a scheme year for which the installation is a hospital or small emitter, that is to say reportable emissions in the scheme year that—

- (a) are not reported in the emissions report submitted for the scheme year under paragraph 11(2)(b) of Schedule 7; but
- (b) are determined by the regulator under article 45.

(2) The civil penalty is £5,000 + (UE x CP), where—

UE is the unreported emissions in the scheme year (in tonnes of carbon dioxide equivalent);  
CP is the carbon price for the scheme year.

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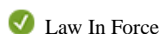
**Commencement**

Pt 7(2) art. 56(1)-(2): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

**Extent**

Pt 7(2) art. 56(1)-(2): United Kingdom

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Law In Force

**57.— Hospitals and small emitters: failure to notify when ceasing to meet criteria**

(1) This article applies where—

- (a) either—

- (i) a hospital-qualifying installation ceases to be an installation that primarily provides services to a hospital in a scheme year for which the installation is a hospital or small emitter; or
    - (ii) the reportable emissions of an installation (other than a hospital-qualifying installation) in a scheme year for which the installation is a hospital or small emitter exceed the maximum amount; and
  - (b) the operator of the installation fails to comply (or to comply on time) with a requirement to give notice on or before 31st March in the following year (the "default year") under a condition of a hospital or small emitter permit included under paragraph 11(3)(a) or (4) of Schedule 7.
- (2) Where the operator fails to give notice on or before 31st March in the default year, but does give notice on or before 31st October in that year, the operator is liable to a civil penalty of £2,500.
- (3) Where the operator fails to give notice on or before 31st October in the default year—
- (a) if there is no penalty year, the operator is liable to a civil penalty of £5,000;
  - (b) if there is a penalty year, the operator is liable (after the end of the last penalty year) to a civil penalty of the sum of—
    - (i) £5,000; and
    - (ii) 2 x the avoided compliance costs for each penalty year.
- (4) The avoided compliance costs, for each penalty year, are  $[(RE - FA) \times CP] - PP$ <sup>1</sup>, where—
- RE is the installation's reportable emissions (determined as if the modification made to Article 38(2) of the Monitoring and Reporting Regulation 2018 by [paragraph 13(4)(a)(i) of Schedule 7]<sup>2</sup> did not apply) in the penalty year;
- [FA is—
- (a) where—
    - (i) an application in respect of the installation was made under the Free Allocation Regulation for free allocation in the same allocation period as the penalty year is in; and
    - (ii) the UK ETS authority informed the regulator under Article 15a(4) of that Regulation that the application was valid,
 the number of tonnes of carbon dioxide equivalent<sup>4</sup> represented by the final annual number of allowances that would have been allocated under Part 4A in respect of the installation for the penalty year if the installation had not been a hospital or small emitter for the penalty year, disregarding any adjustment to free allocation that might have been made under the Activity Level Changes Regulation;
  - (b) in any other case, zero; ]<sup>3</sup>
- CP is the carbon price for the penalty year;
- PP is, where a penalty notice imposing a civil penalty under article 54 in respect of the penalty year has previously been given to the operator, the amount of the civil penalty.
- (5) In this article—
- "hospital-qualifying installation" has the meaning given in paragraph 1 of Schedule 7;
  - "maximum amount" has the meaning given in that paragraph;
  - "penalty year" means a scheme year for which the installation—
    - (a) is a hospital or small emitter; but



(b) would not have been a hospital or small emitter if, by reason of the matters referred to in paragraph (1)(a)(i) or (ii), the regulator had, in the default year, given a conversion notice as required by paragraph 23(1) to (3) of Schedule 7 to the operator of the installation.

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#### Notes

- <sup>1</sup> Words substituted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021/1455 Pt 2 art.18(2)(a) (February 7, 2022)
- <sup>2</sup> Words substituted by Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2022/1173 Pt 2 art.9(2) (January 1, 2023)
- <sup>3</sup> Words inserted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021/1455 Pt 2 art.18(2)(b) (February 7, 2022)
- <sup>4</sup> Section 93(2) of the Climate Change Act 2008 defines "tonnes of carbon dioxide equivalent".


#### Commencement

Pt 7(2) art. 57(1)-(5) definition of "penalty year" (b): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

#### Extent

Pt 7(2) art. 57(1)-(5) definition of "penalty year" (b): United Kingdom

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 Law In Force

### **58. Installations: failure to apply to surrender permit**

The operator of an installation is liable to a civil penalty of £5,000 where the operator fails to apply (or to apply on time) to surrender a permit, contrary to paragraph 11(1) of Schedule 6.

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#### Commencement

Pt 7(2) art. 58: November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

#### Extent

Pt 7(2) art. 58: United Kingdom

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 Law In Force

### **59.— Ultra-small emitters: reportable emissions exceeding maximum amount**

(1) Subject to paragraph (3), where an installation's reportable emissions in a scheme year for which the installation is an ultra-small emitter exceed the maximum amount, the operator of the installation is liable to a civil penalty.

(2) The civil penalty is (RE — maximum amount) x CP, where—

RE is the installation's reportable emissions in the scheme year;  
CP is the carbon price for the scheme year.

(3) A civil penalty under this article may be imposed only in respect of—

- (a) the first scheme year in an allocation period in which the installation's reportable emissions exceed the maximum amount; and
- (b) if the following scheme year is in the same allocation period, that scheme year.

(4) In this article, "maximum amount" has the meaning given in paragraph 1 of Schedule 8.

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#### Commencement

Pt 7(2) art. 59(1)-(4): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

#### Extent

Pt 7(2) art. 59(1)-(4): United Kingdom

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✓ Law In Force

### **60.— Ultra-small emitters: failure to notify where reportable emissions exceed maximum amount**

(1) Where—

- (a) an installation's reportable emissions in a scheme year (the "excess year") for which the installation is an ultra-small emitter exceed the maximum amount; and
- (b) the operator of the installation fails to give notice to the regulator under paragraph 6 of Schedule 8 on or before 31st March in the following year (the "default year") or at all, the operator is liable to a civil penalty.

(2) The civil penalty is the sum of—

- (a) £2,500; and
- (b)  $[CA + ((RE - FA) \times CP)]^1$  for each scheme year (or part of a scheme year) falling within the penalty period (if any), where—

CA is an estimate of the costs avoided by the operator in the scheme year (or part of the scheme year) as a result of carrying out a regulated activity without the authorisation of the relevant permit;

RE is an estimate of the installation's reportable emissions in the scheme year (or part of the scheme year) during which a regulated activity that was not authorised by a permit was carried out;

[FA is—

(a) where—

- (i) an application in respect of the installation was made under the Free Allocation Regulation for free allocation in the same allocation period as the penalty year is in;
- (ii) the UK ETS authority informed the regulator under Article 15a(4) of that Regulation that the application was valid; and
- (iii) paragraph 7(5) of Schedule 8 does not apply (ultra-small emitter becoming hospital or small emitter),

the number of tonnes of carbon dioxide equivalent represented by the final annual number of allowances that would have been allocated under Part 4A in respect of the installation for the scheme year (or part of the scheme year) if the installation had not been included in the ultra-small emitter list for 2021-2025 or, as the case

may be, the ultra-small emitter list for 2026-2030, disregarding any adjustment to free allocation that might have been made under the Activity Level Changes Regulation;

(b) in any other case, zero; ]<sup>2</sup>

CP is the carbon price for the scheme year.

[ (2A) For the purpose of determining the value of FA under paragraph (2)(b) in a case where part of a scheme year falls within the penalty period, the final annual number of allowances that would have been allocated under Part 4A in respect of the installation for that part of the scheme year is the final annual number of allowances that would have been allocated in respect of an installation for the scheme year multiplied by D/Y, where—

D is the number of days in the scheme year in the penalty period;

Y is the number of days in the scheme year.

] <sup>3</sup>

(3) The penalty period is the period—

(a) beginning on 1st January in the year following the default year; and

(b) ending on the earlier of the following—

(i) the day before the day on which a permit for the installation comes into force; and

(ii) the last day of the same allocation period as the excess year is in.

(4) But there is no penalty period if—

(a) 1st January in the year following the default year is not in the same allocation period as the excess year; or

(b) a permit for the installation is in force on that date.

(5) When setting the amount of the civil penalty to be imposed, the regulator may increase the amount calculated under paragraph (2)(b) by a factor designed to ensure that the amount of the civil penalty exceeds the value of any economic benefit that the operator has obtained as a result of carrying out a regulated activity that was not authorised by the relevant permit.

(6) The regulator must—

(a) estimate CA and RE under paragraph (2); and

(b) exercise the regulator's functions under paragraph (5),

in accordance with a direction given by the relevant national authority under section 52 of CCA 2008.

(7) In this article—

"maximum amount" has the meaning given in paragraph 1 of Schedule 8;

"relevant permit" means—

(a) where a hospital or small emitter permit for the installation comes into force before the last day of the same allocation period as the excess year is in, a hospital or small emitter permit;

(b) in any other case, a greenhouse gas emissions permit.

## Notes

<sup>1</sup> Words substituted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021/1455 Pt 2 art.19(2)(a) (February 7, 2022)

<sup>2</sup> Words inserted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021/1455 Pt 2 art.19(2)(b) (February 7, 2022)

- <sup>3</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021/1455 Pt 2 art.19(3) (February 7, 2022)

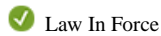
#### Commencement

Pt 7(2) art. 60(1)-(7) definition of "relevant permit" (b): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

#### Extent

Pt 7(2) art. 60(1)-(7) definition of "relevant permit" (b): United Kingdom

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Law In Force

#### **61.— Aviation: failure to apply or make revised application for emissions monitoring plan**

- (1) An aircraft operator is liable to a civil penalty where the aircraft operator fails—
- (a) to apply (or to apply on time) to the regulator for an emissions monitoring plan, contrary to article 28; or
  - (b) to make a revised application (or to make a revised application on time) for an emissions monitoring plan, where required to do so under article 30(3).
- (2) The civil penalty is—
- (a) £20,000; and
  - (b) a daily penalty at a daily rate of £500 for each day that the application is not submitted or, as the case may be, the revised application is not submitted, beginning with the day on which the initial notice is given, up to a maximum of £45,000.
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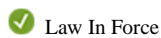
#### Commencement

Pt 7(2) art. 61(1)-(2)(b): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

#### Extent

Pt 7(2) art. 61(1)-(2)(b): United Kingdom

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Law In Force

#### **62.— Aviation: failure to comply with condition of emissions monitoring plan**

- (1) An aircraft operator is liable to a civil penalty where the aircraft operator fails to comply (or to comply on time) with a condition of an emissions monitoring plan, contrary to article 32(2).
- (2) The civil penalty is—
- (a) £20,000; and
  - (b) a daily penalty at a daily rate of £500 for each day that the person fails to comply with the condition, beginning with the day on which the initial notice is given, up to a maximum of £45,000.

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**Commencement**

Pt 7(2) art. 62(1)-(2)(b): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

**Extent**

Pt 7(2) art. 62(1)-(2)(b): United Kingdom

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✓ Law In Force

**63.— Aviation: failure to monitor aviation emissions**

(1) An aircraft operator is liable to a civil penalty where the aircraft operator fails to monitor aviation emissions in accordance with article 32(1).

(2) The civil penalty is—

(a) £20,000; and

(b) a daily penalty at a daily rate of £500 for each day that the person fails to monitor aviation emissions in accordance with article 32(1), beginning with the day on which the initial notice is given, up to a maximum of £45,000.

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**Commencement**

Pt 7(2) art. 63(1)-(2)(b): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

**Extent**

Pt 7(2) art. 63(1)-(2)(b): United Kingdom

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✓ Law In Force

**64.— Aviation: failure to report aviation emissions**

(1) An aircraft operator is liable to a civil penalty where the aircraft operator fails to submit (or to submit on time) a verified report of aviation emissions to the regulator, contrary to article 33(1).

(2) The civil penalty is—

(a) £20,000; and

(b) a daily penalty at a daily rate of £500 for each day that the report is not submitted, beginning with the day on which the initial notice is given, up to a maximum of £45,000.

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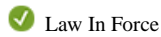
**Commencement**

Pt 7(2) art. 64(1)-(2)(b): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

**Extent**

Pt 7(2) art. 64(1)-(2)(b): United Kingdom

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### **[ 64A.— Failure to comply with notice to return allowances**

(1) A person is liable to a civil penalty where the person fails to comply (or to comply on time) with the requirements of a notice (the "notice to return allowances") given under article 34V.

(2) The civil penalty is—

(a) £20,000; and

(b) a daily penalty at a daily rate of £1,000 for each day that the person fails to comply with the requirements of the notice to return allowances, beginning with the day on which the initial notice is given.

] <sup>1</sup>

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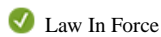
#### **Notes**

<sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2022/454 Pt 2 art.10 (April 14, 2022)

#### **Extent**

Pt 7(2) art. 64A(2)-(1): United Kingdom

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### **65.— Failure to comply with enforcement notice [...] <sup>1</sup> [...] <sup>2</sup>**

(1) A person is liable to a civil penalty where the person fails to comply (or to comply on time) with the requirements of an enforcement notice given [...] <sup>3</sup> [...] <sup>4</sup> under article 44.

(2) The civil penalty is—

(a) £20,000; and

(b) a daily penalty at a daily rate of £1,000 for each day that the person fails to comply with the requirements of the notice, beginning with the day on which the initial notice is given, up to a maximum of £45,000.

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#### **Notes**

<sup>1</sup> Words revoked by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2022/454 Pt 2 art.11(2) (April 14, 2022)

<sup>2</sup> Words revoked by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.26(2) (December 31, 2020)

<sup>3</sup> Words revoked by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2022/454 Pt 2 art.11(3) (April 14, 2022)

<sup>4</sup> Words revoked by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.26(3) (December 31, 2020)

#### **Commencement**

Pt 7(2) art. 65(1)-(2)(b): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

#### **Extent**

Pt 7(2) art. 65(1)-(2)(b): United Kingdom

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✓ Law In Force

## **66.— Failure to comply with information notice**

(1) A person is liable to a civil penalty where the person fails to comply (or to comply on time) with the requirements of a notice (the "information notice") given under article 75.

(2) The civil penalty is—

- (a) £5,000; and
- (b) a daily penalty at a daily rate of £500 for each day that the person fails to comply with the requirements of the information notice, beginning with the day on which the initial notice is given, up to a maximum of £45,000.

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### **Commencement**

Pt 7(2) art. 66(1)-(2)(b): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

### **Extent**

Pt 7(2) art. 66(1)-(2)(b): United Kingdom

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✓ Law In Force

## **67. Providing false or misleading information, etc.**

A person is liable to a civil penalty of £50,000 where the person provides false or misleading information, or makes a statement that is false or misleading in a material respect, where the information is provided, or the statement is made—

- (a) in an application under this Order;
- (b) in compliance with a notice given to the person under this Order;
- (c) in a notice that the person is required to give under this Order;
- (d) in compliance with a condition of a permit or an emissions monitoring plan;
- (e) in a report of aviation emissions under article 33.

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### **Commencement**

Pt 7(2) art. 67(a)-(e): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

### **Extent**

Pt 7(2) art. 67(a)-(e): United Kingdom

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✓ Law In Force

## **68. Inspection: refusal to allow access to premises**

A person in control of premises is liable to a civil penalty of £50,000 where the person does not allow the regulator or authorised person (within the meaning of Part 6) access to the premises contrary to article 39(3).

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**Commencement**

Pt 7(2) art. 68: November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

**Extent**

Pt 7(2) art. 68: United Kingdom

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**PART 8****Appeals**

✓ Law In Force

**69. Interpretation**

In this Part—

"appeal body" has the meaning given in article 71;

"decision" includes a deemed refusal under this Order;

"notice" includes—

- (a) in the case of a notice determining an application for a permit or the transfer of a permit, the provisions of any permit attached to the notice; and
- (b) in the case of a notice determining an application for an emissions monitoring plan, the conditions included in the plan issued by the notice.

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**Commencement**

Pt 8 art. 69 definition of "appeal body"- definition of "notice" (b): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

**Extent**

Pt 8 art. 69 definition of "appeal body"- definition of "notice" (b): United Kingdom

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✓ Law In Force

**70.— Right of appeal**

(1) Subject to paragraph (3), the following may appeal to the appeal body—

(a) a person who is aggrieved by a decision of the regulator [ or the registry administrator ]<sup>1</sup> determining an application made by the person under this Order;

[(b) a person who is aggrieved by a notice given—

- (i) to the person under a provision referred to in paragraph (2);
- (ii) to the registry administrator—

(aa) under article 34U in respect of the transfer of allowances from the person's operator holding account or aircraft operator holding account;



(bb) under article 34W(1) in respect of the withholding of allowances that would otherwise have been allocated in respect of an installation of which the person is the operator under article 34E or to the person under article 34O.

]<sup>2</sup>

(2) Those provisions are—

- (a) article 30(1) (refusal of application for an emissions monitoring plan);
- (b) article 31(4), (5) or (6) (variation of an emissions monitoring plan);
- [ (ba) article 34H(4) (notice of regulator's estimate of value of parameter);
- (bb) article 34V (return of allowances: notice to operator, etc.); ]<sup>3</sup>
- (c) [ article 44(1) or (2A) ]<sup>4</sup> (enforcement notices);
- (d) article 45(5) (determination of reportable emissions by regulator);
- (e) article 47(3) or (7) (penalty notices);
- (f) article 75(1) (information notices);
- (g) paragraph 1(12) of Schedule 3 (application to be treated as being withdrawn);
- [ (ga) paragraph 11(5) of Schedule 5A (notice suspending operator holding account);
- (gb) paragraph 12(4) of Schedule 5A (notice suspending operator holding account on transfer);
- (gc) paragraph 13(4) of Schedule 5A (notice suspending aircraft operator holding account);
- (gd) paragraph 14(4)(b) of Schedule 5A (notice refusing to open trading account);
- (ge) paragraph 16(7)(b) of Schedule 5A (notice refusing to appoint authorised representative);
- (gf) paragraph 17(4)(b) of Schedule 5A (notice refusing to change account permission);
- (gg) paragraph 18(2) of Schedule 5A (notice suspending access to registry of authorised representative);
- (gh) paragraph 19(2) of Schedule 5A (notice removing authorised representative);
- (gi) paragraph 25(3) of Schedule 5A (notice suspending account);
- (gj) paragraph 29(4) of Schedule 5A (notice closing trading account); ]<sup>5</sup>
- (h) paragraph 6(4) or (5) of Schedule 6 (variation of permits);
- (i) paragraph 10(2) of Schedule 6 (transfer of permits: underreporting discovered after transfer);
- (j) paragraph 12(4) of Schedule 6 (revocation of permits);
- (k) paragraph 23(1) or (2) of Schedule 7 (conversion notices);
- (l) paragraph 7(2) of Schedule 8 (end of ultra-small emitter status);
- (m) paragraph 1(3)(b) or (4)(b) of Schedule 11 (permits under GGETSR 2012 ) [ ; ]<sup>6</sup>
- [ (n) Article 8(6)(b) of the Free Allocation Regulation (notice rejecting monitoring methodology plan);
- (o) Article 3(5) of the Activity Level Changes Regulation (notice of regulator's estimate of value of parameter in activity level report) [ ; ]<sup>7</sup><sup>6</sup>
- [ (p) Article 12(4)(b) of the Monitoring and Reporting Regulation 2018 (notice rejecting monitoring plan). ]<sup>7</sup>

(3) An appeal under paragraph (1) may not be made to the extent that the decision implements—

- (a) direction given under—
  - (i) section 40 of the Environment Act 1995<sup>8</sup>;
  - (ii) section 52 of CCA 2008;

(iii) article 11 of the Natural Resources Body for Wales (Establishment) Order 2012<sup>9</sup>;

(iv) regulation 40 of the Pollution Prevention and Control (Industrial Emissions) Regulations (Northern Ireland) 2013<sup>10</sup>;

(b) a direction given by an appeal body under this Order.

[ (4) To avoid doubt, no appeal may be brought under paragraph (1)(a) in respect of—

(a) a calculation of the regulator under article 34M(1)(b) or 34Q(5)(b);

(b) a preliminary assessment of the regulator under paragraph 5(3) of Schedule 7 or paragraph 3(3) of Schedule 8.

] <sup>11</sup>

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#### Notes

<sup>1</sup> Words inserted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.27(2)(a) (December 31, 2020)

<sup>2</sup> Substituted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.27(2)(b) (December 31, 2020)

<sup>3</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.27(3)(a) (December 31, 2020)

<sup>4</sup> Words substituted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.27(3)(b) (December 31, 2020)

<sup>5</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.27(3)(c) (December 31, 2020)

<sup>6</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.27(3)(d) (December 31, 2020)

<sup>7</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021/1455 Pt 2 art.20(2) (February 7, 2022)

<sup>8</sup> Section 40 was amended by S.I. 2011/1043 and 2013/755 and amended prospectively by S.I. 2019/458 with effect from IP completion day.

<sup>9</sup> S.I. 2012/1903 (W. 230).

<sup>10</sup> S.R. (NI) 2013 No. 160.

<sup>11</sup> Substituted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.27(4) (December 31, 2020)

#### Commencement

Pt 8 art. 70(1)-(4)(b): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

#### Extent

Pt 8 art. 70(1)-(4)(b): United Kingdom

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 Law In Force

### 71.— Appeal body

(1) In an appeal against a decision of SEPA, the appeal body is the Scottish Land Court<sup>1</sup>.

(2) In an appeal against a decision of the chief inspector, the appeal body is the Planning Appeals Commission<sup>2</sup>.

(3) In an appeal against any other decision, the appeal body is the First-tier Tribunal<sup>3</sup>.

[ (4) For the purposes of determining the appeal body to which an appeal against a decision or notice of the registry administrator must be made, the decision or notice must be treated as the decision or notice of the person (or if more than one, any one of them) exercising the functions of the registry administrator in accordance with article 8A(2) to make the decision or give the notice, as set out in the decision or notice. ]<sup>4</sup>

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#### Notes

- <sup>1</sup> The Scottish Land Court was established by section 3 of the Small Landholders (Scotland) Act 1911 (c. 49) and continued in being under section 1 of the Scottish Land Court Act 1993 (c. 45).
- <sup>2</sup> The Planning Appeals Commission was continued by section 203(1) of the Planning Act (Northern Ireland) 2011 (c. 25).
- <sup>3</sup> The First-tier Tribunal was established by section 3(1) of the Tribunals, Courts and Enforcement Act 2007 (c. 15).
- <sup>4</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.28(2) (December 31, 2020)


#### Commencement

Pt 8 art. 71(1)-(3): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

#### Extent

Pt 8 art. 71(1)-(4): United Kingdom

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 Law In Force

## 72.— Effect of appeals

(1) Subject to [ paragraphs (2) to (6) ]<sup>1</sup>, the bringing of an appeal under article 70 (right of appeal) suspends the effect of the decision or notice pending the final determination or withdrawal of the appeal.

(2) The bringing of an appeal does not suspend the effect of—

- (a) a decision refusing an application;
- (b) a deemed refusal;
- (c) a notice under—
  - (i) article 31(4), (5) or (6) (variation of an emissions monitoring plan);
  - [ (ia) article 34W(1) (notice to withhold allowances); ]<sup>2</sup>
  - (ii) [ article 44(1) or (2A) ]<sup>3</sup> (enforcement notices);
  - [ (iia) paragraph 11(5) of Schedule 5A (notice suspending operator holding account);
  - (iib) paragraph 12(4) of Schedule 5A (notice suspending operator holding account on transfer);
  - (iic) paragraph 13(4) of Schedule 5A (notice suspending aircraft operator holding account);
  - (iid) paragraph 14(4)(b) of Schedule 5A (notice refusing to open trading account);
  - (iie) paragraph 16(7)(b) of Schedule 5A (notice refusing to appoint authorised representative);
  - (iif) paragraph 17(4)(b) of Schedule 5A (notice refusing to change account permission);

- (iig) paragraph 18(2) of Schedule 5A (notice suspending access to registry of authorised representative);
- (iih) paragraph 19(2) of Schedule 5A (notice removing authorised representative);
- (iii) paragraph 25(3) of Schedule 5A (notice suspending account);
- (iiij) paragraph 29(4) of Schedule 5A (notice closing trading account); ]<sup>4</sup>
- (iii) paragraph 6(4) or (5) of Schedule 6 (variation of permits);
- (iv) paragraph 23(1) or (2) of Schedule 7 (end of hospital or small emitter status);
- (v) paragraph 7(2) of Schedule 8 (end of ultra-small emitter status) [ ; ]<sup>5</sup>
- [ (vi) Article 8(6)(b) of the Free Allocation Regulation (notice rejecting monitoring methodology plan) [ ; ]<sup>6</sup> ]<sup>5</sup>
- [ (vii) Article 12(4)(b) of the Monitoring and Reporting Regulation 2018 (notice rejecting monitoring plan). ]<sup>6</sup>

(3) Where a permit has been granted or varied (following an application for a permit or for the transfer of a permit), the bringing of an appeal against the provisions of the permit or the terms of the variation does not suspend the effect of those provisions or terms.

(4) Where an emissions monitoring plan has been issued following an application under article 28(1), the bringing of an appeal against the conditions included in the plan does not suspend the effect of those conditions.

(5) The bringing of an appeal against a determination of reportable emissions or aviation emissions under article 45(5) suspends the effect of the decision only for the purpose of assessing whether there has been compliance with article 27 or 34 (surrender of allowances).

[ (6) The bringing of an appeal against a notice under article 34U (return of allowances: notice to registry administrator) does not affect the registry administrator's power under paragraph (3)(b) of that article (power to suspend transfers from account). ]<sup>7</sup>

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## Notes

- <sup>1</sup> Words substituted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.29(2) (December 31, 2020)
- <sup>2</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.29(3)(a) (December 31, 2020)
- <sup>3</sup> Words substituted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.29(3)(b) (December 31, 2020)
- <sup>4</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.29(3)(c) (December 31, 2020)
- <sup>5</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.29(3)(d) (December 31, 2020)
- <sup>6</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021/1455 Pt 2 art.21(2) (February 7, 2022)
- <sup>7</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.29(4) (December 31, 2020)

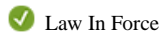
## Commencement

Pt 8 art. 72(1)-(5): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

## Extent

Pt 8 art. 72(1)-(6): United Kingdom

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Law In Force

**73.— Determination of appeals**

(1) In determining an appeal under article 70, the appeal body may—

- (a) affirm the decision;
- (b) quash the decision or vary any of its terms;
- (c) substitute a deemed refusal with a decision of the appeal body;
- (d) give directions as to the exercise of the regulator's [ or the registry administrator's ]<sup>1</sup> functions under this Order.

(2) The appeal body may not make a determination that would result in a decision which could not otherwise have been made under this Order.

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**Notes**

- <sup>1</sup> Words inserted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.30(2) (December 31, 2020)

**Commencement**

Pt 8 art. 73(1)-(2): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

**Extent**

Pt 8 art. 73(1)-(2): United Kingdom

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Law In Force

**74.— Procedure for appeals**

(1) Schedule 9 (which makes provision in relation to appeals to the Scottish Land Court) has effect.

(2) Schedule 10 (which makes provision in relation to appeals to the Planning Appeals Commission) has effect.

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**Commencement**

Pt 8 art. 74(1)-(2): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

**Extent**

Pt 8 art. 74(1)-(2): United Kingdom

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**PART 9****Miscellaneous**



## 75.— Information notices

(1) The UK ETS authority, a national authority [ , a regulator or the registry administrator ]<sup>1</sup> may, by giving a notice (an "information notice") to a person, require the person to provide information for purposes connected with the exercise of functions under—

- (a) this Order;
- (b) the Monitoring and Reporting Regulation 2018;
- (c) the Verification Regulation 2018 [ ; ]<sup>2</sup>
- (d)-(e) [...] <sup>3</sup>
- [ (d) the Free Allocation Regulation;
- (e) the Activity Level Changes Regulation. ]<sup>2</sup>

(2) The information notice must set out—

- (a) the information to be provided;
- (b) the form in which the information must be provided;
- (c) the period within which or the time when the information must be provided;
- (d) the place where the information must be provided.

(3) The information that a person may be required to provide includes information that, although it is not in the person's possession or it would not otherwise come into the person's possession, is information that it is reasonable to require the person to obtain or compile for the purpose of complying with the information notice.

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### Notes

- <sup>1</sup> Words substituted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2022/454 Pt 2 art.12(2)(a) (April 14, 2022)
- <sup>2</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2022/454 Pt 2 art.12(2)(b) (April 14, 2022)
- <sup>3</sup> Revoked by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.31(2)(b) (April 14, 2022: amendment revoked and are re-made by SI 2022/454)

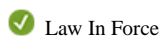
### Commencement

Pt 9 art. 75(1)-(3): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

### Extent

Pt 9 art. 75(1)-(3): United Kingdom

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## [ 75A.— National authority may require regulator, etc. to provide information

(1) The UK ETS authority or the relevant national authority may, by notice to a regulator or the registry administrator, require the regulator or registry administrator to provide any information that the UK ETS authority or relevant national authority considers necessary or expedient for the exercise of the authority's functions.

(2) The regulator or the registry administrator must comply with a notice under paragraph (1) so far as reasonably practicable.

] <sup>1</sup>

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**Notes**

- <sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.32 (December 31, 2020)

**Extent**

Pt 9 art. 75A(1)-(2): United Kingdom

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 Law In Force

**[ 75B.— Restriction on disclosing information**

(1) This article applies to the following persons—

- (a) the UK ETS authority;
- (b) a national authority;
- (c) a regulator;
- (d) the registry administrator.

(2) A person to whom this article applies must not disclose information held or obtained under UK ETS legislation to another person.

(3) But paragraph (2) does not apply to the disclosure of information by the person in any of the following circumstances—

- (a) if the disclosure is required by law;
- (b) if the disclosure is necessary or expedient—
  - (i) for the exercise of the person's functions under UK ETS legislation;
  - (ii) for the purpose of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties;
  - (iii) in the case of a disclosure by a national authority—
    - (aa) for the purpose of monitoring and evaluating the effectiveness of the UK ETS;
    - (bb) for the purpose of preparing and publishing national energy and emissions statistics or the national inventory referred to in Article 4(1)(a) of the United Nations Framework Convention on Climate Change<sup>2</sup>;
  - (iv) in the case of a disclosure by the Environment Agency, for the exercise of the Environment Agency's functions under the Emissions Performance Standard Regulations 2015<sup>3</sup>;
  - (v) in the case of a disclosure by the chief inspector, for the exercise of the chief inspector's functions under the Emissions Performance Standard Monitoring and Enforcement Regulations (Northern Ireland) 2016<sup>4</sup>;
  - (vi) in the case of a disclosure by NRW, for the exercise of NRW's functions under the Emissions Performance Standard (Enforcement) (Wales) Regulations 2015;
- (c) if the disclosure is made with the consent of the person from or on behalf of whom the information was obtained;
- (d) if the disclosure is to another person to whom this article applies [ ; ]<sup>5</sup>

[ (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). ]<sup>5</sup>

(4) In this article, "UK ETS legislation" means any of the following—

- (a) this Order;
- (b) the Monitoring and Reporting Regulation 2018;
- (c) the Verification Regulation 2018;
- (d) the Free Allocation Regulation;
- (e) the Activity Level Changes Regulation.

] <sup>1</sup>

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#### Notes

- <sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.32 (December 31, 2020)
- <sup>2</sup> Cm 2833. The Convention entered into force on 21st March 1994.
- <sup>3</sup> Amended by S.I. 2016/1108.
- <sup>4</sup> S.R. 2016 No. 28, amended by S.R. 2018 No. 200.
- <sup>5</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2022/1173 Pt 2 art.10(2) (January 1, 2023)

#### Extent

Pt 9 art. 75B(1)-(4)(e): United Kingdom

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 Law In Force

#### [ 75BA.— Power to publish UK ETS information

(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).

] <sup>1</sup>

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#### Notes

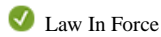
- <sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2022/1173 Pt 2 art.11 (January 1, 2023)

#### Extent

Pt 9 art. 75BA(1)-(3): United Kingdom

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### [ 75C.— National security

(1) The UK ETS authority may not publish any information under article 34D (allocation tables: publication, etc.) or 34N (aviation allocation table) [ , paragraph 31 of Schedule 5A (information about accounts) or paragraph 22A of Schedule 7 (publication of emissions targets and reportable emissions) ]<sup>2</sup> if the publication of the information would be contrary to the interests of national security.

(2) The regulator may not publish any information under article 49 (publication of names of persons subject to civil penalty under article 52) if the publication of the information would be contrary to the interests of national security.

(3) The UK ETS authority and the regulator must exercise functions under this article, and the registry administrator must exercise functions under a relevant provision, in accordance with a direction given by the Secretary of State under section 52 of CCA 2008 as to what is or is not contrary to the interests of national security.

(4) Except where the regulator is the Secretary of State, the regulator must notify the Secretary of State of any information excluded from publication under paragraph (2).

(5) The registry administrator must notify the Secretary of State of any matter excluded from a notice under a relevant provision on the grounds that its inclusion in the notice would be contrary to the interests of national security.

(6) In this article, "relevant provision" means any of the following provisions of Schedule 5A—

- (a) paragraph 11(6) (operator holding accounts);
- (b) paragraph 12(5) (transfer of operator holding accounts);
- (c) paragraph 13(5) (aircraft operator holding accounts);
- (d) paragraph 14(5) (trading accounts);
- (e) paragraph 16(8) (appointment of authorised representatives);
- (f) paragraph 17(5) (change in account permission of authorised representatives);
- (g) paragraph 18(3) (suspension of access to registry of authorised representatives);
- (h) paragraph 19(3) (removal of authorised representatives);
- (i) paragraph 25(4) (suspension of accounts);
- (j) paragraph 29(5) (closure of trading accounts).

] <sup>1</sup>

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#### Notes

<sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.32 (December 31, 2020)

<sup>2</sup> Words inserted by Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2022/1173 Pt 2 art.12(2) (January 1, 2023)

#### Extent

Pt 9 art. 75C(1)-(6)(j): United Kingdom

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✓ Law In Force

## **76.— Crown application**

(1) This Order applies to the Crown.

(2) Articles 39 and 40 and Part 2 of Schedule 3 make specific provision relevant to their application to the Crown.

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### **Commencement**

Pt 9 art. 76(1)-(2): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

### **Extent**

Pt 9 art. 76(1)-(2): United Kingdom

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✓ Law In Force

## **77.— Transitional provisions**

(1) Schedule 11 (which makes transitional provision for installations) has effect.

(2) An application for a GGETSR emissions plan under regulation 32A of GGETSR 2012 that has not been determined under GGETSR 2012 may be treated by the regulator as an application made under article 28.

(3) An application for the variation of a GGETSR emissions plan that has not been determined under GGETSR 2012 may be treated by the regulator as an application made under article 31.

[ (4) The Monitoring and Reporting Regulation 2018 and the Verification Regulation 2018 are to be read as if references, however expressed, to a report submitted or information obtained under Commission Implementing Regulation 2018/2067 in relation to a year or other period before 2021 were to a report submitted or other information obtained under that Regulation as it had effect in EU law or under the Verification Regulation 2012.

(5) A person referred to in paragraph (6) may—

(a) use information held or obtained for the purposes of the EU ETS in the exercise of the person's functions under UK ETS legislation;

(b) disclose such information in the exercise of the person's functions under UK ETS legislation—

(i) to another person referred to in paragraph (6);

(ii) to any other person, if the disclosure is necessary or expedient for the exercise of the person's functions under UK ETS legislation.

(6) The persons are—

(a) the Secretary of State;

(b) the Environment Agency;

(c) the chief inspector;

(d) SEPA;

(e) NRW.

(7) In this article, "UK ETS legislation" means any of the following—

(a) this Order;

- (b) the Monitoring and Reporting Regulation 2018;
- (c) the Verification Regulation 2018;
- (d) the Free Allocation Regulation;
- (e) the Activity Level Changes Regulation.

] <sup>1</sup>

#### Notes


- <sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.33(2) (December 31, 2020)

#### Commencement

Pt 9 art. 77(1)-(3): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

#### Extent

Pt 9 art. 77(1)-(7)(e): United Kingdom

 Law In Force


*Richard Tilbrook*  
Clerk of the Privy Council

## SCHEDULE 1

### Aviation activity

#### Article 4(1)

The text of this provision varies depending on jurisdiction or other application. See parallel texts relating to:  
[Northern Ireland](#) | [England, Scotland and Wales](#)

 Law In Force

Northern Ireland

#### 1.— Aviation activity

- (1) An aviation activity consists of any of the following activities other than excluded flights—
- (a) a flight departing from an aerodrome situated in the United Kingdom and arriving in an aerodrome situated—
    - (i) in the United Kingdom;
    - (ii) in an EEA State;
    - (iii) in Gibraltar;

- (iv) on an offshore structure in the UK sector of the continental shelf or an offshore structure in the continental shelf of an EEA state;
- (b) a flight arriving in an aerodrome situated in the United Kingdom from an aerodrome situated in Gibraltar.

(2) In this paragraph a reference to a flight departing from an aerodrome situated in the United Kingdom and arriving in an aerodrome situated in an EEA state does not include a reference to a flight departing from an aerodrome situated in the United Kingdom and arriving in an aerodrome situated in an outermost region.

(3) In this paragraph, "continental shelf of an EEA state" means an area beyond the territorial sea of an EEA state, within which rights with respect to the seabed and subsoil and their natural resources are exercisable by that EEA state.

England, Scotland and Wales

## [ 1.— Aviation activity

- (1) An aviation activity consists of any of the following activities other than excluded flights—
- (a) a flight departing from an aerodrome situated in the United Kingdom and arriving in an aerodrome situated—
    - (i) in the United Kingdom;
    - (ii) in an EEA State;
    - (iii) in Gibraltar;
    - (iv) on an offshore structure in the UK sector of the continental shelf or an offshore structure in the continental shelf of an EEA state;
  - (b) a flight arriving in an aerodrome situated in the United Kingdom from an aerodrome situated in Gibraltar,
  - (c) a flight departing from an aerodrome situated in Great Britain and arriving in an aerodrome situated in Switzerland.

(2) In this paragraph a reference to a flight departing from an aerodrome situated in the United Kingdom and arriving in an aerodrome situated in an EEA state does not include a reference to a flight departing from an aerodrome situated in the United Kingdom and arriving in an aerodrome situated in an outermost region.

(3) In this paragraph, "continental shelf of an EEA state" means an area beyond the territorial sea of an EEA state, within which rights with respect to the seabed and subsoil and their natural resources are exercisable by that EEA state.

] <sup>1</sup>

## Notes

<sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 3) Order 2022/1336 art.5 (January 1, 2023)

## Commencement

Sch. 1 para. 1(1)-(3): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

**Extent**

Sch. 1 para. 1(1)-(3): United Kingdom

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✓ Law In Force

**2.— Excluded flights**

(1) For the purposes of this Order, subject to sub-paragraph (2), all of the following are excluded flights—

- (a) flights performed exclusively for the transport, on official mission, of a reigning Monarch and their immediate family, Heads of State, Heads of Government and Government Ministers, of a country other than the United Kingdom;
- (b) military flights;
- (c) customs and police flights performed by both civil registered and military aircraft;
- (d) search and rescue flights;
- (e) firefighting flights;
- (f) humanitarian flights;
- (g) emergency medical service flights;
- (h) flights performed exclusively under the visual flight rules set out in Annex 2 to the Chicago Convention;
- (i) flights terminating at the aerodrome from which the aircraft has taken off and during which no intermediate landing has been made;
- (j) training flights performed exclusively for the purpose of obtaining a licence, or a rating in the case of cockpit flight crew, provided that the flights do not serve for the transport of passengers or cargo;
- (k) flights performed exclusively for the purpose of scientific research partially or totally performed in-flight;
- (l) flights performed exclusively for the purpose of checking, testing or certifying aircraft or equipment whether airborne or ground-based;
- (m) flights performed by aircraft with a certified maximum take-off mass of less than 5,700 kilograms.

(2) Excluded flights referred to in sub-paragraph (1)(a), (j), (k) and (l) do not include flights for the positioning or ferrying of the aircraft.

(3) In this paragraph—

"emergency medical service flights" means flights for the exclusive purpose of facilitating emergency medical assistance, where immediate and rapid transportation is essential, by carrying medical personnel, medical supplies, including equipment, blood, organs, drugs, or ill and injured persons and other persons directly involved;

"firefighting flights" means flights performed exclusively to combat wildfires;

"Government Ministers" are the members of the government as listed in the national official journal of the country concerned, excluding members of regional or local governments of a country;

"humanitarian flights" means flights operated exclusively for humanitarian purposes which carry relief personnel and relief supplies such as food, clothing, shelter, medical and other items during or after an emergency or disaster, or are used to evacuate persons from a place

where their life or health is threatened by such emergency or disaster to a safe haven in the same State or another State willing to receive such persons;

"immediate family" comprises exclusively the spouse, any partner considered as equivalent to the spouse, the children and the parents;

"military flights" means flights directly related to the conduct of military activities and performed by military aircraft;

"official mission" means a mission in which the person concerned is acting in an official capacity;

"search and rescue flights" means flights offering search and rescue services, including the performance of distress monitoring, communication, coordination and search and rescue functions, initial medical assistance or medical evacuation, through the use of public and private resources, including cooperating aircraft, vessels and other craft and installations.

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### Commencement

Sch. 1 para. 2(1)-(3) definition of "search and rescue flights": November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

### Extent

Sch. 1 para. 2(1)-(3) definition of "search and rescue flights": United Kingdom

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## SCHEDULE 2

### Meaning of installation and regulated activity

#### Article 4(1)

 Law In Force

### 1.— Interpretation

(1) In this Schedule—

"combustion unit" means a stationary technical unit in which fuels are combusted (and includes all types of boiler, burner, turbine, heater, furnace, incinerator, calciner, kiln, oven, dryer, engine, fuel cell, chemical looping combustion unit, flare and thermal or catalytic post-combustion unit);

"hazardous waste" means—

- (a) in relation to an installation in Northern Ireland or UK coastal waters adjacent to Northern Ireland, hazardous waste for the purposes of regulation 6 of the Hazardous Waste Regulations (Northern Ireland) 2005<sup>1</sup>;
- (b) in relation to an installation in Scotland or UK coastal waters adjacent to Scotland, special waste within the meaning of regulation 2 of the Special Waste Regulations 1996<sup>2</sup>;
- (c) in relation to an installation in Wales or UK coastal waters adjacent to Wales, hazardous waste for the purposes of regulation 6 of the Hazardous Waste (Wales) Regulations 2005<sup>3</sup>;

(d) in any other case, hazardous waste for the purposes of regulation 6 of the Hazardous Waste (England and Wales) Regulations 2005<sup>4</sup>;  
 "municipal waste" has the meaning given in section 21(3) of the Waste and Emissions Trading Act 2003<sup>5</sup>.

(2) For the purposes of this Schedule, a combustion unit or installation that uses only biomass as a fuel includes a combustion unit or installation that uses fossil fuels only during start-up or shut-down of operations.

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#### Notes

- <sup>1</sup> S.R. 2005/300, to which there are amendments not relevant to this Order.  
<sup>2</sup> The definition of "special waste" was substituted by regulation 2(3) of S.S.I. 2004/112 and is substituted prospectively by regulation 7(4) of S.S.I. 2019/26 with effect from IP completion day.  
<sup>3</sup> Regulation 6 was amended by regulation 3(5) of S.I. 2015/1417.  
<sup>4</sup> To which there are amendments not relevant to this Order.  
<sup>5</sup> Section 21(3) was amended by regulation 6(2)(b) of S.I. 2011/2499.


#### Commencement

Sch. 2 para. 1(1)-(2): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

#### Extent

Sch. 2 para. 1(1)-(2): United Kingdom

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 Law In Force

## 2.— Meaning of installation

(1) Subject to sub-paragraph (2), in this Order, "installation" means a stationary technical unit or units where one or more regulated activities are carried out.

(2) "Installation" does not include any of the following (which are outside the scope of the UK ETS)—

- (a) an installation that uses only biomass as a fuel;
- (b) an installation, or part of an installation, the primary purpose of which is research and development (including the testing of new products and processes);
- (c) an installation, the primary purpose of which is the incineration of hazardous or municipal waste;
- (d) a relevant Northern Ireland electricity generator.

(3) In sub-paragraph (2), a reference to an installation is a reference to what would be an installation, but for that sub-paragraph.

(4) References in this Order to an installation include references to part of an installation.

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**Commencement**

Sch. 2 para. 2(1)-(4): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

**Extent**

Sch. 2 para. 2(1)-(4): United Kingdom

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 Law In Force With Amendments Pending

**3.— Meaning of regulated activity, etc.**

(1) In this Order, "regulated activity" means—

- (a) an activity set out in an entry in column 1 of table C that results in emissions of the gases set out in the corresponding entry in column 2; and
- (b) where such an activity is carried out on a site, the combustion of fuels in any combustion unit (including a combustion unit referred to in sub-paragraph (5)(a) or (b)) operated on the site that results in emissions of such gases, except for a combustion unit to which sub-paragraph (2) applies.

(2) This sub-paragraph applies to a combustion unit if—

- (a) the primary purpose of the unit is the incineration of hazardous or municipal waste; and
- (b) the unit does not exclusively serve the stationary technical unit or units where the activity referred to in sub-paragraph (1)(a) is carried out.

(3) But sub-paragraph (2) does not apply to a combustion unit that is a flare.

**Table C**

<i>Column 1 Activities</i>	<i>Column 2 Greenhouse gases</i>
Combustion of fuels on a site where combustion units with a total rated thermal input exceeding 20 megawatts are operated	Carbon dioxide
Refining of mineral oil	Carbon dioxide
Production of coke	Carbon dioxide
Metal ore (including sulphide ore) roasting or sintering, including palletisation	Carbon dioxide
Production of pig iron or steel (primary or secondary fusion) including continuous casting, with a capacity exceeding 2.5 tonnes per hour	Carbon dioxide
Production or processing of ferrous metals (including ferro-alloys) on a site where combustion units with a total rated thermal input exceeding 20 megawatts are operated (and "processing" includes processing in rolling mills, re-heaters, annealing furnaces, smitheries, foundries, coating and pickling)	Carbon dioxide
Production of primary aluminium	Carbon dioxide Perfluorocarbons



<b>Column 1 Activities</b>	<b>Column 2 Greenhouse gases</b>
Production of secondary aluminium on a site where combustion units with a total rated thermal input exceeding 20 megawatts are operated	Carbon dioxide
Production or processing of non-ferrous metals (including production of alloys, refining and foundry casting) on a site where combustion units with a total rated thermal input (including fuels used as reducing agents) exceeding 20 megawatts are operated	Carbon dioxide
Production of cement clinker in rotary kilns with a production capacity exceeding 500 tonnes per day or in other furnaces with a production capacity exceeding 50 tonnes per day	Carbon dioxide
Production of lime or calcination of dolomite or magnesite in rotary kilns or in other furnaces with a production capacity exceeding 50 tonnes per day	Carbon dioxide
Manufacture of glass including glass fibre with a melting capacity exceeding 20 tonnes per day	Carbon dioxide
Manufacture of ceramic products by firing, in particular roofing tiles, bricks, refractory bricks, tiles, stoneware or porcelain, with a production capacity exceeding 75 tonnes per day	Carbon dioxide
Manufacture of mineral wool insulation material using glass, rock or slag with a melting capacity exceeding 20 tonnes per day	Carbon dioxide
Drying or calcination of gypsum or production of plaster boards and other gypsum products on a site where combustion units with a total rated thermal input exceeding 20 megawatts are operated	Carbon dioxide
Production of pulp from timber or other fibrous materials	Carbon dioxide
Production of paper or cardboard with a production capacity exceeding 20 tonnes per day	Carbon dioxide
Production of carbon black involving the carbonisation of organic substances such as oils, tars, cracker and distillation residues on a site where combustion units with a total rated thermal input exceeding 20 megawatts are operated	Carbon dioxide
Production of nitric acid	Carbon dioxide Nitrous oxide
Production of adipic acid	Carbon dioxide Nitrous oxide
Production of glyoxal and glyoxylic acid	Carbon dioxide Nitrous oxide
Production of ammonia	Carbon dioxide
Production of bulk organic chemicals by cracking, reforming, partial or full oxidation or by similar processes, with a production capacity exceeding 100 tonnes per day	Carbon dioxide
Production of hydrogen (H <sub>2</sub> ) and synthesis gas by reforming or partial oxidation with a production capacity exceeding 25 tonnes per day	Carbon dioxide
Production of soda ash (Na <sub>2</sub> CO <sub>3</sub> ) and sodium bicarbonate (NaHCO <sub>3</sub> )	Carbon dioxide

<b>Column 1 Activities</b>	<b>Column 2 Greenhouse gases</b>
Capture of greenhouse gases from other installations for the purpose of transport and geological storage in a storage site	Carbon dioxide
Transport of greenhouse gases by pipelines for geological storage in a storage site	Carbon dioxide
Geological storage of greenhouse gases in a storage site	Carbon dioxide

(4) For the purpose of calculating the production or other capacity set out in an entry in column 1 of table C, where more than one activity referred to in the entry is carried out on a site, the capacities of all such activities must be added together.

(5) For the purpose of calculating the total rated thermal input of combustion units operated on a site, the rated thermal input of all combustion units on the site must be added together, except for—

- (a) combustion units with a rated thermal input below 3 megawatts;
- (b) combustion units that use only biomass as a fuel.

(6) Where the carrying out of an activity referred to in paragraph (a) of sub-paragraph (1) (that is to say, an activity set out in an entry in column 1 of table C) falls within both—

- (a) an entry that does not refer to a threshold expressed as total rated thermal input; and
- (b) an entry that refers to such a threshold,

for the purpose of this Order, the reference to the activity in that paragraph must be treated as a reference to the activity falling within the entry referred to in paragraph (a) of this sub-paragraph.

(7) In this Order, "specified emissions" means, in relation to a regulated activity referred to in sub-paragraph (1), the emissions of the gases referred to in that sub-paragraph.

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#### **Proposed Draft Amendments**

Sch. 2 para. 3: words substituted by Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2023 (Draft) Pt 2 art. 10(2) (Published, September 19, 2023) (January 1, 2024)

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#### **Commencement**

Sch. 2 para. 3(1)-(7): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

#### **Extent**

Sch. 2 para. 3(1)-(7): United Kingdom

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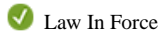
## **SCHEDULE 3**

### **Applications, notices, etc.**

## **Article 15**

## PART 1

### Applications, notices, etc. submitted to regulators



Law In Force

#### 1.— Submission of applications, notices, etc. to regulators

- (1) This paragraph applies to an application, notice or report submitted to a regulator under—
  - (a) this Order;  
[ (aa) the Monitoring and Reporting Regulation 2018;
  - (ab) the Verification Regulation 2018;
  - (ac) the Free Allocation Regulation;
  - (ad) the Activity Level Changes Regulation; ]<sup>1</sup>
  - (b) a permit;
  - (c) an emissions monitoring plan.
- (2) An application, notice or report—
  - (a) must be in writing; and
  - (b) unless the regulator agrees otherwise in writing, must be made on a form provided by the regulator for that purpose.
- (3) The regulator must set out in the form—
  - (a) the information required by the regulator to determine the application; or
  - (b) the matters required to be included in the notice or report.
- (4) Unless the regulator agrees otherwise in writing—
  - (a) the form must be submitted to the regulator electronically and, if the form specifies an email address for submission, to that address;
  - (b) if the form is provided by the regulator for submission through a website, the form must be submitted through the website and in accordance with any instructions given for completion and submission.
- (5) Unless the information has been provided in a previous application made to the regulator [ (including an application under GGETSR 2012) ]<sup>2</sup>, an application must set out—
  - (a) the name, postal address (including postcode) and telephone number of the applicant;
  - (b) either—
    - (i) an email address for service; or
    - (ii) a postal address (including postcode) in the United Kingdom for service.
- (6) In the case of an application under paragraph 7 of Schedule 6 (transfer of permits), sub-paragraph (5) applies to both the transferring operator and the new operator referred to in that paragraph.
- (7) Subject to sub-paragraphs (8) and (9), an application must be accompanied by the charge for the application set out in the charging scheme published under article 36.
- (8) Where an application is submitted electronically, the charge may be sent to the regulator separately from the application; and in that case, for the purposes of this Order, the application must be treated as not being received by the regulator until the charge is also received.

(9) Where an application is made to the Secretary of State (including an application submitted electronically), the charge need not be paid until the end of the period of 28 days beginning with the date on which the Secretary of State gives notice to the applicant requesting payment of the charge.

(10) An application may be withdrawn at any time before it is determined.

(11) The regulator may, by notice to a person submitting an application, require the applicant to provide such further information specified in the notice, within the period so specified, [as may be required]<sup>3</sup> to determine the application.

(12) For the purposes of this Order, the application must be treated as being withdrawn if—

- (a) the applicant fails to provide that information before the end of that period (or on or before such later date as may be agreed with the regulator); and
- (b) the regulator gives notice to the applicant that the application is treated as having been withdrawn.

(13) For the purposes of this paragraph, "application" includes any proposed plan required to be submitted with the application.

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#### Notes

- <sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.34(2)(a) (December 31, 2020)
- <sup>2</sup> Words inserted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.34(2)(b) (December 31, 2020)
- <sup>3</sup> Words substituted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.34(2)(c) (December 31, 2020)

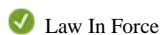
#### Commencement

Sch. 3(1) para. 1(1)-(13): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

#### Extent

Sch. 3(1) para. 1(1)-(13): United Kingdom

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Law In Force

## 2.— Determination of applications by regulators

(1) Where an application under this Order is made to a regulator in accordance with the requirements of this Order, the application must be determined by the regulator within—

- (a) the period of 2 months beginning with the date on which the application is received; or
- (b) such longer period as may be agreed in writing with the applicant.

(2) For the purposes of sub-paragraph (1)—

- (a) an application is determined when notice of the determination is given to the applicant by the regulator;
- (b) in calculating the period of 2 months, no account must be taken of any period beginning with the date on which a notice under paragraph 1(11) is given to the applicant and ending with the date on which the applicant provides the information specified in the notice.

(3) Where the regulator fails to determine an application before the end of the period referred to in sub-paragraph (1)—

- (a) the applicant may give to the regulator notice that the applicant treats the application as having been refused; and
- (b) if such notice is given, for the purposes of this Order, the application must be treated as having been refused at the end of that period.

(4) Where the application is an application for a permit or for the transfer of a permit, any permit that is issued or transferred as a result of the application must be attached to the notice under sub-paragraph (2)(a).

(5) This paragraph does not apply to an application under—

- [ (za) article 34L (application for aviation free allocation entitlement);
- (zb) article 34Q (application for transfer of aviation free allocation entitlement); ]<sup>1</sup>
- (a) paragraph 5 of Schedule 7 (obtaining hospital or small emitter status for 2026-2030 allocation period);
- (b) paragraph 3 of Schedule 8 (obtaining ultra-small emitter status for 2026-2030 allocation period).

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#### Notes

- <sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.34(3) (December 31, 2020)

#### Commencement

Sch. 3(1) para. 2(1)-(5)(b): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

#### Extent

Sch. 3(1) para. 2(1)-(5)(b): United Kingdom

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## PART 2

### Notices, etc. given by regulators, national authorities [ , UK ETS authority or registry administrator ]<sup>1</sup>

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#### Notes

- <sup>1</sup> Words substituted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.34(4) (December 31, 2020)
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 Law In Force

### 3.— Service of notices, etc.

(1) This paragraph applies to a notice or direction that must or may be given under this Order by—

- (a) a regulator;
- (b) a national authority;

- (c) the UK ETS authority [;]<sup>1</sup>
- [(d) the registry administrator.]<sup>1</sup>

(2) A notice or direction must be in writing.

(3) A notice or direction may be given to a person in any of the following ways—

- (a) by delivering it to the person;
- (b) by sending it to a postal or email address provided by the person for the purpose of the service of notices or directions [ (including an address provided under GGETSR 2012) ]<sup>2</sup> ;
- (c) by leaving it at the person's proper address;
- (d) by sending it by post or electronic means to the person's proper address;
- (e) if the person is a body corporate, by giving it to the secretary or clerk of the body in accordance with any of sub-paragraphs (a) to (d);
- (f) if the person is a partnership, by giving it to a partner or a person having the control or management of the partnership business in accordance with any of sub-paragraphs (a) to (d).

[(3A) A notice may be given by the registry administrator to a person who holds an account—

- (a) in any of the ways set out in paragraph (3);
- (b) by sending it by electronic means in the registry.

] <sup>3</sup>

(4) In this paragraph, "proper address" means—

- (a) in the case of a body corporate—
  - (i) the registered or principal office of the body; or
  - (ii) the email address of the secretary or clerk of the body;
- (b) in the case of a partnership—
  - (i) the principal office of the partnership; or
  - (ii) the email address of the partner or person having control or management of the partnership business;
- (c) in any other case, the person's last known address (including an email address).

(5) For the purposes of sub-paragraph (4), where a body corporate registered outside the United Kingdom or a partnership established outside the United Kingdom has an office in the United Kingdom, the principal office of the body corporate or partnership is its principal office in the United Kingdom.

(6) For the purposes of sub-paragraph (4)(c), where the person is an aircraft operator, the proper address includes an address derived from information supplied by Eurocontrol.

[(7) In this paragraph and paragraph 4, a reference to this Order includes a reference to the Monitoring and Reporting Regulation 2018, the Verification Regulation 2018, the Free Allocation Regulation and the Activity Level Changes Regulation.]<sup>4</sup>

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## Notes

<sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.34(5)(a) (December 31, 2020)

<sup>2</sup> Words inserted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.34(5)(b) (December 31, 2020)

<sup>3</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.34(5)(c) (December 31, 2020)

- <sup>4</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.34(5)(d) (December 31, 2020)

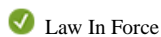
### Commencement

Sch. 3(2) para. 3(1)-(6): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

### Extent

Sch. 3(2) para. 3(1)-(7): United Kingdom

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## 4.— Service on certain Crown operators

- (1) This paragraph applies in relation to an installation operated by a person acting on behalf of—
- (a) the Royal Household;
  - (b) the Duchy of Lancaster; or
  - (c) the Duke of Cornwall or other possessor of the Duchy of Cornwall.
- (2) In relation to the giving of notices or directions under this Order, the following person must be treated as the operator—
- (a) in relation to sub-paragraph (1)(a), the Keeper of the Privy Purse;
  - (b) in relation to sub-paragraph (1)(b), the person appointed by the Chancellor of the Duchy of Lancaster for that purpose;
  - (c) in relation to sub-paragraph (1)(c), the person appointed by the Duke of Cornwall or other possessor of the Duchy of Cornwall for that purpose.
- 

### Commencement

Sch. 3(2) para. 4(1)-(2)(c): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

### Extent

Sch. 3(2) para. 4(1)-(2)(c): United Kingdom

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## SCHEDULE 4

### [Monitoring and Reporting Regulation 2018]<sup>1</sup>

## Article 24

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### Notes

- <sup>1</sup> Words substituted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.35(2) (December 31, 2020)
-

✓ Law In Force

## 1.

[ The Monitoring and Reporting Regulation 2018 ]<sup>1</sup> is to be read as if—

- (a) for "competent authority" in each place it occurs there were substituted "regulator";
- [ (aa) for "greenhouse gas emissions permit" in each place there were substituted "permit"; ]<sup>2</sup>
- (b) Articles 10, 52, 57, 70, 74, 75, 76 and 77 were omitted; and
- (c) the words "This Regulation shall be binding in its entirety and directly applicable in all Member States", immediately following Article 78, were omitted,

and subject to the following additional modifications.

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### Notes

- <sup>1</sup> Words substituted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.35(3)(a) (December 31, 2020)
- <sup>2</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.35(3)(b) (December 31, 2020)

### Commencement

Sch. 4 para. 1(a)-(c): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

### Extent

Sch. 4 para. 1(a)-(c): United Kingdom

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✓ Law In Force

## 2.

Article 1 is to be read as if for the words from "pursuant to" to the end there were substituted "for the purposes of the 2020 Order".

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### Commencement

Sch. 4 para. 2: November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

### Extent

Sch. 4 para. 2: United Kingdom

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✓ Law In Force

## 3.

Article 2 is to be read as if for the words from "greenhouse gas emissions" to the end of the first subparagraph there were substituted "specified emissions (as defined in the 2020 Order) from regulated activities, activity data from installations, CO<sub>2</sub> emissions from aviation activity and tonne-kilometre data from aviation activity".



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**Commencement**

Sch. 4 para. 3: November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

**Extent**

Sch. 4 para. 3: United Kingdom

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 Law In Force

**4.**

Article 3 is to be read as if—

(a) in the words before point (1), for "the following definitions" there were substituted "except where the context otherwise requires, terms defined in the Greenhouse Gas Emissions Trading Scheme Order 2020 have the meanings given by that Order and the following additional definitions";

(b) before point (1), there were inserted—

"(A1) 'greenhouse gas emissions' and 'emissions' mean specified emissions (as defined in the 2020 Order) from regulated activities or CO<sub>2</sub> emissions from aviation activity;"

(c) for point (2), there were substituted—

"(2) 'trading period', in references to the trading period immediately preceding the first trading period of the UK ETS, means the period beginning with 1st January 2013 and ending with 31st December 2020;"

(d) after point (2), there were inserted—

"(2a) 'the 2020 Order' means the Greenhouse Gas Emissions Trading Scheme Order 2020;"

[ (e) after point (5), there were inserted—

"(5a) 'Implementing Regulation (EU) 2018/2067' or 'Commission Implementing Regulation (EU) 2018/2067' means the Verification Regulation 2018 (as defined in the 2020 Order);

(5b) 'monitoring plan' in relation to an aircraft operator, except in Articles 11 to 13 of this Regulation, means the aircraft operator's emissions monitoring plan as defined in article 4 of the 2020 Order;"

] <sup>1</sup>

(f) in point (12), the words from "or, for tonne-kilometre data" to the end were omitted;

(g) point (18) were omitted;

(h) in point (28), for "Annex II to Directive 2003/87/EC" substitute "column 2 of table C in Schedule 2 to the 2020 Order";

(i) in point (44) ", or equivalent applicable international rules" were omitted;

(j) in each of points (46) and (47), "listed in Annex I to Directive 2003/87/EC" were omitted;

(k) point (50) were omitted;

- (l) in each of points (54) and (55), for "under Directive 2009/31/EC" there were substituted "in accordance with the CCS licensing regime";
- (m) after point (55), there were inserted—

"(55a) 'the CCS licensing regime' means Chapter 3 of Part 1 of the Energy Act 2008 and other domestic legislation which immediately before IP completion day implemented Directive 2009/31/EC<sup>2</sup>;"

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#### Notes

- <sup>1</sup> Substituted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.35(4) (December 31, 2020)
- <sup>2</sup> OJ No. L 140, 5.6.2009, p. 114.


#### Commencement

Sch. 4 para. 4(a)-(m): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

#### Extent

Sch. 4 para. 4(a)-(m): United Kingdom

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 Law In Force

#### 5.

Article 4 is to be read as if for "under Directive 2003/87/EC" there were substituted "for the purposes of the Greenhouse Gas Emissions Trading Scheme Order 2020".

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#### Commencement

Sch. 4 para. 5: November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

#### Extent

Sch. 4 para. 5: United Kingdom

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 Law In Force

#### 6.

Article 5 is to be read as if for the words from "activities listed" to "that Directive" there were substituted "regulated activities and aviation activity".

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#### Commencement

Sch. 4 para. 6: November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

#### Extent

Sch. 4 para. 6: United Kingdom

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✓ Law In Force

## 7.

Article 9 is to be read as if for "Article 15 of Directive 2003/87/EC" there were substituted "Commission Implementing Regulation (EU) No 2018/2067".

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### Commencement

Sch. 4 para. 7: November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

### Extent

Sch. 4 para. 7: United Kingdom

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✓ Law In Force

## [ 8.

Article 12 is to be read as if—

- (a) paragraph 3 were omitted;
- (b) after paragraph 2 there were inserted—

### "4.

Where the operator of an installation has submitted a monitoring plan to the regulator, the regulator must, by notice to the operator:

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

(See articles 28 to 30 of the 2020 Order in relation to the submission of a monitoring plan by an aircraft operator.)".

] <sup>1</sup>

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### Notes

- <sup>1</sup> Substituted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021/1455 Pt 2 art.22(2) (February 7, 2022)

### Commencement

Sch. 4 para. 8: November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

### Extent

Sch. 4 para. 8(a)-(b): United Kingdom

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✓ Law In Force

## 9.

Article 13 is to be read as if—

- (a) for paragraph 1 there were substituted—

**"1.**

Subject in each case to the approval of the regulator, operators and aircraft operators may use standardised or simplified monitoring plans that conform to templates published by the regulator.";

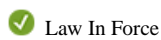
(b) in paragraph 2, for "Member States" there were substituted "The regulator".

**Commencement**

Sch. 4 para. 9(a)-(b): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

**Extent**

Sch. 4 para. 9(a)-(b): United Kingdom

**10.**

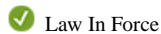
Article 14(1) is to be read as if "in accordance with Article 7 of Directive 2003/87/EC" were omitted.

**Commencement**

Sch. 4 para. 10: November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

**Extent**

Sch. 4 para. 10: United Kingdom

**11.**

Article 15 is to be read as if—

[ (za) for paragraph 1 there were substituted—

**"1.—**

The operator or aircraft operator must notify the regulator of:

- (a) any significant modification (within the meaning of paragraph 3) of the monitoring plan at least 14 days before making the modification or, where this is not possible, as soon as reasonably practicable; and
- (b) any other modification of the monitoring plan on or before 31 December in the year in which the modification is made.";

] <sup>1</sup>

(a) in paragraph 3—

- (i) in point (g), for "or *de minimis*" there were substituted ", *de minimis* or marginal";
- (ii) point (h) were omitted.

(b) in paragraph 4—

- (i) in point (a)(ii), for "calculation methods as laid down in Annex III" there were substituted "the calculation methods referred to in Article 53(2)";

- (ii) in point (a)(iv), for "Article 28a(6) of Directive 2003/87/EC" there were substituted "article 33(2) of the 2020 Order".

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**Notes**

- <sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.35(5) (December 31, 2020)

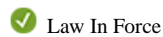
**Commencement**

Sch. 4 para. 11(a)-(b)(ii): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

**Extent**

Sch. 4 para. 11(za)-(b)(ii): United Kingdom

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Law In Force

**12.**

Article 16(1) is to be read as if for the words from "shall carry out" to the end there were substituted "must use, in parallel, both the modified and the original monitoring plan to carry out all monitoring and reporting, according to both plans, and must keep the results of both monitoring approaches in their records".

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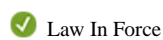
**Commencement**

Sch. 4 para. 12: November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

**Extent**

Sch. 4 para. 12: United Kingdom

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Law In Force

**13.**

Article 18 is to be read as if—

- (a) in paragraph 1, for "EUR 20" there were substituted "£20";
- (b) in paragraph 3(c)—
  - (i) for "Member State" there were substituted "United Kingdom";
  - (ii) after "adopted", there were inserted "before IP completion day";
- (c) in paragraph 4—
  - (i) for "EUR 2000" there were substituted "£2000";
  - (ii) for "EUR 500" there were substituted "£500".

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**Commencement**

Sch. 4 para. 13(a)-(c)(ii): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

**Extent**

Sch. 4 para. 13(a)-(c)(ii): United Kingdom

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✓ Law In Force

**14.**

Article 19(3) is to be read as if—

(a) after point (b) there were inserted—

"(ba) marginal source streams, where the source streams selected by the operator jointly account for less than 10 tonnes of fossil CO<sub>2</sub> per year";  
[ (aa) in point (c) for "points (a) and (b)" there were substituted "points (a), (b) and (ba)"; ]<sup>1</sup>  
(b) in the final subparagraph, for "or a *de minimis* source stream" there were substituted ", a *de minimis* source stream or a marginal source stream".

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**Notes**

<sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021/1455 Pt 2 art.22(3) (February 7, 2022)

**Commencement**

Sch. 4 para. 14(a)-(b): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

**Extent**

Sch. 4 para. 14(a)-(b): United Kingdom

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✓ Law In Force

**15.**

Article 20 is to be read as if—

(a) in paragraph 1, in the second subparagraph—

- (i) after "belonging to" there were inserted "regulated";
- (ii) the words from "and listed in" to the end were omitted;

(b) in paragraph 3—

- (i) in the first subparagraph, for "within the meaning of Directive 2009/31/EC" there were substituted "containing a storage site permitted in accordance with the CCS licensing regime";
- (ii) in the second subparagraph, for "pursuant to Article 16 of Directive 2009/31/EC have been taken", there were substituted "have been taken in accordance with the CCS licensing regime".

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**Commencement**

Sch. 4 para. 15(a)-(b)(ii): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

**Extent**

Sch. 4 para. 15(a)-(b)(ii): United Kingdom

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 Law In Force

**16.**

Article 26(3) is to be read as if after "source streams" there were inserted "and marginal source streams".

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**Commencement**

Sch. 4 para. 16: November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

**Extent**

Sch. 4 para. 16: United Kingdom

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 Law In Force

**17.**

Article 31(1)(b) is to be read as if for "Member State" there were substituted "United Kingdom".

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**Commencement**

Sch. 4 para. 17: November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

**Extent**

Sch. 4 para. 17: United Kingdom

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 Law In Force

**18.**

Article 38 is to be read as if—

(a) in paragraph 2, after "zero" there were inserted ", but [ , subject to paragraph 2a, ]<sup>1</sup> 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";

[ (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<sup>3</sup>;
- (b) "category 2 tallow" means tallow that is category 2 material under Article 9 of that Regulation;"

]<sup>2</sup>

(b) in paragraph 4, after "*de minimis*" there were inserted "or marginal".

**Notes**

- <sup>1</sup> Words inserted by Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2022/1173 Pt 2 art.13(2)(a) (January 1, 2023)
- <sup>2</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2022/1173 Pt 2 art.13(2)(b) (January 1, 2023)
- <sup>3</sup> EUR 2009/1069. Articles 8 and 9 of the Regulation are amended by S.I. 2020/1388.

**Commencement**

Sch. 4 para. 18(a)-(b): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

**Extent**

Sch. 4 para. 18(a)-(b): United Kingdom



Law In Force

**19.**

Article 39 is to be read as if—

- (a) in paragraph 2, the third subparagraph were omitted;
- [(b) paragraph 3 were omitted.]<sup>1</sup>

**Notes**

- <sup>1</sup> Substituted by Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2022/1173 Pt 2 art.13(3) (January 1, 2023)

**Commencement**

Sch. 4 para. 19(a)-(b): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

**Extent**

Sch. 4 para. 19(a)-(b): United Kingdom



✓ Law In Force

**20.**

Article 42(1) is to be read as if, in the second subparagraph, ", standards published by the Commission" were omitted.

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**Commencement**

Sch. 4 para. 20: November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

**Extent**

Sch. 4 para. 20: United Kingdom

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✓ Law In Force

**[ 20A.**

Article 43(4)(c) is to be read as if for "Commission" there were substituted "UK ETS authority".  
]<sup>1</sup>

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**Notes**

<sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021/1455 Pt 2 art.22(4) (February 7, 2022)

**Extent**

Sch. 4 para. 20A: United Kingdom

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✓ Law In Force

**21.**

Article 47(1) is to be read as if for "Annex I to Directive 2003/87/EC" there were substituted "paragraph 3 of Schedule 2 to the 2020 Order".

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**Commencement**

Sch. 4 para. 21: November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

**Extent**

Sch. 4 para. 21: United Kingdom

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✓ Law In Force

**22.**

Article 48(2) is to be read as if—

- (a) for "activities covered by Annex I to Directive 2003/87/EC or included pursuant to Article 24 of that Directive" there were substituted "regulated activities";

- (b) for "activity covered by that Directive" there were substituted "regulated activity";
- (c) for "not covered by that Directive" there were substituted "not covered by the 2020 Order".

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#### Commencement

Sch. 4 para. 22(a)-(c): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

#### Extent

Sch. 4 para. 22(a)-(c): United Kingdom

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 Law In Force With Amendments Pending

### 23.

Article 49 is to be read as if—

(a) in paragraph 1—

- (i) in the words before point (a), for "activities covered by Annex I to Directive 2003/87/EC" there were substituted "regulated activities";
- (ii) in point (a), for "under Directive 2009/31/EC" in each place it occurs there were substituted "in accordance with the CCS licensing regime";

(b) in paragraph 2—

- (i) in the first subparagraph, the words from "the operator" in the first place it occurs to "other cases," were omitted;
- (ii) for the second subparagraph there were substituted—

"In its annual emissions report, the operator of the receiving installation shall provide the name, address and contact information of a contact person for the transferring installation."

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#### Amendments Pending

Sch. 4 para. 23(c): added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2023/850, Pt 2 art. 8(2) (January 1, 2024)

#### Commencement

Sch. 4 para. 23(a)-(b)(ii): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

#### Extent

Sch. 4 para. 23(a)-(c): United Kingdom

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 Law In Force

### 24.

Article 50 is to be read as if—

(a) in paragraph 1—

- (i) in the first subparagraph, for "activities covered by Annex I to Directive 2003/87/EC for which that Annex specifies N<sub>2</sub>O as relevant" there were substituted "regulated activities in respect of which N<sub>2</sub>O emissions are specified emissions (as defined in the 2020 Order)";
- (ii) in the third subparagraph, for "not covered by Directive 2003/87/EC" there were substituted "not covered by the 2020 Order";
- (b) for paragraph 2 there were substituted—

**"2.**

In its annual emissions report, the operator of the transferring installation shall provide the name, address and contact information of a contact person for the receiving installation.

In its annual emissions report, the operator of the receiving installation shall provide the name, address and contact information of a contact person for the transferring installation."

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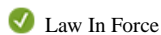
**Commencement**

Sch. 4 para. 24(a)-(b): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

**Extent**

Sch. 4 para. 24(a)-(b): United Kingdom

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**25.**

Article 51 is to be read as if—

- (a) in paragraph 1, for "activities for all flights included in Annex I to Directive 2003/87/EC that are" there were substituted "activity that is";
- (b) paragraphs 2 to 4 were omitted.

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**Commencement**

Sch. 4 para. 25(a)-(b): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

**Extent**

Sch. 4 para. 25(a)-(b): United Kingdom

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**26.**

Article 53 is to be read as if—

- (a) in paragraph 2, for "section 1 of Annex III" there were substituted "Appendix 2 to Annex 16, Volume IV to the Chicago Convention"<sup>1</sup>;

(b) in paragraph 3, for "section 1 of Annex III" there were substituted "Appendix 2 to Annex 16, Volume IV to the Chicago Convention".

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#### Notes

<sup>1</sup> 1st Edition, October 2018, available electronically at <https://www.icao.int/environmental-protection/CORSIA/Pages/SARPs-Annex-16-Volume-IV.aspx> or in paper form from the International Civil Aviation Organisation, 999 Robert-Bourassa Boulevard, Montreal, Quebec, Canada H3C 5H7.

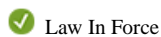
#### Commencement

Sch. 4 para. 26(a)-(b): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

#### Extent

Sch. 4 para. 26(a)-(b): United Kingdom

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Law In Force

#### 27.

[ Article 54 is to be read as if for the whole Article there were substituted—

#### *Article 54 Specific provisions for biofuels*

1. For mixed fuels, the aircraft operator may either assume the absence of biomass and apply a default fossil fraction of 100% or determine a biomass fraction in accordance with paragraph 2 or 3.
2. Where biofuels are physically mixed with fossil fuels and delivered to an aircraft in physically identifiable batches, the aircraft operator may carry out analyses in accordance with Articles 32 to 35 to determine the biomass fraction on the basis of a relevant standard and the analytical methods set out in those Articles, provided that the use of that standard and those analytical methods is approved by the regulator. Where the aircraft operator provides evidence to the satisfaction of the regulator that such analyses would incur unreasonable costs or are technically not feasible, the aircraft operator may base an estimation of the biomass fraction on a mass balance of fossil fuels and biofuels purchased.
3. Where purchased biofuel batches are not physically delivered to a specific aircraft, the aircraft operator shall not use analyses to determine the biomass fraction of the fuels used. In such a case, the aircraft operator may determine the biomass fraction using purchase records of biofuel of equivalent energy content, provided that the aircraft operator provides evidence to the satisfaction of the regulator that there is no double counting of the same biofuel quantity, in particular that the biofuel purchased is not claimed to be used by anyone else.
4. Where a biofuel meets the sustainability criteria [...]<sup>2</sup>, the emission factor of the biofuel shall be zero; and for the purpose of determining whether the sustainability criteria are met, the biofuel (wherever supplied) must be treated as supplied in the United Kingdom.
5. Where a biofuel does not meet [ the sustainability criteria ]<sup>3</sup>, the carbon content of the biofuel shall be treated as fossil carbon.

[ 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<sup>5</sup>) that applied for the purposes of that Order on the date of purchase of the biofuel. ]<sup>4</sup>  
] <sup>1</sup>

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#### Notes

- <sup>1</sup> Substituted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021/1455 Pt 2 art.22(5) (February 7, 2022)
- <sup>2</sup> Words revoked by Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2022/1173 Pt 2 art.13(4)(a) (January 1, 2023)
- <sup>3</sup> Words substituted by Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2022/1173 Pt 2 art.13(4)(b) (January 1, 2023)
- <sup>4</sup> Paragraph 6 inserted by Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2022/1173 Pt 2 art.13(4)(c) (January 1, 2023)
- <sup>5</sup> S.I. 2007/3072; relevant amending instruments are S.I. 2011/2937, 2018/374 and 2021/1420.


#### Commencement

Sch. 4 para. 27(a)-(b): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

#### Extent

Sch. 4 para. 27(a)-(b): United Kingdom

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 Law In Force

### 28.

Article 55(2) is to be read as if for "Commission" there were substituted "UK ETS authority".

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#### Commencement

Sch. 4 para. 28: November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

#### Extent

Sch. 4 para. 28: United Kingdom

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 Law In Force

### 29.

Article 58(1) is to be read as if the second subparagraph were omitted.

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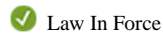
#### Commencement

Sch. 4 para. 29: November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

#### Extent

Sch. 4 para. 29: United Kingdom

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**30.**

Article 68 is to be read as if for the whole Article there were substituted—

***"Article 68 Obligations for reporting***

Annex X (minimum content of annual reports) has effect for the purposes of article 33 of and paragraph 4(2)(b) of Schedule 6 and paragraph 11(2)(b) of Schedule 7 to the 2020 Order."

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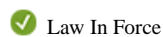
**Commencement**

Sch. 4 para. 30: November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

**Extent**

Sch. 4 para. 30: United Kingdom

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**31.**

Article 71 is to be read as if—

- (a) the first sentence were omitted;
- (b) for "With regard to the application of the exception, as specified in Article 4(2)(d) of Directive 2003/4/EC", there were substituted "With regard to the potential application in relation to emission reports of the exemption in section 43 of the Freedom of Information Act 2000, the exception in regulation 12(5)(e) of the Environmental Information Regulations 2004<sup>1</sup> or the exception in regulation 10(5)(e) of the Environmental Information (Scotland) Regulations 2004<sup>2</sup>".

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**Notes**

<sup>1</sup> S.I. 2004/3391, to which there are amendments not relevant to this Order.

<sup>2</sup> S.S.I. 2004/520, to which there are amendments not relevant to this Order.

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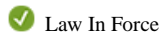
**Commencement**

Sch. 4 para. 31(a)-(b): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

**Extent**

Sch. 4 para. 31(a)-(b): United Kingdom

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**[ 31A.**

Article 72(1) is to be read as if for the first subparagraph there were substituted—

"Total annual emissions of each of the greenhouse gases CO<sub>2</sub>, N<sub>2</sub>O and PFCs shall be reported as rounded tonnes of CO<sub>2</sub> or CO<sub>2(e)</sub>. The total annual emissions of the installation shall be calculated as the sum of these three rounded values."

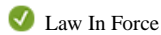
] <sup>1</sup>

**Notes**

<sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.35(6) (December 31, 2020)

**Extent**

Sch. 4 para. 31A: United Kingdom

**32.**

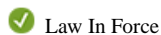
Article 72(3) is to be read as if "calculating the distance and payload pursuant to Article 57 and" were omitted.

**Commencement**

Sch. 4 para. 32: November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

**Extent**

Sch. 4 para. 32: United Kingdom

**33.**

Article 73 is to be read as if—

(a) in the words before point (a), for the words from "Each activity" to "aircraft operator" there were substituted "Each regulated activity carried out by an operator and each aviation activity carried out by an aircraft operator";

(b) points (b) and (c) were omitted [.] <sup>1</sup>

(c) [...] <sup>1</sup>

**Notes**

<sup>1</sup> Revoked by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.35(7) (December 31, 2020)

**Commencement**

Sch. 4 para. 33(a)-(c): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

**Extent**

Sch. 4 para. 33(a)-(c): United Kingdom

 Law In Force

**34.**


Article 78 is to be read as if the words from "However" to the end were omitted.

**Commencement**

Sch. 4 para. 34: November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

**Extent**

Sch. 4 para. 34: United Kingdom

 Law In Force

**35.**

Annex 1 is to be read as if—

[(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";

] <sup>1</sup>

(b) in section 2, in point 1—

(i) in point (a), "the administering Member State," were omitted;

(ii) in point (d), for "covered by Annex I to Directive 2003/87/EC" there were substituted "an aviation activity";

(iii) in point (k), for "Article 28a(6) of Directive 2003/87/EC" there were substituted "article 33(2) of the 2020 Order";

[(c) in section 2, in point 2—

(i) in point (b)(i) "(Method A or Method B)" were omitted;

(ii) after point (e) there were inserted—

"(f) where applicable, a description of the procedure used to assess if biofuels meet the sustainability criteria [(as defined in Article 54(6))] <sup>3</sup>;

(g) where applicable, a description of the procedure used to determine biofuel quantities based on purchase records in accordance with Article 54(3)."

] <sup>2</sup>



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**Notes**

- <sup>1</sup> Substituted by Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2022/1173 Pt 2 art.13(5)(a) (January 1, 2023)
- <sup>2</sup> Substituted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021/1455 Pt 2 art.22(6) (February 7, 2022)
- <sup>3</sup> Words substituted by Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2022/1173 Pt 2 art.13(5)(b) (January 1, 2023)


**Commencement**

Sch. 4 para. 35(a)-(c): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

**Extent**

Sch. 4 para. 35(a)-(c)(i): United Kingdom

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 Law In Force

**[ 36.**

Annex 2 is to be read as if—

- (a) in section 2—
  - (i) in the first subparagraph before section 2.1—
    - (aa) for "all activities as listed in Annex I to Directive 2003/87/EC or included in the Union system under Article 24 of that Directive" there were substituted "all regulated activities";
    - (bb) for "section 5" there were substituted "section 4";
  - (ii) in the second subparagraph before section 2.1 for "sections 4 and 5" there were substituted "section 4";
  - (iii) in section 2.4 in the subparagraph relating to Tier 1 for "competent authority or the Commission" there were substituted "UK ETS authority";
- (b) in section 4—
  - (i) for the heading there were substituted "DEFINITION OF TIERS FOR THE CALCULATION FACTORS FOR CO<sub>2</sub> PROCESS EMISSIONS";
  - (ii) for the subparagraph before section 4.1 (beginning "For all process emissions" and ending "from the process") there were substituted—

"For all CO<sub>2</sub> process emissions (including emissions from the decomposition of carbonates and from process materials containing carbon other than in the form of carbonates, including urea, coke and graphite), where they are monitored using the standard methodology in accordance with Article 24(2), the tiers defined in this section for the applicable calculation factors shall be applied.

In the case of mixed materials which contain inorganic as well as organic forms of carbon, the operator may choose:

—to determine a total preliminary emission factor for the mixed material by analysing the total carbon content, and using a conversion factor and — if

applicable — biomass fraction and net calorific value related to that total carbon content; or

—to determine the organic and inorganic contents separately and treat them as two separate source streams.

For emissions from the decomposition of carbonates, the operator may choose for each source stream one of the following methods:

(a) Method A (Input based): The emission factor, conversion factor and activity data are related to the amount of material input into the process.

(b) Method B (Output based): The emission factor, conversion factor and activity data are related to the amount of output from the process.

For other CO<sub>2</sub> process emissions, the operator shall apply only method A.";

(iii) in section 4.1 in the subparagraph relating to Tier 1 for point (a) there were substituted—

"(a) the standard factors listed in Table 2 of Annex 6 in the case of carbonate decomposition or in Tables 1, 4 or 5 of that Annex for other process materials;"

(iv) after section 4.4 there were inserted—

#### **"4.5 Tiers for the net calorific value**

If relevant, the operator shall determine the net calorific value ("NCV") of the process material using the tiers defined in section 2.2 of this Annex. NCV is considered not relevant for marginal or de minimis source streams or where the material is not itself combustible without other fuels being added. If in doubt, the operator shall seek confirmation by the regulator on whether NCV has to be monitored and reported.

#### **4.6 Tiers for the biomass fraction**

If relevant, the operator shall determine the biomass fraction of the carbon contained in the process material using the tiers defined in section 2.4 of this Annex.";

(c) section 5 were omitted.

] <sup>1</sup>

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#### **Notes**

<sup>1</sup> Substituted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021/1455 Pt 2 art.22(7) (February 7, 2022: substitution has effect subject to transitional provision specified in SI 2021/1455 reg.28)

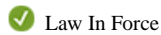
#### **Commencement**

Sch. 4 para. 36: November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

#### **Extent**

Sch. 4 para. 36(a)-(c): United Kingdom

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**37.**

Annex 3 is to be read as if section 1 were omitted.

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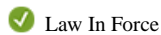
**Commencement**

Sch. 4 para. 37: November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

**Extent**

Sch. 4 para. 37: United Kingdom

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**38.**

Annex 4 is to be read as if—

[(a) in section 1—

(i) in subsection A for "all activities as listed in Annex I to Directive 2003/87/EC or included in the Union system under Article 24 of that Directive" there were substituted "all regulated activities";

(ii) in subsection C.2 in the first subparagraph for "section 5" there were substituted "section 4";

(aa) in each of the headings of sections 2 to 20 for "Annex I to Directive 2003/87/EC" there were substituted "Schedule 2 to the Greenhouse Gas Emissions Trading Scheme Order 2020";

(ab) in section 4 in subsection B for "sections 2, 4 and 5" there were substituted "sections 2 and 4";

(ac) in section 8—

(i) in subsection A", and any guidelines published by the Commission for this purpose" were omitted;

(ii) in subsection B in calculation method B (overvoltage method) for "FCF2F6" in both places there were substituted "FC2F6";

(ad) in section 9—

(i) in subsection A for "organic" there were substituted "non-carbonate";

(ii) in subsection B in the second subparagraph for "organic" there were substituted "non-carbonate";

(iii) in subsection D for "The following tier definitions" in both places there were substituted "By way of derogation from section 4 of Annex 2, the following tier definitions";

(ae) in section 10—

(i) in subsection B in the first subparagraph—

(aa) "and section 5" were omitted;

(bb) for "organic" there were substituted "non-carbonate";

(ii) after subsection B there were inserted—

"C. Emissions from non-carbonate carbon in raw materials

The operator shall determine the emissions from non-carbonate carbon at least from limestone, shale or alternative raw materials in the kiln in accordance with Article 24(2).

By way of derogation from section 4 of Annex 2, the following tier definitions for the emission factor shall apply:

**Tier 1:** The content of non-carbonate carbon in the relevant raw material shall be estimated using industry best practice guidelines.

**Tier 2 :** The content of non-carbonate carbon in the relevant raw material shall be determined at least annually following the provisions of Articles 32 to 35.

By way of derogation from section 4 of Annex 2, the following tier definitions for the conversion factor shall apply:

**Tier 1:** A conversion factor of 1 shall be applied.

**Tier 2:** The conversion factor shall be calculated applying industry best practice.";

(af) in section 11 in subsection B in the first subparagraph for "section 5" there were substituted "section 4";

(ag) in section 12—

(i) in subsection A for "fossil organic material" there were substituted "non-carbonate carbon content";

(ii) in subsection B in the first subparagraph—

(aa) for "sections 4 and 5" there were substituted "section 4";

(bb) for "organic content" there were substituted "non-carbonate carbon content";

(cc) for "organic carbon" there were substituted "non-carbonate carbon".

]<sup>1</sup>

(b) in each of the headings of sections 21, 22 and 23, for "Directive 2009/31/EC" there were substituted "the CCS licensing regime";

(c) in section 21, in subsection A, for "other activities covered by Directive 2003/87/EC" there were substituted "other regulated activities";

(d) in section 22, in subsection B, for "Directive 2003/87/EC" in both places it occurs there were substituted "the 2020 Order";

(e) in section 23—

(i) in subsection A, in the first subparagraph, for "Directive 2009/31/EC" there were substituted "the CCS licensing regime";

(ii) in subsection A, in the second subparagraph, after "with", there were inserted "domestic legislation which immediately before IP completion day implemented";

(iii) in subsection B.3, in the definition of "Tend", after "with", there were inserted "domestic legislation which immediately before IP completion day implemented".

## Notes


<sup>1</sup> Sch.4 para.38(a), (aa)-(ag) substituted for sch.4 para.38(a) and (aa) by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021/1455 Pt 2 art.22(8) (February 7, 2022: substitution has effect subject to transitional provision specified in SI 2021/1455 reg.28)

**Commencement**

Sch. 4 para. 38(a)-(e)(iii): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

**Extent**

Sch. 4 para. 38(a)-(ag)(ii)(cc): United Kingdom

 Law In Force

**[ 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.";
- (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".


] <sup>1</sup>

**Notes**

- <sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2022/1173 Pt 2 art.13(6) (January 1, 2023)

**Extent**

Sch. 4 para. 38A(a)-(c): United Kingdom

 Law In Force

**[ 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>
N2O	265 t CO <sub>2</sub> (e) /t N2O
CF <sub>4</sub>	6 630 t CO <sub>2</sub> (e)/t CF <sub>4</sub>
C <sub>2</sub> F <sub>6</sub>	11 100 t CO <sub>2</sub> (e)/t C <sub>2</sub> F <sub>6</sub>

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

] <sup>1</sup>

**Notes**

- <sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2022/1173 Pt 2 art.13(6) (January 1, 2023)

**Extent**

Sch. 4 para. 38B(1)-(2): United Kingdom

✓ Law In Force

**39.**

Section 2(7) of Annex 9 is to be read as if—

- (a) in point (c)—
  - (i) after "storage permit", there were inserted "for the storage site";
  - (ii) for "Article 9 of Directive 2009/31/EC" there were substituted "the CCS licensing regime";
- (b) in each of points (d), (e) and (f), after "with", there were inserted "domestic legislation which immediately before IP completion day implemented".

**Commencement**

Sch. 4 para. 39(a)-(b): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

**Extent**

Sch. 4 para. 39(a)-(b): United Kingdom

✓ Law In Force

**40.**

Annex 10 is to be read as if—

- (a) in the heading, for "68(3)" there were substituted "68";
- (b) in section 1—

[(ai) for point (1) there were substituted—

(1) Name and address of the installation and details of the following:

- (a) type and number of regulated activities carried out at the installation;
- (b) address, telephone number and email address of two contact persons;
- (c) name of the operator of the installation;
- (d) permit number;

] <sup>1</sup>

(i) in point (6), for "Information" there were substituted "Subject to the subparagraph after point (13), information";

[(ia) in point (8)(g) for "as recognised in accordance with the acts adopted pursuant to Article 19(3) of Directive 2003/87/EC" there were substituted "in the registry"; ] <sup>2</sup>

(ii) in the subparagraph after point (13), at the end there were inserted "Emissions occurring from marginal source streams may be reported in an aggregate manner.";

(iii) in the final subparagraph, after "with", there were inserted "domestic legislation which immediately before IP completion day implemented";

## (c) in section 2—

- (i) in point (1), after "Directive 2003/87/EC", there were inserted "(read as if references in that Annex to "its administering Member State" and "in the administering Member State" were omitted and as if references to "aviation activities listed in Annex I" were references to "aviation activity")";
- (ii) in point (6), for "aviation activities covered by Annex I to Directive 2003/87/EC" there were substituted "aviation activity";
- (iii) in point (9), for "Member State" there were substituted "state";
- [ (iiia) for point (12) there were substituted—

"(12) Memo-items:

- (a) amount of biofuels used during the reporting year (in tonnes or m3) listed per fuel type, and whether the biofuels meet the sustainability criteria [(as defined in Article 54(6))] <sup>4</sup>;
- (b) the net calorific value of biofuels and alternative fuels;"

]

- (iv) in point (13), for "operator" in both places it occurs there were substituted "aircraft operator";

## (d) in section 3—

- (i) in point (1), after "Directive 2003/87/EC", there were inserted "(read as if references in that Annex to "its administering Member State" and "in the administering Member State" were omitted and as if references to "aviation activities listed in Annex I" were references to "aviation activity")";
- (ii) in point (6), for "aviation activities covered by Annex I to Directive 2003/87/EC" there were substituted "aviation activity";
- (iii) in point (8), for "aviation activities listed in Annex I of Directive 2003/87/EC" there were substituted "aviation activity".

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**Notes**

- <sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021/1455 Pt 2 art.22(9)(a)(i) (February 7, 2022)
- <sup>2</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021/1455 Pt 2 art.22(9)(a)(ii) (February 7, 2022)
- <sup>3</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021/1455 Pt 2 art.22(9)(b) (February 7, 2022)
- <sup>4</sup> Words substituted by Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2022/1173 Pt 2 art.13(7) (January 1, 2023)

**Commencement**

Sch. 4 para. 40(a)-(d)(iii): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

**Extent**

Sch. 4 para. 40(a)-(d)(iii): United Kingdom

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## SCHEDULE 5

### Article 25

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#### Notes

- <sup>1</sup> Existing Sch.5 substituted for a new Sch.5 consisting of paras 1-56 by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.36 (December 31, 2020: substitution comes into force on 31st December 2020 as specified in SI 2020/1557 art.2(1) but cannot take effect until the commencement of SI 2020/1265 Sch.5 immediately after IP completion day as specified in SI 2020/1265 art.2(2))
- 

 Law In Force

#### [ 1.

The Verification Regulation 2018 is to be read as if—

- (a) for ".../..." in each place there were substituted "2019/331";
- (b) for "competent authority" in each place there were substituted "regulator";
- (c) Articles 56, 65 to 68, 74, 75, 78 and 79 were omitted;
- (d) the words "This Regulation shall be binding in its entirety and directly applicable in all Member States", immediately following Article 79, were omitted,

and subject to the following additional modifications.

] <sup>1</sup>

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#### Notes

- <sup>1</sup> Existing Sch.5 substituted for a new Sch.5 consisting of paras 1-56 by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.36 (December 31, 2020: substitution comes into force on 31st December 2020 as specified in SI 2020/1557 art.2(1) but cannot take effect until the commencement of SI 2020/1265 Sch.5 immediately after IP completion day as specified in SI 2020/1265 art.2(2))

#### Commencement

Sch. 5 para. 1: December 31, 2020 shall come into force immediately after IP completion day (2020 c. 1 Pt 5 s. 39(1); SI 2020/1265 Pt 1 art. 2(2))

#### Extent

Sch. 5 para. 1(a)-(d): United Kingdom

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 Law In Force

#### [ 2.

Article 1 is to be read as if—

- (a) in the first subparagraph for "Directive 2003/87/EC" there were substituted "the 2020 Order, Delegated Regulation (EU) 2019/331 or Implementing Regulation (EU) 2019/1842";
- (b) the second subparagraph were omitted.

] <sup>1</sup>



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**Notes**

- <sup>1</sup> Existing Sch.5 substituted for a new Sch.5 consisting of paras 1-56 by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.36 (December 31, 2020: substitution comes into force on 31st December 2020 as specified in SI 2020/1557 art.2(1) but cannot take effect until the commencement of SI 2020/1265 Sch.5 immediately after IP completion day as specified in SI 2020/1265 art.2(2))


**Commencement**

Sch. 5 para. 2: December 31, 2020 shall come into force immediately after IP completion day (2020 c. 1 Pt 5 s. 39(1); SI 2020/1265 Pt 1 art. 2(2))

**Extent**

Sch. 5 para. 2(a)-(b): United Kingdom

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 Law In Force

**[ 3.**

Article 2 is to be read as if for "2019, reported pursuant to Article 14 of Directive 2003/87/EC" there were substituted "2021, reported pursuant to the 2020 Order and permits issued in accordance with it".

**]**<sup>1</sup>

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**Notes**

- <sup>1</sup> Existing Sch.5 substituted for a new Sch.5 consisting of paras 1-56 by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.36 (December 31, 2020: substitution comes into force on 31st December 2020 as specified in SI 2020/1557 art.2(1) but cannot take effect until the commencement of SI 2020/1265 Sch.5 immediately after IP completion day as specified in SI 2020/1265 art.2(2))

**Commencement**

Sch. 5 para. 3: December 31, 2020 shall come into force immediately after IP completion day (2020 c. 1 Pt 5 s. 39(1); SI 2020/1265 Pt 1 art. 2(2))

**Extent**

Sch. 5 para. 3: United Kingdom

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 Law In Force

**[ 4.**

Article 3 is to be read as if—

- (a) for the words before point (1) there were substituted—

In this Regulation, references to Implementing Regulation (EU) 2018/2066 are to that Regulation as modified by the Greenhouse Gas Emissions Trading Scheme Order 2020 ("the modified MRR") and expressions used in both the modified MRR and this Regulation have the same meaning in this Regulation as they do in the

modified MRR; in addition the following definitions apply for the purposes of this Regulation:";

- (b) in point (2)—
  - (i) for "a national" there were substituted "the national";
  - (ii) for "harmonised standards, within the meaning of point 9 of Article 2 of Regulation (EC) No 765/2008," there were substituted [ "the standard referred to in Annex 2" ]<sup>2</sup>;
- (c) in point (3)—
  - [ (ai) "or another legal entity" were omitted; ]<sup>3</sup>
  - (i) for "a national" there were substituted "the national";
  - (ii) the words "or a natural person otherwise authorised, without prejudice to Article 5(2) of that Regulation," were omitted;
- (d) after point (3) there were inserted—

"(3a) 'national accreditation body' means the national accreditation body of the United Kingdom appointed in accordance with Article 4(1) of Regulation (EC) 765/2008<sup>4</sup>;"

- (e) after point (4) there were inserted—

"(4a) 'Delegated Regulation (EU) 2019/331' means the Free Allocation Regulation (as defined in the 2020 Order);

(4b) 'Implementing Regulation (EU) 2019/1842' means the Activity Level Changes Regulation (as defined in the 2020 Order);";

- (f) after point (6) there were inserted—

"(6a) 'annual activity level report' means a report submitted by an operator pursuant to Article 3(3) of Implementing Regulation (EU) 2019/1842;"

- (g) for point (7) there were substituted—

"(7) 'operator's or aircraft operator's report' means the annual emission report to be submitted by the operator or aircraft operator pursuant to a permit issued in accordance with Schedule 6 or 7 to the 2020 Order or pursuant to article 33 of the 2020 Order, the baseline data report submitted by the operator pursuant to Article 4(2) of Delegated Regulation (EU) 2019/331, the new entrant data report submitted by the operator pursuant to Article 5(5) of that Regulation or the annual activity level report;"

- (h) in point (13)—

- (i) in paragraph (a) "greenhouse gas emissions" were omitted;
- (ii) for paragraph (c) there were substituted—

"(c) for the purposes of verifying the baseline data report submitted by the operator pursuant to Article 4(2)(a) of Delegated Regulation (EU) 2019/331, the new entrant data report submitted by the operator pursuant to Article 5(5) of that Regulation or the annual activity level report, any act or omission of an act by the operator that is contrary to the requirements in the monitoring methodology plan;"

- (i) in points (22) and (23) for "EU" in each place there were substituted "UK";
- (j) in point (22) for "an" in the first place it occurs there were substituted "a";

- (k) in point (26) for "a" in the second place it occurs there were substituted "the";  
 (l) after point (27) there were inserted—

"(27a) 'monitoring methodology plan' has the same meaning as in Delegated Regulation (EU) 2019/331;"

- (m) after point (28) there were inserted—

"(28a) 'baseline period' has the same meaning as in Delegated Regulation (EU) 2019/331;"

- (n) after point (29) there were inserted—

"(30) 'activity level reporting period' means the applicable period preceding the submission of the annual activity level report pursuant to Article 3(1) of Implementing Regulation (EU) 2019/1842."

] <sup>1</sup>

#### Notes


- <sup>1</sup> Existing Sch.5 substituted for a new Sch.5 consisting of paras 1-56 by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.36 (December 31, 2020: substitution comes into force on 31st December 2020 as specified in SI 2020/1557 art.2(1) but cannot take effect until the commencement of SI 2020/1265 Sch.5 immediately after IP completion day as specified in SI 2020/1265 art.2(2))
- <sup>2</sup> Words substituted by Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2022/1173 Pt 2 art.14(2)(a) (January 1, 2023)
- <sup>3</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2022/1173 Pt 2 art.14(2)(b) (January 1, 2023)
- <sup>4</sup> Regulation (EC) 765/2008 is amended prospectively by S.I. 2019/696 with effect from IP completion day.

#### Commencement

Sch. 5 para. 4: December 31, 2020 shall come into force immediately after IP completion day (2020 c. 1 Pt 5 s. 39(1); SI 2020/1265 Pt 1 art. 2(2))

#### Extent

Sch. 5 para. 4(a)-(n): United Kingdom

 Law In Force

#### [ 5.

Article 4 is to be read as if—

- (a) for the words from "the relevant harmonised standards" to "*European Union*" there were substituted [ "the standard referred to in Annex 2" ] <sup>2</sup>;  
 (b) for "the applicable harmonised standards" there were substituted "those standards".

] <sup>1</sup>

#### Notes

- <sup>1</sup> Existing Sch.5 substituted for a new Sch.5 consisting of paras 1-56 by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.36 (December 31, 2020: substitution comes into force on 31st December

2020 as specified in SI 2020/1557 art.2(1) but cannot take effect until the commencement of SI 2020/1265 Sch.5 immediately after IP completion day as specified in SI 2020/1265 art.2(2))

- <sup>2</sup> Words substituted by Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2022/1173 Pt 2 art.14(3) (January 1, 2023)


### Commencement

Sch. 5 para. 5(a)-(o): December 31, 2020 shall come into force immediately after IP completion day (2020 c. 1 Pt 5 s. 39(1); SI 2020/1265 Pt 1 art. 2(2))

### Extent

Sch. 5 para. 5(a)-(o): United Kingdom

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 Law In Force

### [ 6.

Article 5 is to be read as if for "bodies" there were substituted "body".

] <sup>1</sup>

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### Notes

- <sup>1</sup> Existing Sch.5 substituted for a new Sch.5 consisting of paras 1-56 by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.36 (December 31, 2020: substitution comes into force on 31st December 2020 as specified in SI 2020/1557 art.2(1) but cannot take effect until the commencement of SI 2020/1265 Sch.5 immediately after IP completion day as specified in SI 2020/1265 art.2(2))


### Commencement

Sch. 5 para. 6: December 31, 2020 shall come into force immediately after IP completion day (2020 c. 1 Pt 5 s. 39(1); SI 2020/1265 Pt 1 art. 2(2))

### Extent

Sch. 5 para. 6: United Kingdom

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 Law In Force

### [ 7.

Article 6 is to be read as if for "or new entrant data report" there were substituted ", new entrant data report or annual activity level report".

] <sup>1</sup>

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### Notes

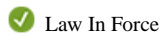
- <sup>1</sup> Existing Sch.5 substituted for a new Sch.5 consisting of paras 1-56 by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.36 (December 31, 2020: substitution comes into force on 31st December 2020 as specified in SI 2020/1557 art.2(1) but cannot take effect until the commencement of SI 2020/1265 Sch.5 immediately after IP completion day as specified in SI 2020/1265 art.2(2))

**Commencement**

Sch. 5 para. 7: December 31, 2020 shall come into force immediately after IP completion day (2020 c. 1 Pt 5 s. 39(1); SI 2020/1265 Pt 1 art. 2(2))

**Extent**

Sch. 5 para. 7: United Kingdom

**[ 8.**

Article 7 is to be read as if—

- (a) in paragraph 3 for "competent authorities responsible for Directive 2003/87/EC" there were substituted "regulator";
- (b) in paragraph 4—
  - (i) in point (a) for the words from "or in Annex IV" to the end there were substituted ", in Annex IV to Delegated Regulation (EU) 2019/331 or in Article 3(2) of Implementing Regulation (EU) 2019/1842, as appropriate;"
  - (ii) in point (b) "greenhouse gas emissions" were omitted;
  - (iii) in point (c) for "or new entrant data report" there were substituted ", new entrant data report or annual activity level report";
- (c) in paragraph 5 for the words from "or with" to "that irregularity" there were substituted ", Delegated Regulation (EU) 2019/331 or Implementing Regulation (EU) 2019/1842, that irregularity";
- (d) in paragraph 6 for the second subparagraph there were substituted—

"If the monitoring methodology plan has not been approved by the regulator pursuant to Article 8 of Delegated Regulation (EU) 2019/331 or is incomplete, or if significant modifications referred to in Article 9(5) of that Regulation have been made which have not been approved by the regulator, the verifier must advise the operator to obtain the necessary approval from the regulator."

] <sup>1</sup>

**Notes**

- <sup>1</sup> Existing Sch.5 substituted for a new Sch.5 consisting of paras 1-56 by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.36 (December 31, 2020: substitution comes into force on 31st December 2020 as specified in SI 2020/1557 art.2(1) but cannot take effect until the commencement of SI 2020/1265 Sch.5 immediately after IP completion day as specified in SI 2020/1265 art.2(2))

**Commencement**

Sch. 5 para. 8(a)-(b): December 31, 2020 shall come into force immediately after IP completion day (2020 c. 1 Pt 5 s. 39(1); SI 2020/1265 Pt 1 art. 2(2))

**Extent**

Sch. 5 para. 8(a)-(d): United Kingdom



## [ 9.

Article 10(1) is to be read as if—

- (a) in point (a) "greenhouse gas emissions" were omitted;
- (b) in point (h) for "or new entrant data report" there were substituted ", new entrant data report or annual activity level report";
- (c) in point (i) for the words from "and annual" to the end there were substituted "under Directive 2003/87/EC and any previous allocation periods under the UK ETS, together with annual activity level reports of the previous years submitted to the competent authority for the purposes of Implementing Regulation (EU) 2019/1842";
- (d) after point (k) there were inserted—

"(ka) if the monitoring methodology plan was modified, a record of all modifications in accordance with Article 9 of Delegated Regulation (EU) 2019/331";

- (e) in point (l) for "report referred to in Article 69(4)" there were substituted "reports referred to in Article 69(1) and (4)";
- (f) after point (l) there were inserted—

"(la) where applicable, information on how the operator has corrected nonconformities or addressed recommendations of improvements that were reported in the verification report concerning an annual activity level report from the previous year or a relevant baseline data report";

- (g) in point (n) after "methodology plan" there were inserted "as well as corrections of reported data";
- (h) in point (p)—
  - (i) for "Directive 2009/31/EC" there were substituted "the CCS licensing regime";
  - (ii) for "required by that Directive and the reports required by Article 14 of that Directive" there were substituted "and reports required by that regime".

] <sup>1</sup>

### Notes

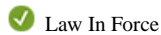
- <sup>1</sup> Existing Sch.5 substituted for a new Sch.5 consisting of paras 1-56 by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.36 (December 31, 2020: substitution comes into force on 31st December 2020 as specified in SI 2020/1557 art.2(1) but cannot take effect until the commencement of SI 2020/1265 Sch.5 immediately after IP completion day as specified in SI 2020/1265 art.2(2))

### Commencement

Sch. 5 para. 9: December 31, 2020 shall come into force immediately after IP completion day (2020 c. 1 Pt 5 s. 39(1); SI 2020/1265 Pt 1 art. 2(2))

### Extent

Sch. 5 para. 9(a)-(h)(ii): United Kingdom

**[ 10.**

Article 11(4) is to be read as if—

- (a) in point (b) the words from "or" to the end were omitted;
- (b) after point (b) there were inserted—

"(ba) whether there have been any modifications to the monitoring methodology plan during the baseline period or the activity level reporting period, as appropriate;"

- (c) in point (c) for the words from "notified" to the end there were substituted "notified to and, if required, approved by the regulator pursuant to Part 4 of or Schedule 6 to the 2020 Order";

- (d) in point (d) for the words from "point (b)" to the end there were substituted "point (ba) have been notified to and, if required, approved by the regulator pursuant to Schedule 6 to the 2020 Order".

**]**<sup>1</sup>

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**Notes**

- <sup>1</sup> Existing Sch.5 substituted for a new Sch.5 consisting of paras 1-56 by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.36 (December 31, 2020: substitution comes into force on 31st December 2020 as specified in SI 2020/1557 art.2(1) but cannot take effect until the commencement of SI 2020/1265 Sch.5 immediately after IP completion day as specified in SI 2020/1265 art.2(2))

**Commencement**

Sch. 5 para. 10: December 31, 2020 shall come into force immediately after IP completion day (2020 c. 1 Pt 5 s. 39(1); SI 2020/1265 Pt 1 art. 2(2))

**Extent**

Sch. 5 para. 10(a)-(d): United Kingdom

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**[ 11.**

Article 13(1)(c) is to be read as if for "or new entrant data report" there were substituted ", new entrant data report or annual activity level report".

**]**<sup>1</sup>

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**Notes**


- <sup>1</sup> Existing Sch.5 substituted for a new Sch.5 consisting of paras 1-56 by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.36 (December 31, 2020: substitution comes into force on 31st December 2020 as specified in SI 2020/1557 art.2(1) but cannot take effect until the commencement of SI 2020/1265 Sch.5 immediately after IP completion day as specified in SI 2020/1265 art.2(2))

**Commencement**

Sch. 5 para. 11: December 31, 2020 shall come into force immediately after IP completion day (2020 c. 1 Pt 5 s. 39(1); SI 2020/1265 Pt 1 art. 2(2))

**Extent**

Sch. 5 para. 11: United Kingdom

 Law In Force

**[ 12.**

Article 16(2) is to be read as if—

- (a) in point (b) for "or new entrant data report" there were substituted ", new entrant data report or annual activity level report";
- (b) in point (c) for "or new entrant data report" there were substituted ", new entrant data report or annual activity level report";
- (c) in point (d) "listed in Annex I to Directive 2003/87/EC" were omitted;
- (d) after point (f) there were inserted—

"(fa) for the purposes of verifying an annual activity level report, the accuracy of the parameters listed in Article 16(5), 19 20, 21 or 22 of Delegated Regulation (EU) 2019/331 as well as data required under paragraphs 1, 2 and 4 of Article 6 of Implementing Regulation (EU) 2019/1842;"

] <sup>1</sup>**Notes**

- <sup>1</sup> Existing Sch.5 substituted for a new Sch.5 consisting of paras 1-56 by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.36 (December 31, 2020: substitution comes into force on 31st December 2020 as specified in SI 2020/1557 art.2(1) but cannot take effect until the commencement of SI 2020/1265 Sch.5 immediately after IP completion day as specified in SI 2020/1265 art.2(2))

**Commencement**

Sch. 5 para. 12(a)-(c): December 31, 2020 shall come into force immediately after IP completion day (2020 c. 1 Pt 5 s. 39(1); SI 2020/1265 Pt 1 art. 2(2))

**Extent**

Sch. 5 para. 12(a)-(d): United Kingdom

 Law In Force

**[ 13.**

Article 17 is to be read as if—

- (a) in paragraph 3—
  - (i) in the words before point (a) for "or new entrant data report" there were substituted ", new entrant data report or annual activity level report";
  - (ii) in point (d) for "delegated acts adopted pursuant to Article 10b(5) of Directive 2003/87/EC" there were substituted "Commission Delegated Decision (EU) 2019/708";
  - (iii) at the end there were inserted—



"(e) whether the energy consumption has been correctly attributed to each sub-installation where applicable;  
 (f) whether the value of the parameters listed in Articles 16(5), 19, 20, 21 or 22 of Delegated Regulation (EU) 2019/331 is based on a correct application of that Regulation;  
 (g) for the purposes of verifying an annual activity level report and a new entrant data report, the date of start of normal operation as referred to in Article 5(5) of Delegated Regulation (EU) 2019/331;  
 (h) for the purposes of verifying an annual activity level report whether the parameters listed in points 2.3 to 2.7 of Annex IV to Delegated Regulation (EU) 2019/331, as appropriate to the installation, have been monitored and reported in the correct way in accordance with the monitoring methodology plan.";

(b) in paragraph 4 after "is not counted" there were inserted "as emitted";

(c) paragraph 5 were omitted.

] <sup>1</sup>

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#### Notes

- <sup>1</sup> Existing Sch.5 substituted for a new Sch.5 consisting of paras 1-56 by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.36 (December 31, 2020: substitution comes into force on 31st December 2020 as specified in SI 2020/1557 art.2(1) but cannot take effect until the commencement of SI 2020/1265 Sch.5 immediately after IP completion day as specified in SI 2020/1265 art.2(2))


#### Commencement

Sch. 5 para. 13(a)-(b): December 31, 2020 shall come into force immediately after IP completion day (2020 c. 1 Pt 5 s. 39(1); SI 2020/1265 Pt 1 art. 2(2))

#### Extent

Sch. 5 para. 13(a)-(c): United Kingdom

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 Law In Force

#### [ 14.

Article 18 is to be read as if for paragraph 3 there were substituted—

#### "3.

Where data gaps in baseline data reports, new entrant data reports or annual activity level reports have occurred, the verifier shall check whether methods are laid down in the monitoring methodology plan to deal with data gaps pursuant to Article 12 of Delegated Regulation (EU) 2019/331, whether those methods were appropriate for the specific situation and whether they have been applied correctly.

Where no applicable data gap method is laid down in the monitoring methodology plan, the verifier shall check whether the approach used by the operator to compensate for the missing data is based on reasonable evidence and ensures that the data required by Annex IV to Delegated Regulation (EU) 2019/331 or Article 3(2) of Implementing Regulation (EU) 2019/1842 are not underestimated or overestimated."

] <sup>1</sup>**Notes**


- <sup>1</sup> Existing Sch.5 substituted for a new Sch.5 consisting of paras 1-56 by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.36 (December 31, 2020: substitution comes into force on 31st December 2020 as specified in SI 2020/1557 art.2(1) but cannot take effect until the commencement of SI 2020/1265 Sch.5 immediately after IP completion day as specified in SI 2020/1265 art.2(2))

**Commencement**

Sch. 5 para. 14(a)-(c): December 31, 2020 shall come into force immediately after IP completion day (2020 c. 1 Pt 5 s. 39(1); SI 2020/1265 Pt 1 art. 2(2))

**Extent**

Sch. 5 para. 14(a)-(c): United Kingdom

 Law In Force

**[ 15.**

Article 21 is to be read as if—

- (a) in paragraph 4 for "or new entrant data report" there were substituted ", new entrant data report or annual activity level report";
- (b) in paragraph 5 for "or new entrant data report" there were substituted ", new entrant data report or annual activity level report".

] <sup>1</sup>**Notes**


- <sup>1</sup> Existing Sch.5 substituted for a new Sch.5 consisting of paras 1-56 by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.36 (December 31, 2020: substitution comes into force on 31st December 2020 as specified in SI 2020/1557 art.2(1) but cannot take effect until the commencement of SI 2020/1265 Sch.5 immediately after IP completion day as specified in SI 2020/1265 art.2(2))

**Commencement**

Sch. 5 para. 15(a)-(d)(ii): December 31, 2020 shall come into force immediately after IP completion day (2020 c. 1 Pt 5 s. 39(1); SI 2020/1265 Pt 1 art. 2(2))

**Extent**

Sch. 5 para. 15(a)-(d)(ii): United Kingdom

 Law In Force

**[ 16.**

Article 22 is to be read as if—

- (a) in paragraph 1—

- (i) in the first subparagraph for the words from "or Delegated" to "as appropriate" there were substituted ", Delegated Regulation (EU) 2019/331 or Implementing Regulation (EU) 2019/1842 as appropriate";
- (ii) in the third subparagraph for the words from "or Delegated" to "has been identified" there were substituted ", Delegated Regulation (EU) 2019/331 or Implementing Regulation (EU) 2019/1842 has been identified";
- (b) in paragraph 2 for the words from "or Delegated" to "that have" there were substituted ", Delegated Regulation (EU) 2019/331 or Implementing Regulation (EU) 2019/1842 that have";
- (c) in paragraph 3 in the fourth subparagraph for the words from "or Delegated" to "in accordance" there were substituted ", Delegated Regulation (EU) 2019/331 or Implementing Regulation (EU) 2019/1842 in accordance".

]¹

#### Notes

- ¹ Existing Sch.5 substituted for a new Sch.5 consisting of paras 1-56 by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.36 (December 31, 2020: substitution comes into force on 31st December 2020 as specified in SI 2020/1557 art.2(1) but cannot take effect until the commencement of SI 2020/1265 Sch.5 immediately after IP completion day as specified in SI 2020/1265 art.2(2))

#### Commencement

Sch. 5 para. 16: December 31, 2020 shall come into force immediately after IP completion day (2020 c. 1 Pt 5 s. 39(1); SI 2020/1265 Pt 1 art. 2(2))

#### Extent

Sch. 5 para. 16(a)-(c): United Kingdom

✓ Law In Force

#### [ 17.

Article 23(4) is to be read as if in the words before point (a) for "or new entrant data reports" there were substituted ", new entrant data reports or annual activity level reports".

]¹

#### Notes

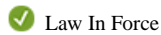
- ¹ Existing Sch.5 substituted for a new Sch.5 consisting of paras 1-56 by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.36 (December 31, 2020: substitution comes into force on 31st December 2020 as specified in SI 2020/1557 art.2(1) but cannot take effect until the commencement of SI 2020/1265 Sch.5 immediately after IP completion day as specified in SI 2020/1265 art.2(2))

#### Commencement

Sch. 5 para. 17: December 31, 2020 shall come into force immediately after IP completion day (2020 c. 1 Pt 5 s. 39(1); SI 2020/1265 Pt 1 art. 2(2))

#### Extent

Sch. 5 para. 17: United Kingdom



## [ 18.

Article 27 is to be read as if—

(a) in paragraph 1 in the words before point (a) for "or new entrant data report" there were substituted ", new entrant data report or annual activity level report";

(b) in paragraph 3—

(i) for point (f) there were substituted—

"(f) in the case of verification of a baseline data report or new entrant data report, unless the monitoring methodology plan has already been approved by the regulator, the verifier's confirmation that the monitoring methodology plan, so far as it is used as a basis for the report, is compliant with Delegated Regulation (EU) 2019/331;"

(ii) in point (g) for "per activity referred to in Annex 1 to Directive 2003/87/EC and per installation or aircraft operator" there were substituted "per regulated activity and per installation or per aviation activity and per aircraft operator";

(iii) after point (h) there were inserted—

"(ha) where it concerns the verification of the annual activity level report, aggregated annual verified data for each year in the activity level reporting period for each sub-installation for its annual activity level;"

(iv) in point (i) for "or baseline period" there were substituted ", baseline period or activity level reporting period";

(v) for point (o) there were substituted—

"(o) any issues of non-compliance with Implementing Regulation (EU) 2018/2066, Delegated Regulation (EU) 2019/331 or Implementing Regulation (EU) 2019/1842 which have become apparent during the verification;"

(vi) point (r) were omitted;

(vii) after point (s) there were inserted—

"(sa) where the verifier has observed relevant changes to the parameters listed in Article 16(5), 19, 20, 21 or 22 of Delegated Regulation (EU) 2019/331 or changes in the energy efficiency pursuant to paragraphs 1, 2 and 3 of Article 6 of Implementing Regulation 2019/1842, a description of those changes and related remarks;

(sb) where applicable, confirmation that the date of start of normal operation as referred to in Article 5(5) of Delegated Regulation (EU) 2019/331 has been checked;"

(viii) in point (t) for "EU" in both places there were substituted "UK";

(c) in paragraph 4—

- (i) in the words before point (a), for "or Delegated" to "in sufficient detail" there were substituted ", Delegated Regulation (EU) 2019/331 or Implementing Regulation (EU) 2019/1842 in sufficient detail";
- (ii) for point (a) there were substituted—

"(a) the size and nature of the misstatement, non-conformity or non-compliance with Implementing Regulation (EU) 2018/2066, Delegated Regulation (EU) 2019/331 or Implementing Regulation (EU) 2019/1842;"

- (iii) for point (d) there were substituted—

"(d) to which Article in Implementing Regulation (EU) 2018/2066, Delegated Regulation (EU) 2019/331 or Implementing Regulation (EU) 2019/1842 the non-compliance relates.";

- (d) paragraph 5 were omitted.

] <sup>1</sup>

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#### Notes

- <sup>1</sup> Existing Sch.5 substituted for a new Sch.5 consisting of paras 1-56 by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.36 (December 31, 2020: substitution comes into force on 31st December 2020 as specified in SI 2020/1557 art.2(1) but cannot take effect until the commencement of SI 2020/1265 Sch.5 immediately after IP completion day as specified in SI 2020/1265 art.2(2))

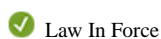
#### Commencement

Sch. 5 para. 18: December 31, 2020 shall come into force immediately after IP completion day (2020 c. 1 Pt 5 s. 39(1); SI 2020/1265 Pt 1 art. 2(2))

#### Extent

Sch. 5 para. 18(a)-(d): United Kingdom

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#### [ 19.

Article 28 is to be read as if point (e) were omitted.

] <sup>1</sup>

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#### Notes


- <sup>1</sup> Existing Sch.5 substituted for a new Sch.5 consisting of paras 1-56 by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.36 (December 31, 2020: substitution comes into force on 31st December 2020 as specified in SI 2020/1557 art.2(1) but cannot take effect until the commencement of SI 2020/1265 Sch.5 immediately after IP completion day as specified in SI 2020/1265 art.2(2))

#### Commencement

Sch. 5 para. 19: December 31, 2020 shall come into force immediately after IP completion day (2020 c. 1 Pt 5 s. 39(1); SI 2020/1265 Pt 1 art. 2(2))

**Extent**

Sch. 5 para. 19: United Kingdom

 Law In Force

**[ 20.**

Article 29 is to be read as if after paragraph 1 there were inserted—

**"1A.**

For the purposes of the verification of the annual activity level report, the verifier shall assess whether the operator has corrected the non-conformities indicated in the verification report related to the corresponding baseline data report, the new entrant data report or the annual activity level report from the previous activity level reporting period.

If the operator has not corrected those non-conformities, the verifier shall consider whether the omission increases or may increase the risk of misstatements.

The verifier shall report in the verification report whether those non-conformities have been resolved by the operator."

]<sup>1</sup>

**Notes**


- <sup>1</sup> Existing Sch.5 substituted for a new Sch.5 consisting of paras 1-56 by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.36 (December 31, 2020: substitution comes into force on 31st December 2020 as specified in SI 2020/1557 art.2(1) but cannot take effect until the commencement of SI 2020/1265 Sch.5 immediately after IP completion day as specified in SI 2020/1265 art.2(2))

**Commencement**

Sch. 5 para. 20: December 31, 2020 shall come into force immediately after IP completion day (2020 c. 1 Pt 5 s. 39(1); SI 2020/1265 Pt 1 art. 2(2))

**Extent**

Sch. 5 para. 20: United Kingdom

 Law In Force

**[ 21.**

Article 30(1)(e) is to be read as if for "and new entrant reports" there were substituted ", new entrant data reports and annual activity level reports".

]<sup>1</sup>

**Notes**

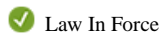
- <sup>1</sup> Existing Sch.5 substituted for a new Sch.5 consisting of paras 1-56 by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.36 (December 31, 2020: substitution comes into force on 31st December 2020 as specified in SI 2020/1557 art.2(1) but cannot take effect until the commencement of SI 2020/1265 Sch.5 immediately after IP completion day as specified in SI 2020/1265 art.2(2))

**Commencement**

Sch. 5 para. 21: December 31, 2020 shall come into force immediately after IP completion day (2020 c. 1 Pt 5 s. 39(1); SI 2020/1265 Pt 1 art. 2(2))

**Extent**

Sch. 5 para. 21: United Kingdom

**[ 22.**

Article 31 is to be read as if—

- (a) in paragraph 1—
  - (i) for "a" in the first place it occurs there were substituted "the";
  - (ii) in point (c) after "paragraph 3" there were inserted ", read with paragraph 3b,";
- (b) in paragraph 3—
  - (i) in point (a) after "emission report" there were inserted "or annual activity level report";
  - (ii) in point (b) at the beginning there were inserted "for the purposes of verifying the operator's emission report,";
  - (iii) after point (b) there were inserted—
    - "(ba) for the purposes of verifying the operator's annual activity level report, if a verifier has not carried out a site visit during the verification of an annual activity level report or a baseline data report in the two activity level reporting periods immediately preceding the current activity level reporting period;"
  - (iv) after point (c) there were inserted—
    - "(ca) if, during the activity level reporting period, there have been significant changes to the installation or its sub-installations which require significant modifications to the monitoring methodology plan, including those changes referred to in Article 9(5) of Delegated Regulation (EU) 2019/331;"
- (c) after paragraph 3 there were inserted—

**"3A.**

The reference in point (b) of paragraph 3 to reporting periods immediately preceding the current reporting period includes reporting periods for the purposes of Directive 2003/87/EC.

**3B.**

In respect of installations within Article 32(5), points (b) and (ba) of paragraph 3 apply as if, in each of those points, for "two" there were substituted "four".;

- (d) for paragraph 4 there were substituted—

**"4.**

Points (c) and (ca) of paragraph 3 are not applicable where, during the reporting period, there have been only modifications of the default value as referred to in Article 15(3)(h) of Implementing Regulation (EU) 2018/2066 or Article 9(5)(c) of Delegated Regulation (EU) 2019/331."

] <sup>1</sup>**Notes**

- <sup>1</sup> Existing Sch.5 substituted for a new Sch.5 consisting of paras 1-56 by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.36 (December 31, 2020: substitution comes into force on 31st December 2020 as specified in SI 2020/1557 art.2(1) but cannot take effect until the commencement of SI 2020/1265 Sch.5 immediately after IP completion day as specified in SI 2020/1265 art.2(2))

**Commencement**

Sch. 5 para. 22: December 31, 2020 shall come into force immediately after IP completion day (2020 c. 1 Pt 5 s. 39(1); SI 2020/1265 Pt 1 art. 2(2))

**Extent**

Sch. 5 para. 22(a)-(d): United Kingdom



Law In Force

**[ 23.**

Article 32 is to be read as if—

- (a) in point (1) after "verification" there were inserted "of an operator's emission report";
- (b) in point (2) after "verification" there were inserted "of an operator's emission report";
- (c) in point (3) after "verification" there were inserted "of an operator's emission report";
- (d) after point (3) there were inserted—

"(3a) the verification of an operator's annual activity level report concerns a category A installation referred to in Article 19(2)(a) of Implementing Regulation (EU) 2018/2066, a category B installation referred to in Article 19(2)(b) of that Implementing Regulation or an installation with low emissions as referred to in Article 47(2) of that Implementing Regulation and:

- (a) that installation's only sub-installation is one to which a product benchmark pursuant to Article 10(2) of Delegated Regulation (EU) 2019/331 is applicable; and
- (b) the production data relevant for the product benchmark has been evaluated as part of an audit for financial accounting purposes and the operator provides evidence of that;

(3b) the verification of an operator's annual activity level report concerns a category A installation referred to in Article 19(2)(a) of Implementing Regulation (EU) 2018/2066, a category B installation referred to in Article 19(2)(b) of that Implementing Regulation or an installation with low emissions as referred to in Article 47(2) of that Implementing Regulation and:

- (a) the installation has no more than two sub-installations;



- (b) if the installation has two sub-installations, one contributes less than 5% to the installation's total final allocation of allowances; and
  - (c) the verifier has sufficient data available to assess the split of sub-installations if relevant;";
- (3c) the verification of an operator's annual activity level report concerns a category A installation referred to in Article 19(2)(a) of Implementing Regulation (EU) 2018/2066, a category B installation referred to in Article 19(2)(b) of that Implementing Regulation or an installation with low emissions as referred to in Article 47(2) of that Implementing Regulation and:
  - (a) the installation has only heat benchmark or district heating sub-installations; and
  - (b) the verifier has sufficient data available to assess the split of sub-installations if relevant;";
- (e) in point (4)—
  - (i) in the words before point (a) after "verification" there were inserted "of the operator's emission report or annual activity level report";
  - (ii) in paragraph (c) after "2018/2066" there were inserted "or Article 11 of Delegated Regulation (EU) 2019/331";
- (f) in point (5)—
  - (i) in the words before point (a) after "verification" there were inserted "of the operator's emission report or annual activity level report";
  - (ii) in paragraph (b) after "2018/2066" there were inserted "or Article 11 of Delegated Regulation (EU) 2019/331";
- (g) at the end there were inserted—

"Point (3b) may not be applied if the sub-installation contributing 95% or more to the installation's total final allocation of allowances is a sub-installation to which a product benchmark pursuant to Article 10(2) of Delegated Regulation (EU) 2019/331 is applicable, unless the production data relevant for the product benchmark has been evaluated as part of an audit for financial accounting purposes and the operator provides evidence of that."

]<sup>1</sup>

## Notes

- <sup>1</sup> Existing Sch.5 substituted for a new Sch.5 consisting of paras 1-56 by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.36 (December 31, 2020: substitution comes into force on 31st December 2020 as specified in SI 2020/1557 art.2(1) but cannot take effect until the commencement of SI 2020/1265 Sch.5 immediately after IP completion day as specified in SI 2020/1265 art.2(2))

## Commencement

Sch. 5 para. 23(a)-(b): December 31, 2020 shall come into force immediately after IP completion day (2020 c. 1 Pt 5 s. 39(1); SI 2020/1265 Pt 1 art. 2(2))

## Extent

Sch. 5 para. 23(a)-(g): United Kingdom



## [ 24.

The Verification Regulation 2018 is to be read as if after Article 34 there were inserted—

***"Article 34a Virtual site visits [ by verifiers of installations ]<sup>2</sup> because of force majeure***

Where serious, extraordinary and unforeseeable circumstances, outside the control of the operator [...]<sup>3</sup>, prevent the verifier from carrying out a physical site visit in accordance with Article 21(1) and where these circumstances cannot, after using all reasonable efforts, be overcome, the verifier may decide, subject to the approval of the regulator in accordance with the second and third subparagraph of this Article, to carry out a virtual site visit. The verifier shall take measures to reduce the verification risk to an acceptable level and carry out a physical visit to the site of the installation [...]<sup>3</sup> without undue delay. The decision to carry out a virtual site visit shall be based on the outcome of the risk analysis and after determining that the conditions for carrying out a virtual site visit are met. The verifier shall inform the operator [...]<sup>3</sup> thereof without undue delay.

The operator [...]<sup>4</sup> shall submit an application to the regulator requesting the regulator to approve the verifier's decision to carry out a virtual site visit.

On an application submitted by the operator [...]<sup>5</sup> concerned, the regulator shall decide whether to approve the verifier's decision to carry out a virtual site visit, taking into consideration all of the following elements:

- (a) evidence that it is not possible to carry out a physical site visit because of the force majeure circumstances;
- (b) the information provided by the verifier on the outcome of the risk analysis;
- (c) information on how the virtual site visit will be carried out;
- (d) evidence that measures are taken to reduce the verification risk to an acceptable level. [...]<sup>6</sup>

***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."

] <sup>1</sup>

#### Notes


- <sup>1</sup> Existing Sch.5 substituted for a new Sch.5 consisting of paras 1-56 by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.36 (December 31, 2020: substitution comes into force on 31st December 2020 as specified in SI 2020/1557 art.2(1) but cannot take effect until the commencement of SI 2020/1265 Sch.5 immediately after IP completion day as specified in SI 2020/1265 art.2(2))
- <sup>2</sup> Words inserted by Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2022/1173 Pt 2 art.14(4)(a)(i) (January 1, 2023)
- <sup>3</sup> Words revoked by Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2022/1173 Pt 2 art.14(4)(a)(ii) (January 1, 2023)
- <sup>4</sup> Words revoked by Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2022/1173 Pt 2 art.14(4)(a)(iii) (January 1, 2023)
- <sup>5</sup> Words revoked by Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2022/1173 Pt 2 art.14(4)(a)(iv) (January 1, 2023)
- <sup>6</sup> Article 34b inserted by Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2022/1173 Pt 2 art.14(4)(b) (January 1, 2023)

#### Commencement

Sch. 5 para. 24(a)-(b)(ii): December 31, 2020 shall come into force immediately after IP completion day (2020 c. 1 Pt 5 s. 39(1); SI 2020/1265 Pt 1 art. 2(2))

#### Extent

Sch. 5 para. 24(a)-(b)(ii): United Kingdom

 Law In Force

#### [ 25.

Article 36 is to be read as if—

- (a) in paragraphs 2(b) and 6 for "EU" in each place there were substituted "UK";
- (b) in paragraph 6 for "an" there were substituted "a".

] <sup>1</sup>

#### Notes

- <sup>1</sup> Existing Sch.5 substituted for a new Sch.5 consisting of paras 1-56 by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.36 (December 31, 2020: substitution comes into force on 31st December 2020 as specified in SI 2020/1557 art.2(1) but cannot take effect until the commencement of SI 2020/1265 Sch.5 immediately after IP completion day as specified in SI 2020/1265 art.2(2))

**Commencement**

Sch. 5 para. 25(a)-(b)(ii): December 31, 2020 shall come into force immediately after IP completion day (2020 c. 1 Pt 5 s. 39(1); SI 2020/1265 Pt 1 art. 2(2))

**Extent**

Sch. 5 para. 25(a)-(b)(ii): United Kingdom

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**[ 26.**

Article 37 is to be read as if—

- (a) in paragraph 2 for "an" there were substituted "a";
- (b) in paragraphs 2 and 6 for "EU" in each place there were substituted "UK";
- (c) in paragraph 5—
  - (i) in the first subparagraph the second sentence were omitted;
  - (ii) in the second subparagraph for "and new entrant data reports" there were substituted ", new entrant data reports or annual activity level reports".

] <sup>1</sup>

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**Notes**

- <sup>1</sup> Existing Sch.5 substituted for a new Sch.5 consisting of paras 1-56 by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.36 (December 31, 2020: substitution comes into force on 31st December 2020 as specified in SI 2020/1557 art.2(1) but cannot take effect until the commencement of SI 2020/1265 Sch.5 immediately after IP completion day as specified in SI 2020/1265 art.2(2))

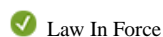
**Commencement**

Sch. 5 para. 26(a)-(b): December 31, 2020 shall come into force immediately after IP completion day (2020 c. 1 Pt 5 s. 39(1); SI 2020/1265 Pt 1 art. 2(2))

**Extent**

Sch. 5 para. 26(a)-(c)(ii): United Kingdom

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**[ 27.**

Article 38 is to be read as if—

- (a) for "EU ETS" in each place (including the heading) there were substituted "UK ETS";
- (b) in paragraph 1 in the words before point (a), for "An" there were substituted "A";
- (c) for paragraph 1(a) there were substituted—

"(a) knowledge of the 2020 Order, Implementing Regulation (EU) 2018/2066, Delegated Regulation (EU) 2019/331 and Implementing Regulation (EU) 2019/1842 in the case of verification of the baseline data report, new entrant data report or annual activity level report, this Regulation, relevant standards, and other relevant legislation and applicable guidelines;"

- (d) in paragraph 2—
- (i) for "An" there were substituted "A";
  - (ii) for "an" there were substituted "a".

] <sup>1</sup>

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#### Notes

- <sup>1</sup> Existing Sch.5 substituted for a new Sch.5 consisting of paras 1-56 by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.36 (December 31, 2020: substitution comes into force on 31st December 2020 as specified in SI 2020/1557 art.2(1) but cannot take effect until the commencement of SI 2020/1265 Sch.5 immediately after IP completion day as specified in SI 2020/1265 art.2(2))

#### Extent

Sch. 5 para. 27(a)-(d)(ii): United Kingdom

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 Law In Force

#### [ 28.

Article 39(2) is to be read as if for "an EU" there were substituted "a UK".

] <sup>1</sup>

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#### Notes

- <sup>1</sup> Existing Sch.5 substituted for a new Sch.5 consisting of paras 1-56 by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.36 (December 31, 2020: substitution comes into force on 31st December 2020 as specified in SI 2020/1557 art.2(1) but cannot take effect until the commencement of SI 2020/1265 Sch.5 immediately after IP completion day as specified in SI 2020/1265 art.2(2))

#### Extent

Sch. 5 para. 28: United Kingdom

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 Law In Force

#### [ 29.

Article 40 is to be read as if for "EU" in each place there were substituted "UK".

] <sup>1</sup>

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#### Notes

- <sup>1</sup> Existing Sch.5 substituted for a new Sch.5 consisting of paras 1-56 by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.36 (December 31, 2020: substitution comes into force on 31st December 2020 as specified in SI 2020/1557 art.2(1) but cannot take effect until the commencement of SI 2020/1265 Sch.5 immediately after IP completion day as specified in SI 2020/1265 art.2(2))

#### Extent

Sch. 5 para. 29: United Kingdom

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✓ Law In Force

**[ 30.**

Article 41 is to be read as if "harmonised" were omitted in both places.

] <sup>1</sup>

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**Notes**

- <sup>1</sup> Existing Sch.5 substituted for a new Sch.5 consisting of paras 1-56 by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.36 (December 31, 2020: substitution comes into force on 31st December 2020 as specified in SI 2020/1557 art.2(1) but cannot take effect until the commencement of SI 2020/1265 Sch.5 immediately after IP completion day as specified in SI 2020/1265 art.2(2))

**Extent**

Sch. 5 para. 30: United Kingdom

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✓ Law In Force

**[ 31.**

Article 42 is to be read as if "harmonised" were omitted in both places.

] <sup>1</sup>

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**Notes**

- <sup>1</sup> Existing Sch.5 substituted for a new Sch.5 consisting of paras 1-56 by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.36 (December 31, 2020: substitution comes into force on 31st December 2020 as specified in SI 2020/1557 art.2(1) but cannot take effect until the commencement of SI 2020/1265 Sch.5 immediately after IP completion day as specified in SI 2020/1265 art.2(2))

**Extent**

Sch. 5 para. 31: United Kingdom

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✓ Law In Force

**[ 32.**

Article 43 is to be read as if—

- (a) in paragraph 1 at the end there were inserted "or under the trading scheme established by the 2020 Order";
- (b) in paragraphs 2, 5 and 6 "harmonised" were omitted in each place;
- (c) after paragraph 6 there were inserted—

**"6A.**

When verifying the same operator or aircraft operator as in the previous year, the verifier shall consider the risk to impartiality and take measures to reduce the risk to impartiality.";

- (d) in paragraph 7 for "EU" in both places there were substituted "UK";
- (e) at the end there were inserted—

**"8.**

If the UK ETS lead auditor undertakes verifications of emissions or allocation data for an installation in respect of five consecutive years beginning with 2021 or a subsequent year, then the UK ETS lead auditor may not undertake such verifications for that installation in respect of any of the next three years."

] <sup>1</sup>

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#### Notes

- <sup>1</sup> Existing Sch.5 substituted for a new Sch.5 consisting of paras 1-56 by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.36 (December 31, 2020: substitution comes into force on 31st December 2020 as specified in SI 2020/1557 art.2(1) but cannot take effect until the commencement of SI 2020/1265 Sch.5 immediately after IP completion day as specified in SI 2020/1265 art.2(2))

#### Extent

Sch. 5 para. 32(a)-(e): United Kingdom

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 Law In Force

**[ 33.**

Article 45 is to be read as if, in the words before point (a), for "each" there were substituted "the".

] <sup>1</sup>

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#### Notes

- <sup>1</sup> Existing Sch.5 substituted for a new Sch.5 consisting of paras 1-56 by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.36 (December 31, 2020: substitution comes into force on 31st December 2020 as specified in SI 2020/1557 art.2(1) but cannot take effect until the commencement of SI 2020/1265 Sch.5 immediately after IP completion day as specified in SI 2020/1265 art.2(2))

#### Extent

Sch. 5 para. 33: United Kingdom

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 Law In Force

**[ 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.

] <sup>1</sup>

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#### Notes

- <sup>1</sup> Substituted by Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2022/1173 Pt 2 art.14(5) (January 1, 2023)

**Extent**

Sch. 5 para. 34(a)-(b): United Kingdom

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✓ Law In Force

**[ 35.**

Article 47 is to be read as if—

- (a) in paragraph 1 for "each" there were substituted "the";
- (b) in paragraph 2 "harmonised" were omitted.

] <sup>1</sup>

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**Notes**

- <sup>1</sup> Existing Sch.5 substituted for a new Sch.5 consisting of paras 1-56 by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.36 (December 31, 2020: substitution comes into force on 31st December 2020 as specified in SI 2020/1557 art.2(1) but cannot take effect until the commencement of SI 2020/1265 Sch.5 immediately after IP completion day as specified in SI 2020/1265 art.2(2))

**Extent**

Sch. 5 para. 35(a)-(b): United Kingdom

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✓ Law In Force

**[ 36.**

Article 48 is to be read as if in each of paragraphs 1 and 2 "harmonised" were omitted.

] <sup>1</sup>

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**Notes**

- <sup>1</sup> Existing Sch.5 substituted for a new Sch.5 consisting of paras 1-56 by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.36 (December 31, 2020: substitution comes into force on 31st December 2020 as specified in SI 2020/1557 art.2(1) but cannot take effect until the commencement of SI 2020/1265 Sch.5 immediately after IP completion day as specified in SI 2020/1265 art.2(2))

**Extent**

Sch. 5 para. 36: United Kingdom

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✓ Law In Force

**[ 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<sup>2</sup> 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<sup>3</sup>, in conjunction with ISO/IEC 17029:2019<sup>4</sup>.

] <sup>1</sup>**Notes**

- <sup>1</sup> Substituted by Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2022/1173 Pt 2 art.14(6) (January 1, 2023)
- <sup>2</sup> 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.
- <sup>3</sup> 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.
- <sup>4</sup> 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.

**Extent**

Sch. 5 para. 37(a)-(c): United Kingdom

 Law In Force

**[ 38.**

Article 50 is to be read as if—

- (a) in paragraph 3 "harmonised" were omitted;
- (b) paragraph 5 were omitted.

] <sup>1</sup>**Notes**

- <sup>1</sup> Existing Sch.5 substituted for a new Sch.5 consisting of paras 1-56 by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.36 (December 31, 2020: substitution comes into force on 31st December 2020 as specified in SI 2020/1557 art.2(1) but cannot take effect until the commencement of SI 2020/1265 Sch.5 immediately after IP completion day as specified in SI 2020/1265 art.2(2))

**Extent**

Sch. 5 para. 38(a)-(b): United Kingdom

✓ Law In Force

**[ 39.**

Article 51(2) is to be read as if "harmonised" were omitted.

] <sup>1</sup>

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**Notes**

- <sup>1</sup> Existing Sch.5 substituted for a new Sch.5 consisting of paras 1-56 by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.36 (December 31, 2020: substitution comes into force on 31st December 2020 as specified in SI 2020/1557 art.2(1) but cannot take effect until the commencement of SI 2020/1265 Sch.5 immediately after IP completion day as specified in SI 2020/1265 art.2(2))

**Extent**

Sch. 5 para. 39: United Kingdom

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✓ Law In Force

**[ 40.**

Article 52(2) is to be read as if "harmonised" were omitted.

] <sup>1</sup>

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**Notes**

- <sup>1</sup> Existing Sch.5 substituted for a new Sch.5 consisting of paras 1-56 by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.36 (December 31, 2020: substitution comes into force on 31st December 2020 as specified in SI 2020/1557 art.2(1) but cannot take effect until the commencement of SI 2020/1265 Sch.5 immediately after IP completion day as specified in SI 2020/1265 art.2(2))

**Extent**

Sch. 5 para. 40: United Kingdom

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✓ Law In Force

**[ 41.**

Article 54(4) is to be read as if for "Member States" there were substituted "The national accreditation body".

] <sup>1</sup>

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**Notes**

- <sup>1</sup> Existing Sch.5 substituted for a new Sch.5 consisting of paras 1-56 by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.36 (December 31, 2020: substitution comes into force on 31st December 2020 as specified in SI 2020/1557 art.2(1) but cannot take effect until the commencement of SI 2020/1265 Sch.5 immediately after IP completion day as specified in SI 2020/1265 art.2(2))

**Extent**

Sch. 5 para. 41: United Kingdom

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✓ Law In Force

**[ 42.**

Article 55 is to be read as if—

- (a) in paragraph 1 for the words from "national accreditation bodies" to the end there were substituted "national accreditation body";
- (b) paragraphs 2 to 5 were omitted;
- (c) in paragraph 6 "harmonised" were omitted.

] <sup>1</sup>

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**Notes**

- <sup>1</sup> Existing Sch.5 substituted for a new Sch.5 consisting of paras 1-56 by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.36 (December 31, 2020: substitution comes into force on 31st December 2020 as specified in SI 2020/1557 art.2(1) but cannot take effect until the commencement of SI 2020/1265 Sch.5 immediately after IP completion day as specified in SI 2020/1265 art.2(2))

**Extent**

Sch. 5 para. 42(a)-(c): United Kingdom

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✓ Law In Force

**[ 43.**

Article 57(4) is to be read as if "harmonised" were omitted.

] <sup>1</sup>

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**Notes**

- <sup>1</sup> Existing Sch.5 substituted for a new Sch.5 consisting of paras 1-56 by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.36 (December 31, 2020: substitution comes into force on 31st December 2020 as specified in SI 2020/1557 art.2(1) but cannot take effect until the commencement of SI 2020/1265 Sch.5 immediately after IP completion day as specified in SI 2020/1265 art.2(2))

**Extent**

Sch. 5 para. 43: United Kingdom

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✓ Law In Force

**[ 44.**

Article 59(1) is to be read as if—

- (a) in point (a) for "harmonised standard pursuant to Regulation (EC) No 765/2008" there were substituted "standard";
- (b) in point (b) for the words from "Directive 2003/87/EC" to "where" there were substituted "the 2020 Order, Implementing Regulation (EU) 2018/2066, Delegated Regulation (EU) 2019/331 and Implementing Regulation 2019/1842 where".

] <sup>1</sup>

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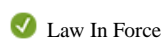
**Notes**

- <sup>1</sup> Existing Sch.5 substituted for a new Sch.5 consisting of paras 1-56 by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.36 (December 31, 2020: substitution comes into force on 31st December 2020 as specified in SI 2020/1557 art.2(1) but cannot take effect until the commencement of SI 2020/1265 Sch.5 immediately after IP completion day as specified in SI 2020/1265 art.2(2))

**Extent**

Sch. 5 para. 44(a)-(b): United Kingdom

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**[ 45.**

Article 60(2)(a) is to be read as if for the words from "Directive 2003/87/EC" to "where" there were substituted "the 2020 Order, Implementing Regulation (EU) 2018/2066, Delegated Regulation (EU) 2019/331 and Implementing Regulation 2019/1842 where".

]<sup>1</sup>

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**Notes**

- <sup>1</sup> Existing Sch.5 substituted for a new Sch.5 consisting of paras 1-56 by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.36 (December 31, 2020: substitution comes into force on 31st December 2020 as specified in SI 2020/1557 art.2(1) but cannot take effect until the commencement of SI 2020/1265 Sch.5 immediately after IP completion day as specified in SI 2020/1265 art.2(2))

**Extent**

Sch. 5 para. 45: United Kingdom

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**[ 46.**

Article 63(2) is to be read as if for "harmonised standard pursuant to Regulation (EC) No 765/2008" there were substituted "standard".

]<sup>1</sup>

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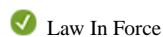
**Notes**

- <sup>1</sup> Existing Sch.5 substituted for a new Sch.5 consisting of paras 1-56 by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.36 (December 31, 2020: substitution comes into force on 31st December 2020 as specified in SI 2020/1557 art.2(1) but cannot take effect until the commencement of SI 2020/1265 Sch.5 immediately after IP completion day as specified in SI 2020/1265 art.2(2))

**Extent**

Sch. 5 para. 46: United Kingdom

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**[ 47.**

Article 69 is to be read as if—

(a) in paragraph 1—

(i) for "Member States" there were substituted "The regulator";

(ii) the words from "in accordance with Article 74(1)" to the end were omitted;

(b) in paragraph 2 "in accordance with Article 74(2) of Implementing Regulation (EU) 2018/2066" were omitted.

]<sup>1</sup>

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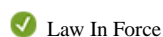
**Notes**

- <sup>1</sup> Existing Sch.5 substituted for a new Sch.5 consisting of paras 1-56 by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.36 (December 31, 2020: substitution comes into force on 31st December 2020 as specified in SI 2020/1557 art.2(1) but cannot take effect until the commencement of SI 2020/1265 Sch.5 immediately after IP completion day as specified in SI 2020/1265 art.2(2))

**Extent**

Sch. 5 para. 47(a)-(b): United Kingdom

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**[ 48.**

Article 70 is to be read as if—

(a) in paragraph 1—

(i) for "Member State" there were substituted "UK ETS authority";

(ii) for "their" there were substituted "the";

(iii) ", or where applicable, the national authority entrusted with the certification of verifiers," were omitted;

(b) in paragraph 2—

(i) for the words from "Where" to "competent authorities" there were substituted "The Environment Agency or such other regulator as may be designated by the UK ETS authority from time to time is";

(ii) after "information" there were inserted "for the purposes of this Chapter".

]<sup>1</sup>

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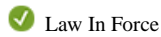
**Notes**

- <sup>1</sup> Existing Sch.5 substituted for a new Sch.5 consisting of paras 1-56 by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.36 (December 31, 2020: substitution comes into force on 31st December 2020 as specified in SI 2020/1557 art.2(1) but cannot take effect until the commencement of SI 2020/1265 Sch.5 immediately after IP completion day as specified in SI 2020/1265 art.2(2))

**Extent**

Sch. 5 para. 48(a)-(b)(ii): United Kingdom

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**[ 49.**

Article 71 is to be read as if—

- (a) in paragraph 1 in the words before point (a)—
  - (i) "of each Member State" were omitted;
  - (ii) for "that" in the first place it occurs there were substituted "the";
  - (iii) for "those Member States" there were substituted "the United Kingdom";
- (b) paragraph (1)(d) were omitted;
- (c) in paragraph 3—
  - (i) in the words before point (a), for "that" in the second place it occurs there were substituted "the";
  - (ii) in point (a) for "that" in the second place it occurs there were substituted "the".

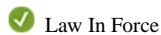
] <sup>1</sup>

**Notes**

- <sup>1</sup> Existing Sch.5 substituted for a new Sch.5 consisting of paras 1-56 by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.36 (December 31, 2020: substitution comes into force on 31st December 2020 as specified in SI 2020/1557 art.2(1) but cannot take effect until the commencement of SI 2020/1265 Sch.5 immediately after IP completion day as specified in SI 2020/1265 art.2(2))

**Extent**

Sch. 5 para. 49(a)-(c)(ii): United Kingdom

**[ 50.**

Article 72 is to be read as if—

- (a) for "a national" there were substituted "the national";
- (b) for the words from "following parties" to the end there were substituted "regulator".

] <sup>1</sup>

**Notes**

- <sup>1</sup> Existing Sch.5 substituted for a new Sch.5 consisting of paras 1-56 by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.36 (December 31, 2020: substitution comes into force on 31st December 2020 as specified in SI 2020/1557 art.2(1) but cannot take effect until the commencement of SI 2020/1265 Sch.5 immediately after IP completion day as specified in SI 2020/1265 art.2(2))

**Extent**

Sch. 5 para. 50(a)-(b): United Kingdom

**[ 51.**

Article 73(1) is to be read as if—


- (a) for "of the Member State where the verifier is carrying out the verification" there were substituted "of the operator of an installation or of an aircraft operator whose data is verified by a verifier";
- (b) "which has accredited that verifier" were omitted.

] <sup>1</sup>**Notes**

- <sup>1</sup> Existing Sch.5 substituted for a new Sch.5 consisting of paras 1-56 by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.36 (December 31, 2020: substitution comes into force on 31st December 2020 as specified in SI 2020/1557 art.2(1) but cannot take effect until the commencement of SI 2020/1265 Sch.5 immediately after IP completion day as specified in SI 2020/1265 art.2(2))

**Extent**

Sch. 5 para. 51(a)-(b): United Kingdom

 Law In Force

**[ 52.**

Article 76 is to be read as if—

- (a) in paragraph 1—
  - (i) for "National accreditation bodies, or where applicable national authorities referred to in Article 55(2)," there were substituted "The national accreditation body";
  - (ii) "other national accreditation bodies," were omitted;
  - (iii) for "competent authorities" there were substituted "regulators";
  - (iv) the second subparagraph were omitted;
- (b) in paragraph 2(a) for "that" there were substituted "the";
- (c) paragraph 2(b) were omitted.

] <sup>1</sup>**Notes**

- <sup>1</sup> Existing Sch.5 substituted for a new Sch.5 consisting of paras 1-56 by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.36 (December 31, 2020: substitution comes into force on 31st December 2020 as specified in SI 2020/1557 art.2(1) but cannot take effect until the commencement of SI 2020/1265 Sch.5 immediately after IP completion day as specified in SI 2020/1265 art.2(2))

**Extent**

Sch. 5 para. 52(a)-(c): United Kingdom

 Law In Force

**[ 53.**

Article 77(1)(b) is to be read as if for "or new entrant data reports" there were substituted ", new entrant data reports or annual activity level reports".

] <sup>1</sup>

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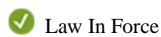
**Notes**

- <sup>1</sup> Existing Sch.5 substituted for a new Sch.5 consisting of paras 1-56 by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.36 (December 31, 2020: substitution comes into force on 31st December 2020 as specified in SI 2020/1557 art.2(1) but cannot take effect until the commencement of SI 2020/1265 Sch.5 immediately after IP completion day as specified in SI 2020/1265 art.2(2))

**Extent**

Sch. 5 para. 53: United Kingdom

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**[ 54.**

Annex 1 is to be read as if—

- (a) in the words before the table the words from "pursuant to Annex I" to the end were omitted;
- (b) in the table—
  - (i) in the entry for group 10 for "Directive 2003/87/EC" there were substituted "the 2020 Order";
  - (ii) in the entries for groups 10 and 11 for "Directive 2009/31/EC" in each place there were substituted "the CCS licensing regime";
  - (iii) in the entry for group 98 for "Article 10a of Directive 2003/87/EC" there were substituted "Part 4A of the 2020 Order, Delegated Regulation (EU) 2019/331 or Implementing Regulation (EU) 2019/1842";
  - (iv) the entry for group 99 were omitted.

]<sup>1</sup>

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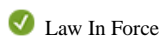
**Notes**

- <sup>1</sup> Existing Sch.5 substituted for a new Sch.5 consisting of paras 1-56 by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.36 (December 31, 2020: substitution comes into force on 31st December 2020 as specified in SI 2020/1557 art.2(1) but cannot take effect until the commencement of SI 2020/1265 Sch.5 immediately after IP completion day as specified in SI 2020/1265 art.2(2))

**Extent**

Sch. 5 para. 54(a)-(b)(iv): United Kingdom

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**[ 55.—**

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

The standard referred to in this Annex is:

- (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.

] <sup>1</sup>

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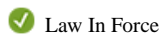
#### Notes

- <sup>1</sup> Substituted by Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2022/1173 Pt 2 art.14(7) (January 1, 2023)

#### Extent

Sch. 5 para. 55: United Kingdom

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#### [ 56.

Annex 3 is to be read as if for "the harmonised standard pursuant to Regulation (EC) No 765/2008" there were substituted "EN ISO/IEC 17011:2017<sup>2</sup>".

] <sup>1</sup>

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#### Notes

- <sup>1</sup> Existing Sch.5 substituted for a new Sch.5 consisting of paras 1-56 by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.36 (December 31, 2020: substitution comes into force on 31st December 2020 as specified in SI 2020/1557 art.2(1) but cannot take effect until the commencement of SI 2020/1265 Sch.5 immediately after IP completion day as specified in SI 2020/1265 art.2(2))
- <sup>2</sup> ISO/IEC 17011:2017 specifies requirements for the competence, consistent operation and impartiality of accreditation bodies assessing and accrediting conformity assessment bodies. It can be accessed at: <https://www.iso.org/standard/67198.html>. A copy may be inspected at the Department for Business, Energy and Industrial Strategy, 1 Victoria Street, London SW1H 0ET.

#### Extent

Sch. 5 para. 56: United Kingdom

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## [ SCHEDULE 5A

### Registry

#### Article 25A

] <sup>1</sup>

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#### Notes

- <sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.37 (December 31, 2020)
-


## [ PART 1

## Preliminary

] <sup>1</sup>

## Notes

- <sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.37 (December 31, 2020)

 Law In Force

## [ 1. Interpretation

In this Schedule—

- "account permission" has the meaning given in paragraph 16(4);  
 "Auctioning Regulations" means regulations under section 96 of the Finance Act 2020;  
 "authorised representative" means an authorised representative appointed for an account under paragraph 16;  
 "operational authorised representative" has the meaning given in paragraph 16(11);  
 "serious offence" means—  
     (a) an offence specified, or falling within a description specified, in Schedule 1 to the Serious Crime Act 2007<sup>2</sup>;  
     (b) an offence under the law of a country or territory outside the United Kingdom which, if committed in or as regards any part of the United Kingdom, would be an offence referred to in paragraph (a);  
     (c) conduct which facilitates the commission by another person of an offence referred to in paragraph (a) or (b), whether the conduct takes place in the United Kingdom or elsewhere;  
 "working day" means any day other than—  
     (a) Saturday, Sunday, Good Friday or Christmas Day;  
     (b) a bank holiday in any part of the United Kingdom under the Banking and Financial Dealings Act 1971<sup>3</sup>.

] <sup>1</sup>

## Notes


- <sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.37 (December 31, 2020)
- <sup>2</sup> Schedule 1 to that Act has been amended by Schedule 22 to the Marine and Coastal Access Act 2009 (c. 23); paragraph 101 of Schedule 7 to the Taxation (International and Other Provisions) Act 2010 (c. 8); paragraph 14 of Schedule 1 to the Bribery Act 2010 (c. 23); paragraph 142 of Schedule 9 to the Protection of Freedoms Act 2012 (c. 9); paragraph 7 of Schedule 4, and Schedule 5, to the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 (c. 2); section 47 of, and paragraph 31 of Schedule 1 and paragraph 81 of Schedule 4 to, the Serious Crime Act 2015 (c. 9); paragraph 7 of Schedule 5 to the Modern Slavery Act 2015 (c. 30); paragraph 8 of Schedule 5 to the Psychoactive Substances Act 2016 (c. 2); section 151 of the Policing and Crime Act 2017 (c. 3); section 51 of the Criminal Finances Act 2017 (c. 22); paragraph 5 of Schedule 3 to the Sanctions and Anti-Money Laundering Act 2018 (c. 13); section 14 of the Counter-Terrorism and Border Security Act 2019 (c. 3); and regulation 3 of S.I. 2019/1354.

- <sup>3</sup> 1971 c. 80. Schedule 1 to that Act has been amended by section 1 of the St Andrew's Day Bank Holiday (Scotland) Act 2007 (asp 2).

### Extent

Sch. 5A(1) para. 1 definition of "account permission"- definition of "working day" (b): United Kingdom

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 Law In Force

### [ 2.— Submission of applications, etc. to registry administrator

(1) An application, notice, instruction or request to the registry administrator under this Order must be in writing and must be given to the registry administrator in any of the following ways—

- (a) by sending it to a postal or email address provided by the registry administrator for that purpose;
- (b) by sending it by electronic means in the registry;
- (c) by any other means permitted by the registry administrator.

(2) A charge that is required to be paid to the registry administrator must be paid by making payment to a postal address or an account provided by the registry administrator for that purpose.

] <sup>1</sup>

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### Notes

- <sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.37 (December 31, 2020)

### Extent

Sch. 5A(1) para. 2(1)-(2): United Kingdom

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 Law In Force

### [ 3. Account holders: fit and proper person

When assessing for the purposes of this Schedule whether an account holder or prospective account holder is a fit and proper person to hold an account of a particular type, the registry administrator may take account of any information or factors that the registry administrator considers relevant, including in particular—

- (a) where the account holder or prospective account holder is an individual, whether the account holder or prospective account holder is under investigation for, or has been convicted in the preceding 5 years of, a serious offence;
- (b) where the account holder or prospective account holder is a body corporate, whether a person with significant control of the body corporate is under investigation for, or has been convicted in the preceding 5 years of, a serious offence;
- (c) whether the registry administrator considers that the account may be used in relation to the commission of an offence under the law of any part of the United Kingdom or a country or territory outside the United Kingdom.

] <sup>1</sup>

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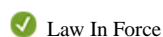
**Notes**

- <sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.37 (December 31, 2020)

**Extent**

Sch. 5A(1) para. 3(a)-(c): United Kingdom

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**[ 4. Authorised representatives: fit and proper person**

When assessing for the purposes of this Schedule whether an individual is a fit and proper person to be an authorised representative, the registry administrator may take account of any information or factors that the registry administrator considers relevant, including in particular—

- (a) whether the individual is under investigation for, or has been convicted in the preceding 5 years of, a serious offence;
- (b) whether the registry administrator considers that the individual may use the account in relation to the commission of an offence under the law of any part of the United Kingdom or a country or territory outside the United Kingdom;
- (c) whether the appointment of the individual as an authorised representative would create a conflict of interest.

] <sup>1</sup>

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**Notes**

- <sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.37 (December 31, 2020)

**Extent**

Sch. 5A(1) para. 4(a)-(c): United Kingdom

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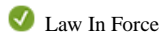
**[ PART 2****Establishment and operation of registry**

] <sup>1</sup>

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**Notes**

- <sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.37 (December 31, 2020)
-



## [ 5.— Registry

- (1) The UK ETS authority must establish an electronic system (the "registry") for the purposes of the UK ETS, in particular, to keep track of—
- (a) operators of installations and aircraft operators participating in the UK ETS;
  - (b) allowances held by persons and the allocation and transfer of allowances;
  - (c) reportable emissions of installations and aviation emissions of aircraft operators;
  - (d) the surrender of allowances by operators and aircraft operators in accordance with articles 27 and 34.
- (2) The UK ETS authority must ensure that the registry is established so as to allow for—
- (a) the following types of account in which allowances may be held—
    - (i) central accounts (see paragraph 9);
    - (ii) an auction delivery account (see paragraph 10);
    - (iii) operator holding accounts for installations (see paragraph 11);
    - (iv) aircraft operator holding accounts (see paragraph 13);
    - (v) trading accounts (see paragraph 14);
  - (b) individuals to be appointed as authorised representatives for accounts with access to the registry to perform actions in relation to accounts on behalf of account holders.

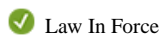
] <sup>1</sup>

### Notes

- <sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.37 (December 31, 2020)

### Extent

Sch. 5A(2) para. 5(1)-(2)(b): United Kingdom



## [ 6.— Operation of registry

- (1) The registry administrator must operate the registry and for that purpose may, in particular—
- (a) establish administrative arrangements and rules for the operation of the registry;
  - (b) take such actions the registry administrator considers necessary to ensure the proper functioning and good administration of the registry;
  - (c) perform actions in relation to accounts in accordance with instructions from account holders.
- (2) In the operation of the registry, the registry administrator must, as soon as reasonably practicable and to the extent possible, comply with a notice or instruction given under this Order by the UK ETS authority or a regulator.

] <sup>1</sup>

### Notes

- <sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.37 (December 31, 2020)

**Extent**

Sch. 5A(2) para. 6(1)-(2): United Kingdom

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✓ Law In Force

**[ 6A.— Reportable emissions and aviation emissions to be recorded in registry**

(1) The regulator and the registry administrator must exercise their functions to ensure that the following provisions of this paragraph are complied with.

(2) Where the operator of an installation submits a report of the installation's reportable emissions to the regulator in accordance with a condition of a greenhouse gas emissions permit included under paragraph 4(2)(b) of Schedule 6, the reportable emissions stated in the report must be recorded in the operator holding account for the installation on or before 30th April in the year in which the report is submitted.

(3) Where an aircraft operator submits a report of the aircraft operator's aviation emissions to the regulator in accordance with article 33, the aviation emissions stated in the report must be recorded in the aircraft operator's aircraft operator holding account on or before 30th April in the year in which the report is submitted.

(4) Where the regulator makes a determination of emissions under article 45 of—

- (a) an installation for any period for which a greenhouse gas emissions permit for the installation is in force; or
- (b) an aircraft operator,

the reportable emissions or aviation emissions so determined must be recorded in the operator holding account for the installation or, as the case may be, the aircraft operator's aircraft operator holding account within 1 month after the date on which notice of the determination is given under paragraph (5) of that article.

] <sup>1</sup>

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**Notes**

- <sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021/1455 Pt 2 art.23(2) (February 7, 2022)

**Extent**

Sch. 5A(2) para. 6A(1)-(4)(b): United Kingdom

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✓ Law In Force

**[ 7.— Suspension of registry due to security concerns**

(1) The UK ETS authority or the registry administrator may suspend access to the registry if the UK ETS authority or the registry administrator considers that—

- (a) a security breach has occurred; or
- (b) there is a significant risk that a security breach will occur.

(2) Where access to the registry is suspended, the UK ETS authority or, as the case may be, the registry administrator must, as soon as reasonably practicable after the suspension takes effect, inform—

- (a) each regulator;
- (b) if the UK ETS authority suspends access to the registry, the registry administrator;
- (c) if the registry administrator suspends access to the registry, the UK ETS authority.

(3) The UK ETS authority must, as soon as reasonably practicable and in any event within 2 working days beginning with the day (the "relevant day") on which the UK ETS authority suspends access to the registry or is informed of a suspension under sub-paragraph (2)(c) or, if the relevant day is not a working day, within 2 working days beginning with the first working day after the relevant day consider whether the suspension should remain in place and—

- (a) if the UK ETS authority considers the suspension should remain in place, inform each regulator and the registry administrator that the suspension will remain in place; or
- (b) if the UK ETS authority considers the suspension should be lifted—
  - (i) lift the suspension or instruct the registry administrator to lift the suspension;
  - (ii) inform each regulator and, where the UK ETS authority lifts the suspension, the registry administrator that the suspension has been lifted.

(4) Where the suspension remains in place in accordance with sub-paragraph (3)(a), the UK ETS authority must, as soon as reasonably practicable after the UK ETS authority considers that the circumstances giving rise to the suspension no longer exist—

- (a) lift the suspension or instruct the registry administrator to lift the suspension;
- (b) inform each regulator and, where the UK ETS authority lifts the suspension, the registry administrator that the suspension has been lifted.

] <sup>1</sup>

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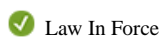
## Notes

- <sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.37 (December 31, 2020)

## Extent

Sch. 5A(2) para. 7(1)-(4)(b): United Kingdom

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Law In Force

## [ 8.— Suspension of registry for technical reasons

(1) The UK ETS authority may suspend access to the registry for technical reasons.

(2) Where the suspension is unscheduled (for example, because a technical issue needs to be addressed immediately), the UK ETS authority must inform each regulator and the registry administrator as soon as reasonably practicable after the suspension takes effect.

(3) Where the suspension is scheduled, the UK ETS authority must inform each regulator and the registry administrator as soon as reasonably practicable and in any event at least 2 working days before the suspension takes effect.

(4) Where, after a suspension, the UK ETS authority considers that the reason for the suspension no longer exists, the UK ETS authority must as soon as reasonably practicable—

- (a) lift the suspension;
- (b) inform each regulator and the registry administrator that the suspension has been lifted.

] <sup>1</sup>

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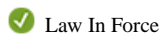
#### Notes

- <sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.37 (December 31, 2020)

#### Extent

Sch. 5A(2) para. 8(1)-(4)(b): United Kingdom

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### [ 8A.— Exemption from liability

(1) Each of the following is exempt from liability in damages for anything done or omitted in the exercise or purported exercise of functions conferred or imposed on the UK ETS authority or the registry administrator under this Schedule—

- (a) a national authority<sup>2</sup>;
- (b) a person referred to in article 9(1) (meaning of regulator).

(2) Sub-paragraph (1) does not apply—

- (a) if the act or omission is shown to have been in bad faith; or
- (b) so as to prevent an award of damages made in respect of an act or omission on the ground that the act or omission was unlawful as a result of section 6 (1) of the Human Rights Act 1998.

] <sup>1</sup>

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#### Notes

- <sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021/1455 Pt 2 art.23(3) (February 7, 2022)
- <sup>2</sup> Section 95(1) of the Climate Change Act 2008 defines "national authority".

#### Extent

Sch. 5A(2) para. 8A(1)-(2)(b): United Kingdom

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## [ PART 3

### Accounts

] <sup>1</sup>



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**Notes**

- <sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.37 (December 31, 2020)
- 

*[ CHAPTER 1 Opening accounts ]<sup>1</sup>*

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**Notes**

- <sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.37 (December 31, 2020)
- 

✓ Law In Force

**[ 9.— Central accounts**

(1) The UK ETS authority may open accounts in the name of the UK ETS authority for the purposes of the UK ETS, in particular—

- (a) a total quantity account (for the creation of allowances under article 18);
- (b) an allocation account (to hold allowances to be allocated under Part 4A);
- (c) a new entrants' reserve account (to keep track of the new entrants' reserve referred to in article 34G);
- (d) an auction account (to hold allowances to be auctioned under the Auctioning Regulations);
- (e) a market stability mechanism account (to hold excess allowances unsold at auctions under the Auctioning Regulations);
- (f) a deletion account (to hold allowances deleted under paragraph 23);
- (g) a surrender account (to hold allowances surrendered under paragraph 24);
- (h) one or more general holding accounts (to hold allowances transferred from accounts before closure under paragraph 30).

(2) An account held by the UK ETS authority is a "central account".

<sup>1</sup>

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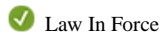
**Notes**

- <sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.37 (December 31, 2020)

**Extent**

Sch. 5A(3)(1) para. 9(1)-(2): United Kingdom

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Law In Force

## [ 10.— Auction delivery account

(1) Where a recognised auction platform is appointed to auction allowances under the Auctioning Regulations, the UK ETS authority must, as soon as reasonably practicable, instruct the registry administrator to open an auction delivery account in the name of the recognised auction platform.

(2) The recognised auction platform must as soon as reasonably practicable after appointment under the Auctioning Regulations submit to the registry administrator—

(a) the charge for opening the account set out in the charging scheme published under article 36A;

(b) applications under paragraph 16 to appoint at least 2 individuals as operational authorised representatives for the account with account permissions such that they are together able to propose and approve all types of action in relation to the account.

(3) The registry administrator may, by notice to the UK ETS authority or the recognised auction platform, require the UK ETS authority or the recognised auction platform to provide, in the form specified in the notice, such information as the registry administrator considers necessary to open the account.

(4) As soon as reasonably practicable after receiving the charge required under sub-paragraph (2)(a) and any information required under sub-paragraph (3) and at least 2 operational authorised representatives with the account permissions referred to in sub-paragraph (2)(b) have been appointed for the account, the registry administrator must open the account.

(5) In this paragraph, "recognised auction platform" means a recognised investment exchange in relation to which a recognition order under the Recognised Auction Platform Regulations 2011<sup>2</sup> is in force.

(6) In sub-paragraph (5), "recognised investment exchange" means an investment exchange in relation to which a recognition order under section 290 of the Financial Services and Markets Act 2000<sup>3</sup> is in force.

] <sup>1</sup>

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### Notes

<sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.37 (December 31, 2020)

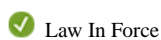
<sup>2</sup> S.I. 2011/2699, amended by S.I. 2012/1906, 2013/429, 2013/642, 2013/3115, 2016/680 and 2017/1064.

<sup>3</sup> 2000 c. 8. Section 290 has been amended by paragraph 6 of Schedule 8 to the Financial Services Act 2012 (c. 21) and S.I. 2007/126, 2013/504, 2017/701 and 2017/1064 and is amended prospectively by S.I. 2019/662 with effect from IP completion day.

### Extent

Sch. 5A(3)(1) para. 10(1)-(6): United Kingdom

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Law In Force

## [ 11.— Operator holding accounts

(1) This paragraph applies where the regulator—

- (a) issues a greenhouse gas emissions permit for an installation under paragraph 3 of Schedule 6;
  - (b) grants an application for the partial transfer of a greenhouse gas emissions permit under paragraph 9 of Schedule 6;
  - (c) converts an installation's hospital or small emitter permit into a greenhouse gas emissions permit under paragraph 24(2) or 26(3) of Schedule 7; or
  - (d) converts an installation's permit (within the meaning of GGETSR 2012) into a greenhouse gas emissions permit under paragraph 1(4)(a) of Schedule 11.
- (2) The regulator must, as soon as reasonably practicable—
- (a) instruct the registry administrator to open an operator holding account for the installation in the name of the operator of the installation or, where sub-paragraph (1)(b) applies, for the installation consisting of the transferred units (as defined in paragraph 8(1) of Schedule 6) in the name of the new operator (as defined in paragraph 7(1) of that Schedule); or
  - (b) inform the registry administrator that a new operator holding account is not required.
- (3) Where sub-paragraph (2)(a) applies, the registry administrator may, by notice to the operator or the regulator, require the operator or the regulator to provide, in the form specified in the notice, such information as the registry administrator considers necessary to—
- (a) open the account; and
  - (b) assess whether the operator is a fit and proper person to hold an operator holding account.
- (4) As soon as reasonably practicable after receiving an instruction under sub-paragraph (2)(a) and any information required under sub-paragraph (3), the registry administrator must assess whether the operator is a fit and proper person to hold an operator holding account and—
- (a) if the registry administrator considers that the operator is a fit and proper person to hold an operator holding account, open the account; or
  - (b) if the registry administrator does not consider that the operator is a fit and proper person to hold an operator holding account, open, and immediately suspend, the account, imposing the restriction set out in paragraph 25(2)(b) or (c) (or both).
- (5) The registry administrator must give notice to the operator and the regulator of a decision to open and suspend an account under sub-paragraph (4)(b).
- (6) A notice under sub-paragraph (5) must include the reason for the suspension unless the registry administrator considers that its inclusion might prejudice the investigation or prosecution of an offence under the law of any part of the United Kingdom or a country or territory outside the United Kingdom or would be contrary to the interests of national security.
- (7) Where, after a suspension under sub-paragraph (4)(b), the registry administrator subsequently considers that the operator is a fit and proper person to hold an operator holding account, the registry administrator must, as soon as reasonably practicable—
- (a) lift the suspension;
  - (b) give notice to the operator and the regulator that the suspension has been lifted.

]<sup>1</sup>

## Notes

<sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.37 (December 31, 2020)

**Extent**

Sch. 5A(3)(1) para. 11(1)-(7)(b): United Kingdom

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✓ Law In Force

**[ 12.— Transfer of operator holding accounts**

(1) Where the regulator grants an application for the transfer (other than a partial transfer) of an installation's greenhouse gas emissions permit under paragraph 9 of Schedule 6, the regulator must, as soon as reasonably practicable—

(a) instruct the registry administrator to transfer the operator holding account for the installation held in the name of the transferring operator (as defined in paragraph 7(1) of Schedule 6) to the new operator (as defined in that sub-paragraph);

(b) instruct the registry administrator to—

(i) open an operator holding account for the installation in the name of the new operator; and

(ii) close the operator holding account held in the name of the transferring operator [ (but see sub-paragraph (8)) ]<sup>2</sup> ; or

(c) inform the registry administrator that no action under paragraph (a) or (b) is required.

(2) Where paragraph (1)(a) or (b) applies, the registry administrator may, by notice to the new operator or the regulator, require the new operator or the regulator to provide, in the form specified in the notice, such information as the registry administrator considers necessary to—

(a) transfer or, as the case may be, open the account; and

(b) assess whether the new operator is a fit and proper person to hold an operator holding account.

(3) As soon as reasonably practicable after receiving an instruction under sub-paragraph (1)(a) or (b) and any information required under sub-paragraph (2), the registry administrator must assess whether the new operator is a fit and proper person to hold an operator holding account and—

(a) if the registry administrator considers that the new operator is a fit and proper person to hold an operator holding account, transfer or, as the case may be, open the account; or

(b) if the registry administrator does not consider that the new operator is a fit and proper person to hold an operator holding account—

(i) transfer or, as the case may be, open the account; and

(ii) immediately suspend the account, imposing the restriction set out in paragraph 25(2)(b) or (c) (or both).

(4) The registry administrator must give notice to the new operator and the regulator of a decision to transfer or, as the case may be, open and suspend an account under sub-paragraph (3)(b).

(5) A notice under sub-paragraph (4) must include the reason for the suspension unless the registry administrator considers that its inclusion might prejudice the investigation or prosecution of an offence under the law of any part of the United Kingdom or a country or territory outside the United Kingdom or would be contrary to the interests of national security.

(6) Where, after a suspension under sub-paragraph (3)(b), the registry administrator subsequently considers that the new operator is a fit and proper person to hold an operator holding account, the registry administrator must, as soon as reasonably practicable—

- (a) lift the suspension;
- (b) give notice to the new operator and the regulator that the suspension has been lifted.

(7) Where the registry administrator receives an instruction to transfer an operator holding account under sub-paragraph (1)(a), no action may be performed in relation to the account until the registry administrator complies with sub-paragraph (3).

[ (8) Where the grant of the application results in a merger (as defined in Article 2(17) of the Free Allocation Regulation<sup>4</sup>) 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. ]<sup>3</sup>

] <sup>1</sup>

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#### Notes

- <sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.37 (December 31, 2020)
- <sup>2</sup> Words inserted by Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2022/1173 Pt 2 art.15(2)(a) (January 1, 2023)
- <sup>3</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2022/1173 Pt 2 art.15(2)(b) (January 1, 2023)
- <sup>4</sup> 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.

#### Extent

Sch. 5A(3)(1) para. 12(1)-(8): United Kingdom

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 Law In Force

### [ 13.— Aircraft operator holding accounts

(1) Where the regulator issues an emissions monitoring plan to a person under article 29, the regulator must, as soon as reasonably practicable, instruct the registry administrator to open an aircraft operator holding account in the name of the person.

(2) The registry administrator may, by notice to the person or the regulator, require the person or the regulator to provide, in the form specified in the notice, such information as the registry administrator considers necessary to—

- (a) open the account; and
- (b) assess whether the person is a fit and proper person to hold an aircraft operator holding account.

(3) As soon as reasonably practicable after receiving an instruction under sub-paragraph (1) and any information required under sub-paragraph (2), the registry administrator must assess whether the person is a fit and proper person to hold an aircraft operator holding account and—

- (a) if the registry administrator considers that the person is a fit and proper person to hold an aircraft operator holding account, open the account; or

- (b) if the registry administrator does not consider that the person is a fit and proper person to hold an aircraft operator holding account, open, and immediately suspend, the account imposing the restriction set out in paragraph 25(2)(b) or (c) (or both).
- (4) The registry administrator must give notice to the person and the regulator of a decision to open and suspend an account under sub-paragraph (3)(b).
- (5) A notice under sub-paragraph (4) must include the reason for the suspension unless the registry administrator considers that its inclusion might prejudice the investigation or prosecution of an offence under the law of any part of the United Kingdom or a country or territory outside the United Kingdom or would be contrary to the interests of national security.
- (6) Where, after a suspension under sub-paragraph (3)(b), the registry administrator subsequently considers that the person is a fit and proper person to hold an aircraft operator holding account, the registry administrator must, as soon as reasonably practicable—
  - (a) lift the suspension;
  - (b) give notice to the person and the regulator that the suspension has been lifted.

] <sup>1</sup>

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#### Notes

- <sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.37 (December 31, 2020)

#### Extent

Sch. 5A(3)(1) para. 13(1)-(6)(b): United Kingdom

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 Law In Force

### [ 14.— Trading accounts

- (1) Any person may apply to the registry administrator to open a trading account on terms agreed by the registry administrator.
- (2) An application must be accompanied by—
  - (a) the charge for the application set out in the charging scheme published under article 36A;
  - (b) applications under paragraph 16 to appoint at least 2 individuals as operational authorised representatives for the account with account permissions such that they are together able to propose and approve all types of action in relation to the account.
- (3) After receiving an application, the registry administrator may, by notice to the applicant, require the applicant to provide, in the form specified in the notice, such information as the registry administrator considers necessary to determine the application.
- (4) As soon as reasonably practicable after receiving the application and any information required under sub-paragraph (3), the registry administrator must assess whether the applicant is a fit and proper person to hold a trading account and—
  - (a) if the registry administrator considers that the applicant is a fit and proper person to hold a trading account and at least 2 operational authorised representatives with the account

permissions referred to in sub-paragraph (2)(b) have been appointed for the account, open the account; or

(b) if either—

(i) the registry administrator does not consider that the applicant is a fit and proper person to hold a trading account; or

(ii) at least 2 operational authorised representatives with the account permissions referred to in sub-paragraph (2)(b) have not been appointed for the account,

give notice to the applicant that the application to open the account is refused.

(5) A notice under sub-paragraph (4)(b) must include the reason for the refusal unless the registry administrator considers that its inclusion might prejudice the investigation or prosecution of an offence under the law of any part of the United Kingdom or a country or territory outside the United Kingdom or would be contrary to the interests of national security.

]<sup>1</sup>

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#### Notes

<sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.37 (December 31, 2020)

#### Extent

Sch. 5A(3)(1) para. 14(1)-(5): United Kingdom

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### *[ CHAPTER 2 Account representatives ]<sup>1</sup>*

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#### Notes

<sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.37 (December 31, 2020)

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 Law In Force

#### **[ 15.— Primary contacts and alternative primary contacts**

(1) An account holder must give details to the registry administrator of an individual whom the account holder appoints as a person authorised to give instructions to the registry administrator on the account holder's behalf in relation to the account.

(2) An individual appointed under sub-paragraph (1) is the "primary contact" for the account.

(3) An account holder who is an individual may appoint the account holder as the primary contact for the account.

(4) An account holder who has appointed a primary contact may give details to the registry administrator of a second individual whom the account holder appoints as a person authorised to give instructions to the registry administrator on the account holder's behalf in relation the account.

(5) An individual appointed under sub-paragraph (4) is the "alternative primary contact" for the account.

- (6) The primary contact and any alternative primary contact must be at least 18 years of age.
- (7) An account holder may, at any time by notice to the registry administrator—
  - (a) replace the primary contact;
  - (b) replace or remove the alternative primary contact.

] <sup>1</sup>

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#### Notes

- <sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.37 (December 31, 2020)

#### Extent

Sch. 5A(3)(2) para. 15(1)-(7)(b): United Kingdom

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 Law In Force With Amendments Pending

### [ 16.— Appointment of authorised representatives

- (1) An account holder or a prospective account holder may apply to the registry administrator for one or more individuals (up to a maximum number of 8) to be appointed as authorised representatives for the account with access to the registry to perform actions in relation to the account on behalf of the account holder.
- (2) An account holder who is an individual may apply for the account holder to be appointed as an authorised representative for the account.
- (3) An authorised representative must be at least 18 years of age.
- (4) An authorised representative may have one of the following permissions (an "account permission")—
  - (a) permission to propose actions in relation to the account;
  - (b) permission to approve actions in relation to the account;
  - (c) permission to propose actions, and approve actions proposed by another operational authorised representative, in relation to the account;
  - (d) permission to review account information only.
- (5) An application for an individual to be appointed as an authorised representative must—
  - (a) specify which account permission the individual is to have;
  - (b) be accompanied by the charge for the application set out in the charging scheme published under article 36A.
- (6) After receiving an application, the registry administrator may, by notice to the applicant, require the applicant to provide, in the form specified in the notice, such information as the registry administrator considers necessary to determine the application.
- (7) As soon as reasonably practicable after receiving the application and any information required under sub-paragraph (6), the registry administrator must assess whether the individual is a fit and proper person to be an authorised representative and—
  - (a) if the registry administrator considers that the individual is a fit and proper person to be an authorised representative, appoint the individual as an authorised representative with



the account permission in respect of which the application is made and give notice to the applicant of the appointment; or

(b) if the registry administrator considers that the individual is not a fit and proper person to be an authorised representative, give notice to the applicant that the application is refused.

(8) A notice under sub-paragraph (7)(b) must include the reason for the refusal unless the registry administrator considers that its inclusion might prejudice the investigation or prosecution of an offence under the law of any part of the United Kingdom or a country or territory outside the United Kingdom or would be contrary to the interests of national security.

(9) The registry administrator may, in administrative rules made under paragraph 6(1)(a), provide for whether actions of a particular type require the approval of a second operational authorised representative in addition to the operational authorised representative proposing the action.

(10) The appointment of an authorised representative for an account does not preclude the account holder from instructing the registry administrator to perform actions in relation to the account on behalf of the account holder.

(11) In this Schedule, "operational authorised representative" means an authorised representative who has an account permission referred to in sub-paragraph (4)(a), (b) or (c).

]<sup>1</sup>

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#### Notes

<sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.37 (December 31, 2020)

#### Amendments Pending


Sch. 5A(3)(2) para. 16(11): words substituted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2023/850, Pt 2 art. 9(2)(b) (January 1, 2024)

Sch. 5A(3)(2) para. 16(4)(e): added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2023/850, Pt 2 art. 9(2)(a) (January 1, 2024)

#### Extent

Sch. 5A(3)(2) para. 16(1)-(11): United Kingdom

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 Law In Force

### [ 17.— Change in account permission of authorised representatives

(1) An account holder may apply to the registry administrator to change the account permission of an individual appointed as an authorised representative.

(2) An application must—

- (a) specify which account permission the individual is to have;
- (b) be accompanied by the charge for the application set out in the charging scheme published under article 36A.

(3) After receiving an application, the registry administrator may, by notice to the account holder, require the account holder to provide, in the form specified in the notice, such information as the registry administrator considers necessary to determine the application.

(4) As soon as reasonably practicable after receiving the application and any information required under sub-paragraph (3), the registry administrator must assess whether the individual is still a fit and proper person to be an authorised representative and—

- (a) if the registry administrator considers that the individual is still a fit and proper person to be an authorised representative, change the individual's account permission to the account permission in respect of which the application is made and give notice to the account holder of the change; or
- (b) if the registry administrator considers that the individual has ceased to be a fit and proper person to be an authorised representative, give notice to the account holder that the application is refused.

(5) A notice under sub-paragraph (4)(b) must include the reason for the refusal unless the registry administrator considers that its inclusion might prejudice the investigation or prosecution of an offence under the law of any part of the United Kingdom or a country or territory outside the United Kingdom or would be contrary to the interests of national security.

] <sup>1</sup>

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#### Notes

- <sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.37 (December 31, 2020)

#### Extent

Sch. 5A(3)(2) para. 17(1)-(5): United Kingdom

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 Law In Force

### [ 18.— Suspension of access to registry of authorised representatives

(1) The registry administrator may suspend an authorised representative's access to the registry in either of the following circumstances—

- (a) if the registry administrator considers that the suspension is necessary to ensure that the registry is secure and protected from misuse;
- (b) if the registry administrator considers that the authorised representative has ceased to be a fit and proper person to be an authorised representative.

(2) Where the registry administrator suspends an authorised representative's access to the registry, the registry administrator must give notice of the suspension to the account holder as soon as reasonably practicable.

(3) A notice under sub-paragraph (2) must include the reason for the suspension unless the registry administrator considers that its inclusion might prejudice the investigation or prosecution of an offence under the law of any part of the United Kingdom or a country or territory outside the United Kingdom or would be contrary to the interests of national security.

(4) Where, after a suspension under sub-paragraph (2), the registry administrator subsequently considers that the circumstances giving rise to the suspension no longer exist, the registry administrator must as soon as reasonably practicable—

- (a) lift the suspension;
- (b) give notice to the account holder that the suspension has been lifted.

] <sup>1</sup>

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**Notes**

- <sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.37 (December 31, 2020)

**Extent**

Sch. 5A(3)(2) para. 18(1)-(4)(b): United Kingdom

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 Law In Force

**[ 19.— Removal of authorised representatives**

(1) The registry administrator may remove an individual as an authorised representative for an account—

- (a) if the account holder requests the registry administrator to remove the individual as authorised representative;
- (b) if the individual requests the registry administrator to remove the individual as authorised representative;
- (c) if the registry administrator considers that the individual has ceased to be a fit and proper person to be an authorised representative; or
- (d) where the individual's access to the registry has been suspended, if the registry administrator considers that the circumstances giving rise to the suspension still exist and are unlikely to be resolved within a reasonable period of time.

(2) The registry administrator must give notice to the account holder of a removal under sub-paragraph (1)(b), (c) or (d).

(3) A notice following a removal under sub-paragraph (1)(c) or (d) must include the reason for the removal unless the registry administrator considers that its inclusion might prejudice the investigation or prosecution of an offence under the law of any part of the United Kingdom or a country or territory outside the United Kingdom or would be contrary to the interests of national security.

] <sup>1</sup>

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**Notes**

- <sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.37 (December 31, 2020)

**Extent**

Sch. 5A(3)(2) para. 19(1)-(3): United Kingdom


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*[ CHAPTER 3 Transfers of allowances ]<sup>1</sup>*

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**Notes**

- <sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.37 (December 31, 2020)
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 Law In Force

**[ 20.— Transfers between accounts**

- (1) An allowance may be transferred from one account to another.
- (2) Sub-paragraph (1) is subject to—
- (a) paragraph 11(4)(b) (operator holding accounts);
  - (b) paragraph 12(3)(b) or (7) (transfer of operator holding accounts);
  - (c) paragraph 13(3)(b) (aircraft operator holding accounts);
  - (d) paragraph 25 (suspension of accounts).

<sup>1</sup>

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**Notes**

- <sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.37 (December 31, 2020)

**Extent**

Sch. 5A(3)(3) para. 20(1)-(2)(d): United Kingdom

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 Law In Force

**[ 21. Transfer cancellations**

The transfer of an allowance between accounts may be cancelled by the account holder of the transferring account at any time before the transfer has completed.

<sup>1</sup>

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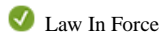
**Notes**

- <sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.37 (December 31, 2020)

**Extent**

Sch. 5A(3)(3) para. 21: United Kingdom

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## [ 22.— Transfer reversals

(1) A transfer of an allowance that has completed may not be reversed except as set out in this paragraph.

(2) The registry administrator must reverse the transfer of an allowance to the deletion account if, within 14 days beginning with the day on which the transfer completes, the account holder requests the registry administrator to reverse the transfer.

(3) The registry administrator must reverse the transfer of an allowance to the surrender account if, within 14 days beginning with the day on which the transfer completes, the account holder requests the registry administrator to reverse the transfer.

(4) Sub-paragraph (3) is subject to paragraph 24 (surrender of allowances).

(5) Where the account from which the allowance was transferred has been closed since the transfer completed (and the transfer cannot therefore be reversed), the account holder who requests the reversal of a transfer must give notice to the registry administrator of an alternative account to which the allowance is to be transferred.

[ (6) The registry administrator may reverse the transfer of an allowance from the allocation account if the transfer was made in error. ]<sup>2</sup>

] <sup>1</sup>

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### Notes

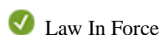
<sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.37 (December 31, 2020)

<sup>2</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021/1455 Pt 2 art.23(4) (February 7, 2022)

### Extent

Sch. 5A(3)(3) para. 22(1)-(6): United Kingdom

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## [ 23.— Deletion of allowances

(1) An account holder may delete an allowance by transferring the allowance from the account holder's account to the deletion account.

(2) An allowance transferred to the deletion account may not be transferred from the deletion account and ceases to be available for any other purpose unless the transfer is reversed under paragraph 22 (transfer reversals).

] <sup>1</sup>

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### Notes

<sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.37 (December 31, 2020)

**Extent**

Sch. 5A(3)(3) para. 23(1)-(2): United Kingdom

 Law In Force

**[ 24.— Surrender of allowances**

(1) The operator of an installation or a person who is an aircraft operator in relation to a scheme year may surrender an allowance by transferring the allowance from the operator's operator holding account for the installation or the aircraft operator's aircraft operator holding account to the surrender account.

(2) An allowance that has been transferred to the surrender account may not be transferred from the surrender account and ceases to be available for any other purpose.

(3) But the transfer of an allowance to the surrender account may be reversed under paragraph 22(3) if—

- (a) the person requesting the reversal has complied with—
  - (i) where the person requesting the reversal is the operator of an installation, the person's obligations to surrender allowances under article 27 in respect of the installation;
  - (ii) where the person requesting the reversal is an aircraft operator in relation to a scheme year, the person's obligations to surrender allowances under article 34; and
- (b) the reversal of the transfer would not result in the person being in breach of those obligations.

] <sup>1</sup>

**Notes**

- <sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.37 (December 31, 2020)

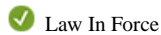
**Extent**

Sch. 5A(3)(3) para. 24(1)-(3)(b): United Kingdom

*[ CHAPTER 4 Suspension and closure of accounts ]*<sup>1</sup>

**Notes**

- <sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.37 (December 31, 2020)



## [ 25.— Suspension of accounts

(1) The registry administrator may suspend an account other than a central account in any of the following circumstances—

- (a) if, on the death or dissolution of the account holder or the occurrence of an insolvency event in relation to the account holder, either—
  - (i) it is not clear who has the right to deal with the assets of the account holder; or
  - (ii) the registry administrator has not received instructions about the operation of the account from the person who has the right to deal with the assets of the account holder;
- (b) if the registry administrator does not consider that the account holder is a fit and proper person to hold the account;
- (c) if the registry administrator considers that the account has been, is being or may be used in relation to the commission of an offence under the law of any part of the United Kingdom or a country or territory outside the United Kingdom [ ; ]<sup>2</sup>
- [ (d) at the request of the account holder. ]<sup>2</sup>

(2) A suspended account may be subject to one or more of the following restrictions—

- (a) no allowances may be transferred to the account except from the allocation account;
- (b) no authorised representative may perform an action in relation to the account by accessing the registry;
- (c) no allowances may be transferred from the account except to a central account.

(3) Where the registry administrator suspends an account [ under sub-paragraph (1)(a), (b) or (c) ]<sup>3</sup>, the registry administrator must give notice of the suspension to the account holder as soon as reasonably practicable.

(4) A notice under sub-paragraph (3) must include the reason for the suspension unless the registry administrator considers that its inclusion might prejudice the investigation or prosecution of an offence under the law of any part of the United Kingdom or a country or territory outside the United Kingdom or would be contrary to the interests of national security .

(5) Where, after a suspension under sub-paragraph (1), the registry administrator subsequently considers that the circumstances giving rise to the suspension no longer exist, the registry administrator must as soon as reasonably practicable—

- (a) lift the suspension;
- (b) give notice to the account holder that the suspension has been lifted.

(6) For the purposes of this paragraph an "insolvency event" occurs in relation to an account holder if—

- (a) an order for the winding-up of the account holder is made;
- (b) a resolution for the voluntary winding-up of the account holder is passed;
- (c) the account holder enters into administration;
- (d) a bankruptcy order is made in relation to the account holder or, in Scotland, an award of sequestration is made against the account holder;
- (e) a provisional liquidator is appointed for the account holder under section 135 of the Insolvency Act 1986; or
- (f) an event (an "overseas insolvency event") occurs in a country or territory outside the United Kingdom in relation to the account holder that the registry administrator considers corresponds to an event (a "UK insolvency event") referred to in paragraphs (a) to (e).

(7) For the purpose of considering under sub-paragraph (6)(f) whether an overseas insolvency event corresponds to a UK insolvency event, where, in consequence of the UK insolvency event, a person is appointed to an office (for example, liquidator or trustee in bankruptcy) to deal with the assets of the account holder, it is immaterial whether or not there is a corresponding appointment in consequence of the overseas insolvency event.

] <sup>1</sup>

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#### Notes

- <sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.37 (December 31, 2020)
- <sup>2</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021/1455 Pt 2 art.23(5)(a) (February 7, 2022)
- <sup>3</sup> Words inserted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021/1455 Pt 2 art.23(5)(b) (February 7, 2022)

#### Extent

Sch. 5A(3)(4) para. 25(1)-(7): United Kingdom

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 Law In Force

### [ 26. Closure of central accounts and auction delivery account

The UK ETS authority may close—

- (a) a central account;
- (b) the auction delivery account.

] <sup>1</sup>

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#### Notes

- <sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.37 (December 31, 2020)

#### Extent

Sch. 5A(3)(4) para. 26(a)-(b): United Kingdom

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 Law In Force

### [ 27.— Closure of operator holding accounts

(1) This paragraph applies where—

- (a)
  - (i) an installation's greenhouse gas emissions permit is cancelled under paragraph 9(5)(b) of Schedule 6;
  - (ii) after giving a surrender notice under paragraph 11(3) of that Schedule in respect of a greenhouse gas emissions permit for an installation, the regulator certifies under paragraph 11(6)(b) of that Schedule that the conditions of the permit and the



requirements of the surrender notice have been complied with or that there is no reasonable prospect of their being complied with;

(iii) after giving a revocation notice under paragraph 12(4) of that Schedule in respect of a greenhouse gas emissions permit for an installation, the regulator certifies under paragraph 12(7)(b) of that Schedule that the conditions of the permit and the requirements of the revocation notice have been complied with or that there is no reasonable prospect of their being complied with; or

(iv) after the regulator converts an installation's greenhouse gas emissions permit into a hospital or small emitter permit under paragraph 10 of Schedule 7, the obligations of the operator under the permit in respect of specified emissions before 1st January 2026 are complied with; and

(b) where relevant, any notice given under article 34V (return of allowances: notice to operator, etc.) to the operator of the installation or to a transferring operator (as defined in paragraph 7(1) of Schedule 6) has been complied with or the regulator considers that there is no reasonable prospect of the notice being complied with.

(2) The regulator must instruct the registry administrator to close the operator holding account for the installation.

(3) The registry administrator must give notice to the operator of the installation as soon as reasonably practicable after the account is closed.

] <sup>1</sup>

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#### Notes

<sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.37 (December 31, 2020)

#### Extent

Sch. 5A(3)(4) para. 27(1)-(3): United Kingdom

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 Law In Force

### [ 28.— Closure of aircraft operator holding accounts

(1) This paragraph applies where—

(a) the regulator is satisfied under article 34P that a person has ceased to perform aviation activity and there is no realistic prospect that the person will resume aviation activity;

(b) the person has complied with the requirements of article 34(1) or the regulator considers that there is no reasonable prospect of the requirements being complied with; and

(c) where relevant, any notice given under article 34V (return of allowances: notice to operator, etc.) to the person has been complied with or the regulator considers that there is no reasonable prospect of the notice being complied with.

(2) The regulator must instruct the registry administrator to close the aircraft operator holding account.

(3) The registry administrator must give notice to the person as soon as reasonably practicable after the account is closed.

] <sup>1</sup>

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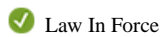
**Notes**

- <sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.37 (December 31, 2020)

**Extent**

Sch. 5A(3)(4) para. 28(1)-(3): United Kingdom

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**[ 29.— Closure of trading accounts**

- (1) Where the account holder of a trading account instructs the registry administrator to close the account, the registry administrator must close the account—
- (a) within 14 days after receiving the instruction; or
  - (b) if there are allowances in the account at the date on which the instruction is received, as soon as reasonably practicable after the allowances are transferred to another account.
- (2) Where a trading account has been suspended, the registry administrator may close the account if the registry administrator considers that the circumstances giving rise to the suspension still exist and are unlikely to be resolved within a reasonable period of time.
- (3) Where no transfers have been made to or from a trading account for a period of at least 1 year, the registry administrator may give notice to the account holder that the trading account will be closed; and if the account holder does not object in writing to the closure within 60 days after the date on which the notice is given, the registry administrator may close the account.
- (4) The registry administrator must give notice to the account holder as soon as reasonably practicable after the account is closed under sub-paragraph (2) or (3).
- (5) A notice following the closure of an account under sub-paragraph (2) must include the reason for the closure unless the registry administrator considers that its inclusion might prejudice the investigation or prosecution of an offence under the law of any part of the United Kingdom or a country or territory outside the United Kingdom or would be contrary to the interests of national security.

] <sup>1</sup>

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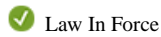
**Notes**

- <sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.37 (December 31, 2020)

**Extent**

Sch. 5A(3)(4) para. 29(1)-(5): United Kingdom

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### **[ 30.— Balance in accounts to be closed**

(1) This paragraph applies where there are allowances in an account that is to be closed under paragraph 27, 28 or 29(2) or (3).

(2) Subject to sub-paragraph (3), the registry administrator must give notice to the account holder, requiring the account holder to transfer the allowances to another account on or before a date set out in the notice; and if the account holder does not comply with the notice, the registry administrator must transfer the allowances to a general holding account before closing the account.

(3) If the account to be closed has been suspended, the registry administrator must transfer the allowances to a general holding account before closing the account.

] <sup>1</sup>

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#### **Notes**

<sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.37 (December 31, 2020)

#### **Extent**

Sch. 5A(3)(4) para. 30(1)-(3): United Kingdom

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## **[ PART 4**

### **Publication of information from registry**

] <sup>1</sup>

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#### **Notes**

<sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2022/1173 Pt 2 art.15(3) (January 1, 2023)

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### **[ 31.— Information about accounts: operator and aircraft operator holding accounts and trading accounts**

(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;
  - (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).

] <sup>1</sup>

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#### Notes

- <sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2022/1173 Pt 2 art.15(3) (January 1, 2023)

#### Extent

Sch. 5A(4) para. 31(1)-(4): United Kingdom

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 Law In Force

### [ 32.— Information about accounts: operator holding accounts

- (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.

] <sup>1</sup>

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#### Notes

- <sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2022/1173 Pt 2 art.15(3) (January 1, 2023)

#### Extent

Sch. 5A(4) para. 32(1)-(3): United Kingdom

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 Law In Force

### [ 33.— Information about accounts: aircraft operator holding accounts

- (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.

] <sup>1</sup>

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#### Notes

<sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2022/1173 Pt 2 art.15(3) (January 1, 2023)

#### Extent

Sch. 5A(4) para. 33(1)-(3): United Kingdom

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 Law In Force

### [ 34.— Information about transfers of allowances

(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.

] <sup>1</sup>

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#### Notes

<sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2022/1173 Pt 2 art.15(3) (January 1, 2023)

#### Extent

Sch. 5A(4) para. 34(1)-(4): United Kingdom

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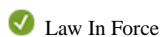
## SCHEDULE 6

### Permits

#### Article 26(3)

### PART 1

#### Application for greenhouse gas emissions permits



Law In Force

#### 1.— Greenhouse gas emissions permits: application

- (1) The operator of an installation may apply to the regulator for a greenhouse gas emissions permit for the installation<sup>1</sup>.
- (2) But an application may not be made if a permit for the installation is already in force.
- (3) In sub-paragraph (2), "permit" includes a permit within the meaning of GGETSR 2012 to which paragraph 1 of Schedule 11 applies (permits to be converted).

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#### Notes

- <sup>1</sup> Paragraphs 24 and 26 of Schedule 7 and paragraph 1 of Schedule 11 provide for the conversion of permits into greenhouse gas emissions permits.

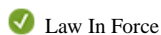
#### Commencement

Sch. 6(1) para. 1(1)-(3): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

#### Extent

Sch. 6(1) para. 1(1)-(3): United Kingdom

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Law In Force

#### 2.— Greenhouse gas emissions permits: content of application

- (1) An application for a greenhouse gas emissions permit must contain—
- (a) an address to which correspondence relating to the application should be sent (in addition to the addresses required by paragraph 1(5) of Schedule 3);
  - (b) if the operator of the installation is a body corporate—
    - (i) its registered number and the postal address of its registered or principal office; and
    - (ii) where the operator is a subsidiary of a holding company, the name of the holding company (other than a holding company which is itself a subsidiary) and the postal address of the holding company's registered or principal office,

and in this paragraph "subsidiary" and "holding company" have the meanings given in section 1159 of the Companies Act 2006<sup>1</sup>;

(c) in relation to the site of the installation—

- (i) the postal address and national grid reference of the site (or in the case of an installation in UK coastal waters or the UK sector of the continental shelf equivalent information identifying the installation and its location);
- (ii) a description of the site and the location of the installation on it; and
- (iii) the name of any local authority where the site is situated;

(d) a description of the installation, the regulated activities to be carried out at the installation and the specified emissions from those activities;

(e) a description of the raw and auxiliary materials used in carrying out regulated activities at the installation, the use of which is likely to lead to specified emissions;

(f) a description of the sources of specified emissions from the regulated activities carried out at the installation;

(g) a monitoring plan in accordance with Article 12 of the Monitoring and Reporting Regulation 2018, together with—

- (i) the supporting documents referred to in Article 12(1) of that Regulation;
- (ii) except where the installation is an installation with low emissions within the meaning of Article 47(2) of that Regulation, the uncertainty assessment carried out under Article 28(1)(a) of that Regulation;

(h) a description, including the reference number, of any environmental licence issued in relation to the installation;

(i) any additional information that the operator wishes the regulator to take into account in considering the application;

(j) a non-technical summary of the information referred to in paragraphs (d) to (i); and

(k) the date on which the operator wishes the permit to come into force.

(2) In sub-paragraph (1)(h), "environmental licence" means—

(a) an authorisation under—

- (i) Part 1 of the Environmental Protection Act 1990;
- (ii) the Industrial Pollution Control (Northern Ireland) Order 1997<sup>2</sup>;

(b) a permit under—

- (i) the Pollution Prevention and Control (Scotland) Regulations 2012;
- (ii) the Offshore Combustion Installations (Pollution Prevention and Control) Regulations 2013;
- (iii) the Pollution Prevention and Control (Industrial Emissions) Regulations (Northern Ireland) 2013<sup>3</sup>;
- (iv) the Environmental Permitting (England and Wales) Regulations 2016;
- (v) the Environmental Authorisations (Scotland) Regulations 2018.

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## Notes

<sup>1</sup> In section 1159 of the Companies Act 2006, "company" includes any body corporate.

<sup>2</sup> S.I. 1997/2777 (N.I. 18).

<sup>3</sup> S.R. 2013/160.

## Commencement

Sch. 6(1) para. 2(1)-(2)(b)(v): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))



**Extent**

Sch. 6(1) para. 2(1)-(2)(b)(v): United Kingdom

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 Law In Force

**[ 3. Greenhouse gas emissions permits: issue of permit**

A greenhouse gas emissions permit for an installation may be issued only if—

- (a) a monitoring plan has been approved in relation to the installation under the Monitoring and Reporting Regulation 2018; and
- (b) the regulator considers that from the date on which the permit comes into force the operator of the installation will be capable of monitoring and reporting the installation's reportable emissions in accordance with the monitoring and reporting conditions of the permit.

] <sup>1</sup>

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**Notes**

- <sup>1</sup> Substituted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021/1455 Pt 2 art.24(2) (February 7, 2022)


**Commencement**

Sch. 6(1) para. 3: November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

**Extent**

Sch. 6(1) para. 3(a)-(b): United Kingdom

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 Law In Force

**4.— Greenhouse gas emissions permits: content of permit**

(1) A greenhouse gas emissions permit must contain—

- (a) the name and postal address in the United Kingdom (including postcode) of the operator and any other address for correspondence included by the operator in the application;
- (b) the postal address and national grid reference of the installation (or, in the case of an installation in UK coastal waters or the UK sector of the continental shelf, equivalent information identifying the installation and its location);
- (c) a description of the installation, the regulated activities to be carried out at the installation and the specified emissions from those activities;
- (d) a description of the site and the location of the installation on the site;
- (e) the date on which the permit comes into force;
- (f) the monitoring plan—
  - (i) where an application is made for the permit, approved in relation to the installation under [ the Monitoring and Reporting Regulation 2018 ] <sup>1</sup>;
  - (ii) where an existing permit is converted into a greenhouse gas emissions permit, approved in relation to the installation under [ the Monitoring and Reporting Regulation 2012 ] <sup>1</sup> or [ the Monitoring and Reporting Regulation 2018 ] <sup>1</sup> for the

- purpose of monitoring specified emissions at the installation immediately before the greenhouse gas emissions permit comes into force;
- (g) the monitoring and reporting conditions (see sub-paragraph (2));
  - (h) the surrender condition (see sub-paragraphs (3) to (5));
  - [ (ha) the free allocation conditions (see sub-paragraph (6));
  - (hb) where a monitoring methodology plan has been approved in relation to the installation under Article 8 of the Free Allocation Regulation, the monitoring methodology plan; ]<sup>2</sup>
  - (i) any conditions that the regulator considers necessary to ensure that the operator notifies the regulator of any planned or effective changes to the capacity, activity level or operation of the installation, on or before 31st December in the year in which the change is planned or occurs;
  - (j) any other conditions that the regulator considers appropriate to include in the permit.
- (2) The monitoring and reporting conditions are—
- (a) a condition requiring the operator to monitor the installation's reportable emissions in accordance with—
    - (i) the Monitoring and Reporting Regulation 2018; and
    - (ii) the monitoring plan (including the written procedures supplementing the monitoring plan);
  - (b) a condition requiring the operator to prepare in accordance with the Monitoring and Reporting Regulation 2018 a report of the installation's reportable emissions in each scheme year that is verified [ as satisfactory ]<sup>3</sup> in accordance with the Verification Regulation 2018 and to submit the report [ (and the verification report) ]<sup>4</sup> to the regulator on or before 31st March in the following year;
  - (c) [...] <sup>5</sup>
  - (d) any further conditions that the regulator considers necessary to give proper effect to the Monitoring and Reporting Regulation 2018 or the Verification Regulation 2018.
- (3) The surrender condition is a condition requiring the operator to surrender allowances equal to the installation's reportable emissions in a scheme year on or before 30th April in the following year.
- (4) For the purposes of the surrender condition, where an installation's reportable emissions in a scheme year (the "non-compliance year") exceeds the allowances surrendered on or before 30th April in the following year, the installation's reportable emissions in the relevant scheme year must be treated as being increased by the difference.
- (5) In sub-paragraph (4), the relevant scheme year means—
- (a) the scheme year following the non-compliance year; or
  - (b) if the failure to comply with the surrender condition results from an error in the verified emissions report submitted by the operator, the scheme year in which the error is discovered.
- [ (6) The free allocation conditions are the following conditions, which must be expressed to apply while the installation is an FA installation—
- (a) a condition requiring the operator to monitor the activity level of the installation in accordance with—
    - (i) the Free Allocation Regulation; and
    - (ii) the monitoring methodology plan approved under Article 8 of the Free Allocation Regulation (including the written documentation of the procedures referred to in Article 8(3) of that Regulation);

[ (b) a condition requiring the operator, in accordance with the Activity Level Changes Regulation, to prepare an activity level report that is verified as satisfactory in accordance with the Verification Regulation 2018<sup>8</sup> and to submit the report (and the verification report) to the regulator—

(i) on or before 31st March in each scheme year; or

(ii) in the case of an installation in relation to which the Activity Level Changes Regulation has effect with the modifications referred to in paragraph 5 of Schedule 8A—

(aa) on or before 31st March in the first eligible scheme year (within the meaning of that Schedule) or, if later, within 3 months after the date on which the final annual number of allowances to be allocated in respect of the installation is approved under paragraph 4(6) of that Schedule;

(bb) on or before 31st March in each subsequent scheme year;

] <sup>7</sup>

(c) a condition requiring the operator, if the installation has ceased operation, to notify the regulator on or before 31st December in the scheme year in which the cessation occurs or within 1 month of the cessation, whichever is later;

(d) any further conditions that the regulator considers necessary to give proper effect to the Free Allocation Regulation or the Activity Level Changes Regulation.

(7) Where, after the date of issue of, or conversion of a permit into, a greenhouse gas emissions permit, a monitoring methodology plan is approved in relation to an installation under Article 8 of the Free Allocation Regulation, the regulator must vary the permit under paragraph 6 so that it contains the monitoring methodology plan. ] <sup>6</sup>

## Notes

<sup>1</sup> Words revoked by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021/1455 Pt 2 art.24(3)(a) (February 7, 2022)

<sup>2</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.38(2)(a) (December 31, 2020)

<sup>3</sup> Words inserted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.38(2)(b)(i) (December 31, 2020)

<sup>4</sup> Words inserted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.38(2)(b)(ii) (December 31, 2020)

<sup>5</sup> Revoked by Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2022/1173 Pt 2 art.16(2) (January 1, 2023)

<sup>6</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.38(2)(c) (December 31, 2020)

<sup>7</sup> Substituted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021/1455 Pt 2 art.24(3)(b) (February 7, 2022)

<sup>8</sup> "Verification Regulation 2018" is defined in article 4(1) of S.I. 2020/1265 as Commission Implementing Regulation (EU) 2018/2067 of 19 December 2018. Article 25 of that Order provides that the Regulation has effect for the purposes of the UK Emissions Trading Scheme, subject to modifications.

## Commencement

Sch. 6(1) para. 4(1)-(5)(b): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

**Extent**

Sch. 6(1) para. 4(1)-(7): United Kingdom

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✓ Law In Force

**5.— Greenhouse gas emissions permits: effect of permit, etc.**

- (1) A greenhouse gas emissions permit for an installation—
- (a) comes into force on the date set out in the permit;
  - (b) authorises the regulated activities set out in the permit to be carried out at the installation.
- (2) The operator of the installation must comply with the conditions of the permit.
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**Commencement**

Sch. 6(1) para. 5(1)-(2): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

**Extent**

Sch. 6(1) para. 5(1)-(2): United Kingdom

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**PART 2****Greenhouse gas emissions permits and hospital or small emitter permits**

✓ Law In Force

**6.— Variation of permits**

- (1) The operator of an installation—
- (a) may apply to the regulator to vary the installation's permit;
  - (b) must apply to the regulator to vary the installation's permit where required by a condition of the permit.
- (2) The regulator may vary an installation's permit at any time if the regulator considers that it is necessary to do so for the purposes of the UK ETS and in particular may do so in consequence of any of the following—
- (a) a report of the operator referred to in Article 69 of the Monitoring and Reporting Regulation 2018;
  - (b) a notification under a condition included under paragraph 4(1)(i) (notification of planned changes in operation);
  - (c) a failure by the operator to comply with a condition of the permit to apply for a variation [ ; ]<sup>1</sup>
  - [(d) a failure by the operator to implement—
    - (i) a recommendation for improvement of the monitoring methodology plan as required by Article 9(2)(e) of the Free Allocation Regulation; or

(ii) a modification of the monitoring methodology plan requested by the regulator under Article 9(5)(d) of that Regulation.

]<sup>1</sup>

(3) The regulator may vary a permit to comply with—

[ (za) paragraph 4(7) (adding monitoring methodology plan); ]<sup>2</sup>

(a) [ paragraph 9(3), (3A), (4) or (5) ]<sup>3</sup> (transfer of permits);

(b) any of the following provisions of Schedule 7—

(i) paragraph 10 (conversion of permit to hospital or small emitter permit);

(ii) paragraph 18 (calculation of later emissions targets where initial targets based on estimates);

[ (iia) paragraph 19C (capacity increases); ]<sup>4</sup>

(iii) paragraph 20 (banking overachieved target);

(iv) paragraph 21 (emissions targets for 2026-2030 allocation period);

(v) paragraph 24 (conversion of permit on loss of hospital or small emitter status);

(vi) paragraph 26 (conversion of permit at end of 2021-2025 allocation period).

(4) The variation of an installation's permit is given effect by the regulator giving a notice to the operator of the installation setting out the variations to the permit.

(5) Where a permit is varied, the regulator may, by giving notice to the operator, replace the permit with a consolidated version that includes the variations.

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#### Notes

<sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.38(3)(a) (December 31, 2020)

<sup>2</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.38(3)(b) (December 31, 2020)

<sup>3</sup> Words substituted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021/1455 Pt 2 art.24(4)(a) (February 7, 2022)

<sup>4</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021/1455 Pt 2 art.24(4)(b) (February 7, 2022)

#### Commencement

Sch. 6(2) para. 6(1)-(5): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

#### Extent

Sch. 6(2) para. 6(1)-(5): United Kingdom

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 Law In Force

### 7.— Transfer of permits: application

(1) Subject to sub-paragraphs (3) and (4), a permit holder (the "transferring operator") and another person (the "new operator") may jointly apply to the regulator—

(a) for the transfer of the permit to the new operator;

(b) for the partial transfer of the permit to the new operator.

(2) For the purposes of this Order, the partial transfer of a permit is the transfer in respect of part of the installation at which the permit authorises a regulated activity to be carried out.

(3) An application for the transfer or partial transfer of a permit may not be made in respect of an installation (or part of an installation) that has ceased operation.

(4) An application may not be made for the partial transfer of a hospital or small emitter permit.

(5) In this paragraph and paragraphs 8 to 10—

"existing permit" has the meaning given in [ paragraph 9(3A) or (5) ]<sup>1</sup>;

"new operator" has the meaning given in sub-paragraph (1);

"transferred activities" has the meaning given in [ paragraph 8(1)(a) ]<sup>2</sup>;

"transferred units" has the meaning given in [ paragraph 8(1)(a) ]<sup>2</sup>;

"transferring operator" has the meaning given in sub-paragraph (1).

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## Notes

<sup>1</sup> Words substituted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021/1455 Pt 2 art.24(5) (February 7, 2022)

<sup>2</sup> Word substituted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.38(4) (December 31, 2020)

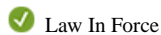
## Commencement

Sch. 6(2) para. 7(1)-(5) definition of "transferring operator": November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

## Extent

Sch. 6(2) para. 7(1)-(5) definition of "transferring operator": United Kingdom

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Law In Force

## [ 8. Transfer of permits: contents of application

(1) An application for the transfer or partial transfer of a permit must contain—

(a) a description of the installation (or part of an installation) in respect of which the application is made (the "transferred units") and of the regulated activities authorised to be carried out there (the "transferred activities");

(b) in relation to both the transferring operator and the new operator, an address to which correspondence relating to the application should be sent (in addition to the addresses required by paragraph 1(5) of Schedule 3);

(c) if the new operator is a body corporate, the matters referred to in paragraph 2(1)(b) in relation to the new operator;

(d) either—

(i) the new operator's monitoring plan in accordance with Article 12 of the Monitoring and Reporting Regulation 2018, together with—

(aa) the supporting documents referred to in Article 12(1) of that Regulation;

(bb) except where the transferred units are an installation with low emissions within the meaning of Article 47(2) of that Regulation, the uncertainty assessment carried out under Article 28(1)(a) of that Regulation; or

- (ii) the new operator's specification of the parts of the existing monitoring plan that it is proposed be varied and any necessary corresponding update of the supporting documents and any uncertainty assessment;
- (e) in the case of an application for a partial transfer of a permit, the transferring operator's specification of the parts of the existing monitoring plan that it is proposed be varied and any necessary corresponding update of the supporting documents and any uncertainty assessment.

[ (1A) Where an application is made—

- (a) the new operator's monitoring plan referred to in sub-paragraph (1)(d)(i) must be treated as if it had been submitted to the regulator for approval under Article 12 of the Monitoring and Reporting Regulation 2018; or
- (b) if sub-paragraph (1)(d)(ii) or (e) applies, the new or transferring operator's specification of the parts of an existing monitoring plan that it is proposed be varied must be treated as a significant modification within the meaning of Article 15 of that Regulation notified to the regulator for approval under that Article.

] <sup>2</sup>

(2) Where the application is for the transfer or partial transfer of a greenhouse gas emissions permit for an installation that is an FA installation, the application must also contain—

- (a) either—
  - (i) the new operator's monitoring methodology plan in accordance with Article 8 of the Free Allocation Regulation; or
  - (ii) the new operator's specification of the parts of the existing monitoring methodology plan that it is proposed be varied;
- (b) in the case of an application for the partial transfer of the permit, the transferring operator's specification of the parts of the existing monitoring methodology plan that it is proposed be varied.

(3) But sub-paragraph (2) does not apply if the application contains a statement by the new operator that the new operator renounces free allocation in respect of the transferred units.

[ (4) Where sub-paragraph (2) applies—

- (a) the new operator's monitoring methodology plan referred to in sub-paragraph (2)(a)(i) must be treated as if it had been submitted to the regulator for approval under Article 8 of the Free Allocation Regulation; or
- (b) if sub-paragraph (2)(a)(ii) or (b) applies, the new or transferring operator's specification of the parts of an existing monitoring methodology plan that it is proposed be varied must be treated as a significant modification within the meaning of Article 9 of that Regulation notified to the regulator for approval under that Article.

] <sup>3</sup>

] <sup>1</sup>

## Notes

- <sup>1</sup> Existing sch.6 para.8 renumbered as sch.6 para.8(1) and sch.6 para.8(2) and (3) inserted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.38(5) (December 31, 2020)
- <sup>2</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021/1455 Pt 2 art.24(6)(a) (February 7, 2022)
- <sup>3</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021/1455 Pt 2 art.24(6)(b) (February 7, 2022)

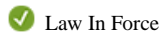


**Commencement**

Sch. 6(2) para. 8(a)-(e): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

**Extent**

Sch. 6(2) para. 8(1)-(e): United Kingdom



Law In Force

**9.— Transfer of permits: grant of application**

[ (1) An application for the transfer or partial transfer of a permit may be granted only if—

- (a) the regulator considers that, from the transfer date, the new operator—
  - (i) will be the operator of the installation;
  - (ii) will be capable of monitoring and reporting the installation's reportable emissions in accordance with the monitoring and reporting conditions of the permit (including as varied under this paragraph); and
  - (iii) where the application is for the transfer or partial transfer of a greenhouse gas emissions permit of an installation that is an FA installation, will be capable of complying with the free allocation conditions of the permit (including as varied under this paragraph);
- (b) the monitoring plan or the variations referred to in paragraph 8(1)(d) and, in the case of an application for the partial transfer of the permit, the variations referred to in paragraph 8(1)(e) have been approved under the Monitoring and Reporting Regulation 2018 (*see* paragraph 8(1A)); and
- (c) where the application is for the transfer or partial transfer of a greenhouse gas emissions permit of an installation that is an FA installation, the monitoring methodology plan or the variations referred to in paragraph 8(2)(a) and, in the case of an application for the partial transfer of the permit, the variations referred to in paragraph 8(2)(b) have been approved under the Free Allocation Regulation (*see* paragraph 8(4)).

] <sup>1</sup>

[ (1A) But [ sub-paragraph (1)(a)(iii) and (c) do not apply ] <sup>3</sup> if the application contains a statement by the new operator that the new operator renounces free allocation in respect of the transferred units. ] <sup>2</sup>

(2) Where an application for a transfer or a partial transfer is granted, the regulator must give notice of the transfer to—

- (a) the transferring operator; and
- (b) the new operator.

(3) Where an application for the partial transfer of a permit is granted—

- (a) the regulator must issue a new greenhouse gas emissions permit (the "new permit") to the new operator that—
  - (i) sets out that the new permit comes into force on the transfer date;
  - (ii) sets out the transferred activities and the transferred units at which the transferred activities may be carried out;
  - (iii) includes such other provisions as the regulator considers appropriate to take account of the transfer;



- (b) the regulator may make such corresponding variations under paragraph 6 to the permit (the "original permit") held by the transferring operator as the regulator considers appropriate to take account of the transfer;
- (c) the new permit comes into force on the transfer date to authorise the transferred activities to be carried out at the transferred units from that date;
- (d) the variations to the original permit have effect from the transfer date (which must be set out in the original permit).

[ (3A) But if the new operator already holds a permit (the "existing permit") for an installation that is on the same site as the transferred units, the regulator may, instead of issuing a new greenhouse gas emissions permit to the new operator under sub-paragraph (3), vary the existing permit under paragraph 6 so that it includes such variations as the regulator considers necessary to take account of the transferred units and transferred activities; and if the regulator does so—

- (a) the regulator must make such corresponding variations under paragraph 6 to the permit (the "original permit") held by the transferring operator as the regulator considers appropriate to take account of the transfer;
- (b) the variations to the existing permit and the original permit have effect from the transfer date, which must be set out in the existing permit and the original permit.

] <sup>4</sup>

(4) Where an application for the transfer of a permit (other than for a partial transfer) is granted—

- (a) the regulator must vary the permit under paragraph 6 so that it includes—
  - (i) the name and other particulars of the new operator;
  - (ii) the transfer date;
  - (iii) such variations to the monitoring plan as the regulator considers appropriate;
- (b) the new operator is the holder of the permit as varied from the transfer date.

(5) But if the new operator already holds a permit (the "existing permit") for an installation that is on the same site as the transferred units, the regulator may, instead of varying the transferring operator's permit under sub-paragraph (4)—

- (a) vary the existing permit under paragraph 6 so that it includes such variations as the regulator considers necessary to take account of the transferred units and transferred activities; and the variations have effect from the transfer date, which must be set out in the existing permit; and
- (b) by giving notice to the transferring operator, cancel the permit held by the transferring operator so that the permit ceases to authorise regulated activities to be carried out from the transfer date.

[ (5A) Where a permit is cancelled under sub-paragraph (5)(b), the regulator must give notice to the registry administrator as soon as reasonably practicable. ] <sup>5</sup>

(6) In this paragraph, "transfer date" means the date agreed by the transferring operator, the new operator and the regulator as the date on which the transfer or partial transfer to the new operator is to take effect.

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#### Notes

<sup>1</sup> Substituted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021/1455 Pt 2 art.24(7)(a) (February 7, 2022)

<sup>2</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.38(6)(b) (December 31, 2020)


- <sup>3</sup> Words substituted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021/1455 Pt 2 art.24(7)(b) (February 7, 2022)
- <sup>4</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021/1455 Pt 2 art.24(7)(c) (February 7, 2022)
- <sup>5</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.38(6)(c) (December 31, 2020)

### Commencement

Sch. 6(2) para. 9(1)-(6): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

### Extent

Sch. 6(2) para. 9(1)-(6): United Kingdom

 Law In Force

## 10.— Transfer of permits: underreporting discovered after transfer

(1) This paragraph applies where—

- (a) after the transfer of a greenhouse gas emissions permit under paragraph 9 takes effect, the regulator becomes aware, following a determination of reportable emissions under article 45, of an error in a report submitted for a scheme year by the transferring operator under the monitoring and reporting conditions of the permit; and
- (b) as a result of the error, the transferring operator failed to comply with the surrender condition of the permit in respect of the scheme year to which the error relates.

(2) The regulator must give notice to the transferring operator of the error as soon as reasonably practicable.

(3) The transferring operator must within 1 month of the notice effect a transfer to the new operator of allowances equal to the reportable emissions in respect of which, as a result of the error, the transferring operator failed to comply with the surrender condition of the permit.

(4) The new operator must surrender the allowances within 1 month after the transfer of the allowances.

(5) In sub-paragraph (1), the reference to the transfer of a greenhouse gas emissions permit under paragraph 9 includes a reference to an application for a transfer of a permit to which effect is given by a variation of the new operator's existing permit under [sub-paragraph (3A) or (5)]<sup>1</sup> of that paragraph.

### Notes


- <sup>1</sup> Words substituted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021/1455 Pt 2 art.24(8) (February 7, 2022)

### Commencement

Sch. 6(2) para. 10(1)-(5): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

**Extent**

Sch. 6(2) para. 10(1)-(5): United Kingdom

 Law In Force

**11.— Surrender of permits**

(1) Where a permit authorises a regulated activity to be carried out at an installation that has ceased operation, the operator must apply to the regulator to surrender the permit on or before—

- (a) the last day of the period of 1 month beginning with the day on which it ceased operation; or
- (b) such later date as may be agreed by the regulator.

(2) Where a permit authorises a regulated activity to be carried out at an installation where a regulated activity is no longer being carried out but it is not technically impossible to resume operation, the operator of the installation may apply to the regulator to surrender the permit.

(3) Where the regulator grants an application to surrender a permit under sub-paragraph (1) or (2), the regulator must give a notice (a "surrender notice") to the operator.

(4) The surrender notice must—

- (a) set out a date (the "end date") on which the surrender of the permit takes effect;
- (b) require the operator to—
  - (i) submit to the regulator on or before a date set out in the notice a report of the installation's reportable emissions in the period beginning on 1st January in the scheme year (the "end year") in which the end date falls and ending on the end date;
  - (ii) ensure that the report is prepared and verified in accordance with the monitoring and reporting conditions of the permit;
  - [(iii) where the permit is a greenhouse gas emissions permit, on or before a date set out in the notice (which must not be before 30th April in the end year), surrender allowances equal to the sum of—
    - (aa) the installation's reportable emissions in the period referred to in sub-paragraph (i); and
    - (bb) if, in relation to reportable emissions before that period, the operator fails to comply with the surrender condition of the permit, the number of allowances in respect of which the operator fails to comply.

] <sup>1</sup>

(5) The operator must comply with the requirements of the surrender notice.

(6) Where a surrender notice is given—

- (a) the permit ceases to be in force on the end date (and therefore ceases to authorise a regulated activity to be carried out at the installation from that date); but
- (b) the conditions of the permit continue to have effect as if the permit were in force until the regulator certifies that the conditions of the permit and the requirements of the surrender notice have been complied with [ or that there is no reasonable prospect of their being complied with ] <sup>2</sup> .

(7) The reference in sub-paragraph (6)(b) to the conditions of the permit that continue to have effect includes a reference to conditions relating to reportable emissions [ , or reports on activity

levels, ]<sup>3</sup> before the end year that the operator is required to comply with on or before a date that may fall after the end date (for example, in the case of a greenhouse gas emissions permit, the [ conditions referred to in paragraph 4(2)(b) and (6)(b) ]<sup>4</sup> and the surrender condition or, in the case of a hospital or small emitter permit, the condition referred to in paragraph 11(2)(b) of Schedule 7).

[ (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). ]<sup>5</sup>

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#### Notes

- <sup>1</sup> Substituted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2022/454 Pt 2 art.13(2) (April 14, 2022)
- <sup>2</sup> Words inserted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.38(7) (December 31, 2020)
- <sup>3</sup> Words inserted by Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2022/1173 Pt 2 art.16(3)(a)(i) (January 1, 2023)
- <sup>4</sup> Words substituted by Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2022/1173 Pt 2 art.16(3)(a)(ii) (January 1, 2023)
- <sup>5</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2022/1173 Pt 2 art.16(3)(b) (January 1, 2023)

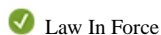
#### Commencement

Sch. 6(2) para. 11(1)-(7): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

#### Extent

Sch. 6(2) para. 11(1)-(8): United Kingdom

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Law In Force

## 12.— Revocation of permits

(1) Where the operator of an installation fails to apply to surrender the installation's permit under paragraph 11(1) on or before the date referred to in that sub-paragraph, the regulator must revoke the permit as soon as reasonably practicable after that date.

(2) Where a permit authorises a regulated activity to be carried out at an installation that is included in the ultra-small emitter list for 2026-2030, the regulator must revoke the permit so that it ceases to be in force at the end of 31st December 2025.

(3) The regulator may revoke a permit if—

(a) the operator fails to comply with—

(i) a requirement imposed on the operator by or under—

(aa) this Order;

(bb) the Monitoring and Reporting Regulation 2018;

(cc) the Verification Regulation 2018;

[ (dd) the Free Allocation Regulation;

(ee) the Activity Level Changes Regulation. ]<sup>1</sup>

- (ii) a condition of the permit; or
  - (b) the operator of an installation fails to pay the charge for maintaining the permit in force<sup>2</sup>.
- (4) A permit is revoked by giving a notice (a "revocation notice") to the operator.
- (5) The revocation notice must—
  - (a) set out a date (the "end date") on which the revocation of the permit takes effect;
  - (b) require the operator to—
    - (i) submit to the regulator on or before a date set out in the notice a report of the installation's reportable emissions in the period beginning on 1st January in the scheme year (the "end year") in which the end date falls and ending on the end date;
    - (ii) ensure that the report is prepared and verified in accordance with the monitoring and reporting conditions of the permit;
    - [ (iii) where the permit is a greenhouse gas emissions permit, on or before a date set out in the notice (which must not be before 30th April in the end year), surrender allowances equal to the sum of—
      - (aa) the installation's reportable emissions in the period referred to in sub-paragraph (i); and
      - (bb) if, in relation to reportable emissions before that period, the operator fails to comply with the surrender condition of the permit, the number of allowances in respect of which the operator fails to comply.
- ]<sup>3</sup>
- (6) The operator must comply with the requirements of the revocation notice.
- (7) Where a revocation notice is given—
  - (a) the permit ceases to be in force on the end date (and therefore ceases to authorise a regulated activity to be carried out at the installation from that date); but
  - (b) the conditions of the permit continue to have effect as if the permit were in force until the regulator certifies that the conditions of the permit and the requirements of the revocation notice have been complied with [ or that there is no reasonable prospect of their being complied with ]<sup>4</sup>.
- (8) The reference in sub-paragraph (7)(b) to the conditions of the permit that continue to have effect includes a reference to conditions relating to reportable emissions [ , or reports on activity levels, ]<sup>5</sup> before the end year that the operator is required to comply with on or before a date that may fall after the end date (for example, in the case of a greenhouse gas emissions permit, the [ conditions referred to in paragraph 4(2)(b) and (6)(b) ]<sup>6</sup> and the surrender condition or, in the case of a hospital or small emitter permit, the condition referred to in paragraph 11(2)(b) of Schedule 7).
- [ (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). ]<sup>7</sup>
- (9) A regulator who gives a revocation notice may, by notice to the operator, withdraw the revocation notice at any time before the end date.

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**Notes**

- <sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.38(8)(a) (December 31, 2020)
- <sup>2</sup> Paragraph 23(4) of Schedule 7 provides for the regulator to give a conversion notice in respect of the hospital or small emitter permit instead of revoking the permit.
- <sup>3</sup> Substituted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2022/454 Pt 2 art.13(3) (April 14, 2022)
- <sup>4</sup> Words inserted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.38(8)(b) (December 31, 2020)
- <sup>5</sup> Words inserted by Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2022/1173 Pt 2 art.16(4)(a)(i) (January 1, 2023)
- <sup>6</sup> Words substituted by Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2022/1173 Pt 2 art.16(4)(a)(ii) (January 1, 2023)
- <sup>7</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2022/1173 Pt 2 art.16(4)(b) (January 1, 2023)

**Commencement**


Sch. 6(2) para. 12(1)-(9): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

**Extent**

Sch. 6(2) para. 12(1)-(9): United Kingdom

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**SCHEDULE 7****Hospitals and small emitters****Article 26(4)****PART 1****Preliminary**

 Law In Force

**1.— Interpretation**

(1) In this Schedule—

"conversion notice" has the meaning given in paragraph 23 [ or 23A ]<sup>1</sup>;

"emissions report" has the meaning given in paragraph 11(2)(b);

"emissions target", in relation to an installation, means a target for the installation's reportable emissions (excluding emissions from biomass) set out in the installation's hospital or small

emitter permit; and an emissions target for a scheme year is the emissions target for that year set out in the permit;

"hospital-qualifying installation" means—

- (a) in relation to an installation included in the hospital and small emitter list for 2021-2025, an installation stated in that list to be a "hospital" by the inclusion of "Y" in the entry relating to the installation in the column headed "Hospital (YES/NO)";
- (b) in relation to an installation included in the hospital and small emitter list for 2026-2030, an installation that meets condition A (whether or not the installation also meets condition B or C) (see paragraphs 5 and 6);
- (c) in relation to an installation included in the ultra-small emitter list for 2021-2025 or the ultra-small emitter list for 2026-2030—
  - (i) in respect of which a notice under paragraph 7(2) of Schedule 8 is given; and
  - (ii) that is a hospital or small emitter for a scheme year by virtue of paragraph 4 of this Schedule,

an installation that primarily provided services to a hospital in the scheme year before the notice was given;

"maximum amount" means 24,999 tonnes of carbon dioxide equivalent.

(2) For the purposes of this Order, in determining whether or not an installation's reportable emissions or an estimate of reportable emissions exceed the maximum amount or an emissions target and in calculating an installation's emissions target based on reportable emissions or an estimate, emissions from biomass must be excluded.

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#### Notes

- <sup>1</sup> Words inserted by Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2022/1173 Pt 2 art.17(2) (January 1, 2023)


#### Commencement

Sch. 7(1) para. 1(1)-(2): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

#### Extent

Sch. 7(1) para. 1(1)-(2): United Kingdom

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 Law In Force

## 2.— Meaning of installation that primarily provides services to a hospital in scheme year

(1) For the purposes of this Schedule, an installation is an installation that primarily provides services to a hospital in a scheme year if at least 85% of the heat produced by the installation in that year is used by or supplied to one or more hospitals.

(2) In sub-paragraph (1), "hospital" means—

- (a) an institution for the reception and treatment of persons suffering from illness;
- (b) a maternity home;

- (c) an institution for the reception and treatment of persons during convalescence or persons requiring medical rehabilitation;
- (d) a clinic, dispensary or out-patient department maintained in connection with an establishment referred to in any of paragraphs (a) to (c);
- (e) a research or teaching facility that is associated with an establishment referred to in any of paragraphs (a) to (c) that has as its primary purpose medical research or medical teaching;
- (f) any other facility that has as its primary purpose the provision of such services as are necessary to maintain the proper functioning of an establishment referred to in any of paragraphs (a) to (d), including in particular—
  - (i) blood transfusion services;
  - (ii) catering services;
  - (iii) laundry services;
  - (iv) medical sanitisation services.

(3) In sub-paragraph (2), "illness" includes any disorder or disability of the mind and any injury or disability requiring medical or dental treatment or nursing.

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#### Commencement

Sch. 7(1) para. 2(1)-(3): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

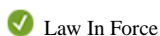
#### Extent

Sch. 7(1) para. 2(1)-(3): United Kingdom

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## PART 2

### Hospital or small emitter status



Law In Force

#### 3.— Hospital or small emitter status

(1) This paragraph and paragraph 4 apply to determine whether or not an installation is a hospital or small emitter for a scheme year.

(2) Subject to sub-paragraphs (3) and (4), an installation is a hospital or small emitter for the scheme years in the 2021-2025 allocation period if the installation is included in the list (the "hospital and small emitter list for 2021-2025") of installations to be excluded from the EU ETS under Article 27 of the Directive from 1st January 2021 published for the purposes of the EU ETS on the website of SEPA on 28th May 2020<sup>1</sup>.

(3) Where a conversion notice is given to the operator of the installation stating that the installation is not a hospital or small emitter for a scheme year in the 2021-2025 allocation period, the installation is not a hospital or small emitter for that scheme year or subsequent scheme years in the allocation period.



(4) Where a regulated activity does not begin to be carried out before 1st November 2020 at an installation that is included in the hospital and small emitter list for 2021-2025—

- (a) the installation is not a hospital or small emitter for the scheme years in the 2021-2025 allocation period; and
- (b) for the purposes of this Order, the hospital and small emitter list for 2021-2025 must be treated as not including the installation.

(5) Subject to sub-paragraphs (6) and (7), an installation is a hospital or small emitter for the scheme years in the 2026-2030 allocation period if the installation is included in the hospital and small emitter list for 2026-2030.

(6) Where a conversion notice is given to the operator of the installation stating that the installation is not a hospital or small emitter for a scheme year in the 2026-2030 allocation period, the installation is not a hospital or small emitter for that scheme year or subsequent scheme years in the allocation period.

(7) Where a regulated activity does not begin to be carried out before 1st November 2025 at an installation that is included in the hospital and small emitter list for 2026-2030—

- (a) the installation is not a hospital or small emitter for the scheme years in the 2026-2030 allocation period; and
- (b) for the purposes of this Order, the hospital and small emitter list for 2026-2030 must be treated as not including the installation.

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#### Notes

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

#### Commencement

Sch. 7(2) para. 3(1)-(7)(b): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

#### Extent

Sch. 7(2) para. 3(1)-(7)(b): United Kingdom

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Law In Force

### 4.— Hospital or small emitter status: former ultra-small emitters

(1) This paragraph applies to an installation if—

- (a) the installation is included in—
  - (i) the ultra-small emitter list for 2021-2025; or
  - (ii) the ultra-small emitter list for 2026-2030;
- (b) the regulator gives notice to the operator of the installation under paragraph 7(2) of Schedule 8 stating that the installation will not be an ultra-small emitter for a scheme year (the "relevant scheme year"); and

- (c) the regulator gives notice to the operator under paragraph 7(5)(b) of that Schedule that the regulator considers that the installation is not an ineligible installation.
- (2) Subject to paragraph 3(3), an installation to which this paragraph applies by virtue of sub-paragraph (1)(a)(i) is a hospital or small emitter for the relevant scheme year and for subsequent scheme years in the 2021-2025 allocation period.
- (3) Subject to paragraph 3(6), an installation to which this paragraph applies by virtue of sub-paragraph (1)(a)(ii) is a hospital or small emitter for the relevant scheme year and for subsequent scheme years in the 2026-2030 allocation period.
- (4) For the purpose of this paragraph, an installation is an ineligible installation if—
- (a) where the activity referred to in column 1 of the first entry in table C in Schedule 2 (combustion of fuels) is carried out at the installation, the installation's rated thermal input is 35 megawatts or above—
    - (i) where the installation is included in the ultra-small emitter list for 2021-2025, in any of the scheme years (within the meaning of GGETSR 2012) beginning on 1st January 2016, 2017 or 2018;
    - (ii) where the installation is included in the ultra-small emitter list for 2026-2030, in any of the 2021, 2022 or 2023 scheme years; and
  - (b) the installation is not an installation that primarily provided services to a hospital in the scheme year preceding the scheme year in which the notice under paragraph 7(2) of Schedule 8 is given.

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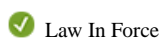
#### Commencement

Sch. 7(2) para. 4(1)-(4)(b): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

#### Extent

Sch. 7(2) para. 4(1)-(4)(b): United Kingdom

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Law In Force

### 5.— Obtaining hospital or small emitter status for 2026-2030 allocation period

- (1) The operator of an installation who wishes to apply for the installation to be a hospital or small emitter for the scheme years in the 2026-2030 allocation period must submit the following to the regulator—
- (a) details of the installation, including details of any permit in force;
  - (b) evidence that the installation meets condition A, B or C (see paragraph 6);
  - (c) where the operator submits evidence that the installation meets condition A, the evidence and any estimate required by paragraph 6(3);
  - (d) where the operator submits evidence that the installation meets condition C, any estimate required by paragraph 6(6).
- (2) An application—
- (a) may not be made before 1st April 2024;
  - (b) must be made on or before 30th June 2024.
- (3) After receiving an application, the regulator must on or before 30th September 2024—

- (a) make a preliminary assessment of whether or not the installation meets condition A, B or C; and
  - (b) send the preliminary assessment and the reasons for it to the UK ETS authority.
- (4) After receiving the preliminary assessment—
- (a) the UK ETS authority must make a final assessment of whether or not the installation meets condition A, B or C; and
  - (b) if the UK ETS authority considers that the installation meets condition A, B or C, the UK ETS authority must include the installation in a list (the "hospital and small emitter list for 2026-2030").
- (5) The UK ETS authority must publish the hospital and small emitter list for 2026-2030 on or before 30th April 2025.
- (6) Evidence of an installation's historic reportable emissions may not be taken into account for the purposes of assessing whether or not an installation meets condition B or C unless the evidence is—
- (a) verified [as satisfactory]<sup>1</sup> in accordance with the Verification Regulation 2018; or
  - (b) where relevant, set out in an emissions report accompanied by the declaration referred to in paragraph 11(2)(b)(ii).
- (7) An application may not be made under this paragraph and paragraph 3 of Schedule 8.

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#### Notes

- <sup>1</sup> Words inserted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.39(2) (December 31, 2020)

#### Commencement

Sch. 7(2) para. 5(1)-(7): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

#### Extent

Sch. 7(2) para. 5(1)-(7): United Kingdom

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### **6.— Obtaining hospital or small emitter status for 2026-2030 allocation period: Conditions A, B and C**

(1) This paragraph applies for the purposes of paragraph 5.

#### *Condition A*

(2) Condition A is that the installation—

- (a) is an installation that primarily provides services to a hospital in the 2023 scheme year; or
- (b) if a regulated activity has not begun to be carried out at the installation at the date of the application—
  - (i) a regulated activity will begin to be carried out at the installation before 1st November 2025; and

(ii) the installation will be an installation that primarily provides services to a hospital after that date.

(3) Where the operator submits evidence that the installation meets condition A, the operator must also submit—

(a) if a regulated activity begins to be carried out at the installation on or before 1st January 2021, evidence of—

(i) the installation's reportable emissions in each of the 2021, 2022 and 2023 scheme years, verified as mentioned in paragraph 5(6);

(ii) where the activity referred to in column 1 of the first entry in table C in Schedule 2 (combustion of fuels) is carried out at the installation, the installation's rated thermal input in each of those years;

(b) in any other case—

(i) where a regulated activity has begun to be carried out at the installation at the date of the application, such evidence of the matters referred to in paragraph (a)(i) and (ii) as is available at the date of the application; and

(ii) where the evidence submitted under sub-paragraph (i) does not include evidence of reportable emissions for a complete scheme year, an estimate of the installation's reportable emissions in the 2026 scheme year.

#### *Condition B*

(4) Condition B is that—

(a) a regulated activity begins to be carried out at the installation on or before 1st January 2021;

(b) the installation's reportable emissions in each of the 2021, 2022 and 2023 scheme years do not exceed the maximum amount; and

(c) where the activity referred to in column 1 of the first entry in table C in Schedule 2 (combustion of fuels) is carried out at the installation, the installation's rated thermal input is below 35 megawatts in each of those years.

#### *Condition C*

(5) Condition C is that—

(a) if a regulated activity is carried out at the installation at the date of the application, the regulated activity began to be carried out at the installation after 1st January 2021;

(b) if a regulated activity has not begun to be carried out at the installation at the date of the application, a regulated activity will begin to be carried out at the installation before 1st November 2025;

(c) the installation's reportable emissions—

(i) are not likely to exceed the maximum amount in each of the scheme years in the 2026-2030 allocation period; and

(ii) if a regulated activity has begun to be carried out at the installation at the date of the application, do not exceed the maximum amount in each of the scheme years for which, at the date of the application, evidence of reportable emissions is available; and

(d) where the activity referred to in column 1 of the first entry in table C in Schedule 2 (combustion of fuels) is carried out at the installation, the installation's rated thermal input—

(i) is likely to be below 35 megawatts in each of the scheme years in the 2026-2030 allocation period; and

(ii) if a regulated activity has begun to be carried out at the installation at the date of the application, is below 35 megawatts in each of the scheme years for which, at the date of the application, evidence of rated thermal input is available.

(6) Where the evidence submitted under sub-paragraph (5) does not include evidence of reportable emissions for a complete scheme year, the operator must also submit an estimate of the installation's reportable emissions in the 2026 scheme year.

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**Commencement**

Sch. 7(2) para. 6(1)-(6): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

**Extent**

Sch. 7(2) para. 6(1)-(6): United Kingdom

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## PART 3

### Hospital or small emitter permits

✓ Law In Force

#### 7.— Hospital or small emitter permits: application

(1) The operator of an installation that is a hospital or small emitter for a scheme year may apply to the regulator for a hospital or small emitter permit to come into force in that year<sup>1</sup>.

(2) But an application may not be made if a permit for the installation is already in force.

(3) In sub-paragraph (2), "permit" includes a permit within the meaning of GGETSR 2012 to which paragraph 1 of Schedule 11 applies (permits to be converted).

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**Notes**

<sup>1</sup> Paragraph 10 of Schedule 7 and paragraph 1 of Schedule 11 provide for the conversion of permits into hospital or small emitter permits.

**Commencement**

Sch. 7(3) para. 7(1)-(3): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

**Extent**

Sch. 7(3) para. 7(1)-(3): United Kingdom

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✓ Law In Force

### **8. Hospital or small emitter permits: content of application**

An application for a hospital or small emitter permit must contain the matters set out in paragraph 2 of Schedule 6, except for the uncertainty assessment referred to in sub-paragraph (1)(g)(ii) of that paragraph.

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#### **Commencement**

Sch. 7(3) para. 8: November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

#### **Extent**

Sch. 7(3) para. 8: United Kingdom

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✓ Law In Force

### **[ 9. Hospital or small emitter permits: issue of permit**

A hospital or small emitter permit for an installation may be issued only if—

- (a) the application is made for a permit to come into force in a scheme year for which the installation is a hospital or small emitter;
- (b) a monitoring plan has been approved in relation to the installation under the Monitoring and Reporting Regulation 2018; and
- (c) the regulator considers that from the date on which the permit comes into force the operator of the installation will be capable of monitoring and reporting the installation's reportable emissions in accordance with the monitoring and reporting conditions of the permit.

] <sup>1</sup>

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#### **Notes**

- <sup>1</sup> Substituted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021/1455 Pt 2 art.25(2) (February 7, 2022)

#### **Commencement**

Sch. 7(3) para. 9(a)-(b): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

#### **Extent**

Sch. 7(3) para. 9(a)-(b): United Kingdom

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✓ Law In Force

### **10.— Hospital or small emitter permits: conversion of existing greenhouse gas emissions permit for 2026-2030 allocation period**

(1) This paragraph applies where a greenhouse gas emissions permit is in force for an installation that is included in the hospital and small emitter list for 2026-2030.

(2) The regulator must convert the greenhouse gas emissions permit into a hospital or small emitter permit with effect from 1st January 2026 by varying it under paragraph 6 of Schedule 6, so that the provisions of the permit are replaced by provisions that satisfy the requirements of paragraph 11.

(3) When varying a permit under sub-paragraph (2), the regulator may make only such variations as the regulator considers necessary in consequence of the installation's inclusion in the hospital and small emitter list for 2026-2030.

(4) The conversion of the permit does not affect the obligations of the operator under the greenhouse gas emissions permit in respect of specified emissions before 1st January 2026.

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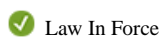
#### Commencement

Sch. 7(3) para. 10(1)-(4): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

#### Extent

Sch. 7(3) para. 10(1)-(4): United Kingdom

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Law In Force

### 11.— Hospital or small emitter permits: content of permit

(1) A hospital or small emitter permit must contain—

- (a) the name and postal address in the United Kingdom (including postcode) of the operator and any other address for correspondence included by the operator in the application;
- (b) the postal address and national grid reference of the installation (or, in the case of an installation in UK coastal waters or the UK sector of the continental shelf, equivalent information identifying the installation and its location);
- (c) a description of the installation, the regulated activities to be carried out at the installation and the specified emissions from those activities;
- (d) a description of the site and the location of the installation on the site;
- (e) the date on which the permit comes into force;
- (f) an emissions target for the installation, calculated by the regulator in accordance with paragraphs 15 to 17—
  - (i) subject to paragraph 18, where the installation is included in the hospital and small emitter list for 2021-2025, for each scheme year in the 2021-2025 allocation period;
  - (ii) subject to paragraph 18, where the installation is included in the hospital and small emitter list for 2026-2030, for each scheme year in the 2026-2030 allocation period;
  - (iii) where the installation is included in the ultra-small emitter list for 2021-2025, for each scheme year in the 2021-2025 allocation period for which the installation is a hospital or small emitter (see paragraph 4(2));
  - (iv) where the installation is included in the ultra-small emitter list for 2026-2030, for each scheme year in the 2026-2030 allocation period for which the installation is a hospital or small emitter (see paragraph 4(3));
- (g) the monitoring plan—

- (i) where an application is made for the permit, approved in relation to the installation under [ the Monitoring and Reporting Regulation 2018 ]<sup>1</sup>;
    - (ii) where an existing permit is converted into a hospital or small emitter permit, approved in relation to the installation under [ the Monitoring and Reporting Regulation 2012 ]<sup>1</sup> or [ the Monitoring and Reporting Regulation 2018 ]<sup>1</sup> for the purpose of monitoring reportable emissions at the installation immediately before the hospital or small emitter permit comes into force;
  - (h) the monitoring and reporting conditions (see sub-paragraph (2));
  - (i) any other conditions that the regulator considers appropriate to include in the permit.
- (2) The monitoring and reporting conditions are—
- (a) a condition requiring the operator to monitor the installation's reportable emissions in each scheme year for which the installation is a hospital or small emitter in accordance with—
    - (i) the Monitoring and Reporting Regulation 2018; and
    - (ii) the monitoring plan (including the written procedures supplementing the monitoring plan);
  - (b) a condition requiring the operator to prepare in accordance with the Monitoring and Reporting Regulation 2018 a report (the "emissions report") of the installation's reportable emissions in each scheme year for which the installation is a hospital or small emitter that is—
    - (i) verified [ as satisfactory ]<sup>2</sup> in accordance with the Verification Regulation 2018; or
    - (ii) accompanied by a declaration stating that—
      - (aa) in preparing the emissions report the operator has complied with the Monitoring and Reporting Regulation 2018;
      - (bb) the operator has complied with the monitoring plan; and
      - (cc) the emissions report is free from material misstatements, and to submit the emissions report [ and the verification report (where sub-paragraph (i) applies) or declaration (where sub-paragraph (ii) applies) ]<sup>3</sup> to the regulator on or before 31st March in the following year; and
  - (c) any further conditions that the regulator considers necessary to give proper effect to the Monitoring and Reporting Regulation 2018 or the Verification Regulation 2018.
- (3) A hospital or small emitter permit for a hospital-qualifying installation must contain conditions requiring the operator—
- (a) if the installation ceases to be an installation that primarily provides services to a hospital in a scheme year for which the installation is a hospital or small emitter, to give notice to the regulator on or before 31st March in the following year;
  - (b) except where the operator gives notice under paragraph (a)—
    - (i) to maintain records demonstrating that the installation continues to be an installation that primarily provides services to a hospital; and
    - (ii) to comply with requests from the regulator to inspect the records for the purpose of verifying the accuracy of the records and of the emissions report.
- (4) A hospital or small emitter permit for an installation that is not a hospital-qualifying installation must contain a condition requiring the operator, if the installation's reportable emissions in a scheme year for which the installation is a hospital or small emitter exceed the maximum amount, to give notice to the regulator on or before 31st March in the following year.



(5) This paragraph is subject to paragraph 14.

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#### Notes

- <sup>1</sup> Words revoked by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021/1455 Pt 2 art.25(3) (February 7, 2022)
- <sup>2</sup> Words inserted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.39(3)(a) (December 31, 2020)
- <sup>3</sup> Words substituted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.39(3)(b) (December 31, 2020)


#### Commencement

Sch. 7(3) para. 11(1)-(5): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

#### Extent

Sch. 7(3) para. 11(1)-(5): United Kingdom

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 Law In Force

### **12.— Hospital or small emitter permits: effect of permit, etc.**

- (1) A hospital or small emitter permit for an installation—
- (a) comes into force on the date set out in the permit;
  - (b) authorises the regulated activities set out in the permit to be carried out at the installation.
- (2) The operator of the installation must comply with the conditions of the permit.

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#### Commencement

Sch. 7(3) para. 12(1)-(2): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

#### Extent

Sch. 7(3) para. 12(1)-(2): United Kingdom

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 Law In Force

### **13.— Hospitals and small emitters: modifications to Monitoring and Reporting Regulation 2018**

- (1) Where an installation is a hospital or small emitter for a scheme year, the Monitoring and Reporting Regulation 2018 has effect with the following modifications (in addition to the modifications in Schedule 4).
- (2) [...]<sup>1</sup>
- (3) Article 19 is to be read as if—
- (a) in paragraph 2 for the words from "in one of the following categories" to the end there were substituted "as a category A installation";
  - (b) paragraph 5 were omitted.

[ (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.

] <sup>2</sup>

(5) Article 47 is to be read as if—

(a) every installation that is a hospital or small emitter for a scheme year were an installation to which Article 47 applies (that is to say, an installation that operates with low emissions, disregarding the second subparagraph of paragraph 1 of that Article);

[ (aa) in paragraph 3—

(i) for "an improvement report" there were substituted "a report";

(ii) after "in response to" there were inserted "outstanding non-conformities or";

] <sup>3</sup>

(b) paragraph 8 were omitted.

(6) Where an emissions report submitted to the regulator under paragraph 11(2)(b) is accompanied by a declaration referred to in paragraph 11(2)(b)(ii) (and is not [ verified as satisfactory in accordance ] <sup>4</sup> with the Verification Regulation 2018), in the Monitoring and Reporting Regulation 2018—

(a) Annex 10 must be read as if section 1(2) were omitted;

(b) a reference to a verified annual emission report is to be read as a reference to the emissions report;

(c) a reference to verified annual emissions or verified emissions is to be read as a reference to the reportable emissions reported in the emissions report;

(d) a reference to a verifier is to be read as a reference to the regulator;

(e) a reference to verifying or verification is to be read as a reference to auditing the reportable emissions reported in the emissions report by the regulator in accordance with the regulator's procedures for auditing reportable emissions of installations, the operators of which submit emissions reports under paragraph 11(2)(b)(ii);

(f) a reference to a verification report is to be read as a reference to the record of such an audit given to the operator by the regulator.

## Notes

<sup>1</sup> Revoked by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.39(4)(a) (December 31, 2020)

<sup>2</sup> Substituted by Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2022/1173 Pt 2 art.17(3) (January 1, 2023)

<sup>3</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021/1455 Pt 2 art.25(4) (February 7, 2022)


<sup>4</sup> Words substituted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.39(4)(b) (December 31, 2020)

## Commencement

Sch. 7(3) para. 13(1)-(6)(f): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

**Extent**Sch. 7(3) para. 13(1)-(6)(f): United Kingdom

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 Law In Force**14.— Former ultra-small emitters: hospital or small emitter permits coming into force after beginning of scheme year**

(1) This paragraph applies where a hospital or small emitter permit for an installation referred to in paragraph 4(2) or (3) comes into force on a day after 1st January in the relevant scheme year.

(2) References in paragraph 11(2) to a scheme year for which the installation is a hospital or small emitter must be treated as not including a reference to the part of the relevant scheme year before the date on which the permit comes into force.

(3) The installation's emissions target for the relevant scheme year is the emissions target calculated under paragraph 16 or, as the case may be, 17 multiplied by the factor set out in sub-paragraph (4).

(4) The factor is

$$\frac{(Y - D)}{Y},$$

where—

Y is the number of days in the relevant scheme year;

D is the number of days in the relevant scheme year before the date on which the permit comes into force.

(5) Paragraph 19 has effect as if the reference to the installation's reportable emissions in the relevant scheme year were a reference to the installation's reportable emissions in the relevant scheme year on and after the date on which the permit comes into force.

(6) In this paragraph, "relevant scheme year" has the meaning given in paragraph 4(1)(b).

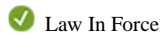
**Commencement**

Sch. 7(3) para. 14(1)-(6): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

**Extent**Sch. 7(3) para. 14(1)-(6): United Kingdom

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**PART 4****Emissions targets**



Law In Force

**15.— Emissions targets other than for hospital-qualifying installations may not exceed maximum amount**

- (1) Except in the case of a hospital-qualifying installation, an emissions target for a scheme year may not exceed the maximum amount.
- (2) This paragraph overrides paragraphs 16 and 17.

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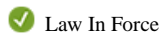
**Commencement**

Sch. 7(4) para. 15(1)-(2): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

**Extent**

Sch. 7(4) para. 15(1)-(2): United Kingdom

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Law In Force

**16.— Emissions targets for 2021-2025 allocation period**

- (1) This paragraph applies for the purpose of calculating an installation's emissions targets for the scheme years in the 2021-2025 allocation period under paragraph 11(1)(f)(i) and (iii).
- (2) Where a regulated activity began to be carried out at the installation before 2019, the installation's emissions target for a scheme year is the installation's relevant emissions multiplied by the reduction factor for the scheme year.
- (3) For the purpose of sub-paragraph (2), the relevant emissions of an installation are—
  - (a) where a regulated activity began to be carried out at the installation before 2016, the sum of the installation's reportable emissions in 2016, 2017 and 2018 divided by 3;
  - (b) where a regulated activity began to be carried out at the installation in 2016, the sum of the installation's reportable emissions in 2017 and 2018 divided by 2;
  - (c) where a regulated activity began to be carried out at the installation in 2017, the installation's reportable emissions in 2018;
  - (d) where a regulated activity began to be carried out at the installation in 2018, the installation's reportable emissions in 2019.
- (4) Where a regulated activity began to be carried out at the installation in 2019, the installation's emissions target—
  - (a) for the 2021 scheme year is the 2021 estimate multiplied by the reduction factor for the 2021 scheme year;
  - (b) for every other scheme year (the "relevant scheme year") in the 2021-2025 allocation period is the installation's reportable emissions in 2020 multiplied by the reduction factor for the relevant scheme year.
- (5) Where a regulated activity began to be carried out at the installation in the period beginning on 1st January 2020 and ending on 31st October 2020, the installation's emissions target—
  - (a) for the 2021 scheme year is the 2021 estimate multiplied by the reduction factor for the 2021 scheme year;

(b) for the 2022 scheme year is the 2021 estimate multiplied by the reduction factor for the 2022 scheme year;

(c) for every other scheme year (the "relevant scheme year") in the 2021-2025 allocation period is the installation's reportable emissions in the 2021 scheme year multiplied by the reduction factor for the relevant scheme year.

(6) In sub-paragraphs (4) and (5), "2021 estimate" means the conservative estimate of annual average emissions referred to in Article 19(4) of the Monitoring and Reporting Regulation 2012 used for the purposes of a monitoring plan submitted under that Regulation and contained in the application for a permit under GGETSR 2012 (see paragraph 1(1)(f) of Schedule 4 to GGETSR 2012).

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

**Table D**

<i>Column 1 Scheme year</i>	<i>Column 2 Reduction factor</i>
2021	0.8697
2022	0.8461
2023	0.8224
2024	0.7988
2025	0.7751

(8) In this paragraph, a reference to reportable emissions is a reference to reportable emissions (within the meaning of GGETSR 2012 or this Order)—

(a) verified [as satisfactory]<sup>1</sup> in accordance with the Verification Regulation 2012 or the Verification Regulation 2018;

[ (aa) determined under regulation 44 of GGETSR 2012 or article 45 of this Order; or ]<sup>2</sup>

(b) where relevant, set out in an emissions report accompanied by the notice or declaration referred to in paragraph 3(8)(b)(ii) of Schedule 5 to GGETSR 2012 or paragraph 11(2)(b)(ii) of this Schedule.

(9) This paragraph is subject to paragraph 14.

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**Notes**

<sup>1</sup> Words inserted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.39(5)(a) (December 31, 2020)

<sup>2</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.39(5)(b) (December 31, 2020)

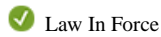
**Commencement**

Sch. 7(4) para. 16(1)-(9): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

**Extent**

Sch. 7(4) para. 16(1)-(9): United Kingdom

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Law In Force

**17.— Emissions targets for 2026-2030 allocation period**

- (1) This paragraph applies for the purpose of calculating an installation's emissions targets for the scheme years in the 2026-2030 allocation period under—
- (a) paragraph 11(1)(f)(ii) and (iv);
  - (b) paragraph 21.
- (2) Where a regulated activity begins to be carried out at the installation before 2024, the installation's emissions target for a scheme year is the installation's relevant emissions multiplied by the reduction factor for the scheme year.
- (3) For the purpose of sub-paragraph (2), the relevant emissions of an installation are—
- (a) where a regulated activity begins to be carried out at the installation before 2021, the sum of the installation's reportable emissions in 2021, 2022 and 2023 divided by 3;
  - (b) where a regulated activity begins to be carried out at the installation in 2021, the sum of the installation's reportable emissions in 2022 and 2023 divided by 2;
  - (c) where a regulated activity begins to be carried out at the installation in 2022, the installation's reportable emissions in 2023;
  - (d) where a regulated activity begins to be carried out at the installation in 2023, the installation's reportable emissions in 2024.
- (4) Where a regulated activity begins to be carried out at the installation in 2024, the installation's emissions target—
- (a) for the 2026 scheme year is the 2026 estimate multiplied by the reduction factor for the 2026 scheme year;
  - (b) for every other scheme year (the "relevant scheme year") in the 2026-2030 allocation period is the installation's reportable emissions in the 2025 scheme year multiplied by the reduction factor for the relevant scheme year.
- (5) Where a regulated activity begins to be carried out at the installation in the period beginning on 1st January 2025 and ending on 31st October 2025, the installation's emissions target—
- (a) for the 2026 scheme year is the 2026 estimate multiplied by the reduction factor for the 2026 scheme year;
  - (b) for the 2027 scheme year is the 2026 estimate multiplied by the reduction factor for the 2027 scheme year;
  - (c) for every other scheme year (the "relevant scheme year") in the 2026-2030 allocation period is the installation's reportable emissions in the 2026 scheme year multiplied by the reduction factor for the relevant scheme year.
- (6) In sub-paragraphs (4) and (5), "2026 estimate" means the estimate of the installation's reportable emissions in the 2026 scheme year provided under—
- (a) in the case of a hospital-qualifying installation, paragraph 6(3)(b);
  - (b) in any other case, paragraph 6(6).
- (7) For the purpose of this paragraph, the reduction factor for a scheme year set out in column 1 of table E is the value set out in the corresponding entry in column 2.

**Table E**

<i>Column 1 Scheme year</i>	<i>Column 2 Reduction factor</i>
2026	0.8882
2027	0.8602
2028	0.8322
2029	0.8043
2030	0.7763

- (8) In this paragraph, a reference to reportable emissions is a reference to reportable emissions—
- (a) verified [ as satisfactory ]<sup>1</sup> in accordance with the Verification Regulation 2018 ; [...]<sup>2</sup>
  - [ (aa) determined under article 45; or ]<sup>3</sup>
  - (b) where relevant, set out in an emissions report accompanied by the declaration referred to in paragraph 11(2)(b)(ii).
- (9) This paragraph is subject to paragraph 14.

**Notes**


- <sup>1</sup> Words inserted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.39(6)(a)(i) (December 31, 2020)
- <sup>2</sup> Word revoked by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.39(6)(a)(ii) (December 31, 2020)
- <sup>3</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.39(6)(b) (December 31, 2020)

**Commencement**

Sch. 7(4) para. 17(1)-(9): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

**Extent**

Sch. 7(4) para. 17(1)-(9): United Kingdom

 Law In Force

**18.— Emissions targets: calculation of later targets where initial targets based on estimates**

- (1) This paragraph applies where an installation's emission targets for the scheme years in an allocation period are required to be calculated under—
- (a) paragraph 16(4) or (5);
  - (b) paragraph 17(4) or (5).
- (2) Paragraph 11(1)(f)(i) and (ii) do not require the installation's hospital or small emitter permit to contain emissions targets for scheme years (the "relevant scheme years") for which, at the date of issue of the permit, the information required to calculate the emission targets is not available.
- (3) As soon as reasonably practicable after the information to calculate the installation's emissions targets for the relevant scheme years becomes available, the regulator must vary the installation's hospital or small emitter permit under paragraph 6 of Schedule 6 by adding the emissions targets.

(4) But sub-paragraph (3) does not apply if the regulator has given a conversion notice to the operator of the installation, the effect of which is that the installation will not be a hospital or small emitter for the relevant scheme years.

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#### Commencement

Sch. 7(4) para. 18(1)-(4): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

#### Extent

Sch. 7(4) para. 18(1)-(4): United Kingdom

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✓ Law In Force

### **19.— Emissions targets: hospital or small emitters must not exceed targets**

(1) The operator of an installation must ensure that the installation's reportable emissions in a scheme year for which the installation is a hospital or small emitter do not exceed the emissions target for that year.

(2) This paragraph is subject to paragraph 14.

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#### Commencement

Sch. 7(4) para. 19(1)-(2): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

#### Extent

Sch. 7(4) para. 19(1)-(2): United Kingdom

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✓ Law In Force

### **[ 19A.— Capacity increases: application to increase emissions targets**

(1) Where a capacity increase is put into operation at an installation after the reference date, the operator of the installation may apply to the regulator to increase the installation's emissions targets for scheme years after the capacity increase is put into operation (including, if the capacity increase is put into operation on or after 1st January 2021, for the scheme year in which the capacity increase is put into operation).

(2) An application may be made to increase emissions targets for scheme years in the 2021-2025 allocation period or the 2026-2030 allocation period (or both).

(3) But an application may not be made to increase an emissions target—

- (a) for the 2021 or 2022 scheme year if the emissions target for that year was calculated under paragraph 16(4)(a) or (5)(a) or (b);
- (b) for the 2026 or 2027 scheme year if the emissions target for that year was calculated under paragraph 17(4)(a) or (5)(a) or (b).

(4) Nor may an application be made to increase an emissions target—

- (a) for the 2021 scheme year unless the application is made on or before 31st March 2022;



- (b) for any other scheme year unless the application is made on or before the later of—
  - (i) the end of the scheme year; and
  - (ii) where the capacity increase is put into operation in the scheme year, 3 months after the date on which the capacity increase is put into operation.

(5) Subject to sub-paragraph (4), an application to increase emissions targets may be made at any time.

] <sup>1</sup>

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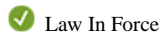
#### Notes

- <sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021/1455 Pt 2 art.25(5) (February 7, 2022)

#### Extent

Sch. 7(4) para. 19A(1)-(5): United Kingdom

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Law In Force

#### [ 19B.— Capacity increases: content of application

(1) For the purpose of an application to increase an installation's emissions targets, the operator must divide the installation into sub-installations in accordance with Article 10 of the Free Allocation Regulation.

(2) The application must contain the following—

- (a) evidence of the capacity increase and the sub-installation to which it relates, including evidence that it has been put into operation and is not temporary;
- (b) evidence of any capacity decrease at the installation since the reference date and the sub-installation to which it relates, including, where relevant, evidence that it is temporary;
- (c) evidence to enable the combined capacity utilisation factor to be calculated (*see* paragraph 19F);
- (d) where the capacity increase or any capacity decrease relates to a district heating sub-installation or a heat benchmark sub-installation of an installation that consumes or exports measurable heat produced outside the installation, evidence of whether or not the capacity increase or capacity decrease is solely associated with measurable heat produced at the installation.

] <sup>1</sup>

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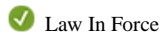
#### Notes

- <sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021/1455 Pt 2 art.25(5) (February 7, 2022)

#### Extent

Sch. 7(4) para. 19B(1)-(2)(d): United Kingdom

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Law In Force

### [ 19C.— Capacity increases: grant of application

(1) An application to increase an installation's emissions targets may be granted only if the regulator considers that—

- (a) a capacity increase has been put into operation at the installation;
- (b) the capacity increase is not temporary; and
- (c) the net change in installed capacity at the installation since the reference date (*see* paragraph 19D) is greater than zero.

(2) Where the application is granted, the regulator must—

- (a) calculate new emissions targets for each scheme year for which the application is made by increasing the existing emissions target for the scheme year by the increase in the emissions target for the scheme year (*see* paragraph 19E); and
- (b) vary the installation's hospital or small emitter permit under paragraph 6 of Schedule 6 by substituting the new emissions targets for the existing targets.

(3) Except where the installation is a hospital-qualifying installation, if increasing the emissions target for a scheme year would result in an emissions target that exceeds the maximum amount, the emissions target must be increased by such amount as results in an emissions target of the maximum amount.

(4) Where, after calculating new emissions targets and varying the permit under sub- paragraph (2), the regulator considers that, as a result of incorrect or incomplete evidence in the application, either the application would not have been granted or the installation's emissions targets would not have been increased to the same extent—

- (a) the regulator may, for the current and future scheme years, determine that the emissions targets should not have been increased or, as the case may be, recalculate the new emissions targets under sub-paragraph (2)(a); and
- (b) if the regulator does either of the things referred to in paragraph (a), the regulator must vary the permit under paragraph 6 of Schedule 6 accordingly.

] <sup>1</sup>

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#### Notes

- <sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021/1455 Pt 2 art.25(5) (February 7, 2022)

#### Extent

Sch. 7(4) para. 19C(1)-(4)(b): United Kingdom

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Law In Force

### [ 19D.— Capacity increases: net change in installed capacity at installation since reference date

(1) The net change in installed capacity at the installation since the reference date must be calculated as follows.

*Step 1*

Calculate the following for each relevant sub-installation—

---

the net change in installed capacity at the relevant sub-installation since the reference date x the benchmark for the sub-installation.

---

*Step 2*

Add up all calculations done under Step 1.

The net change in installed capacity at the installation since the reference date is the result of Step 2.

(2) For the purposes of sub-paragraph (1)—

- (a) the net change in installed capacity at a relevant sub-installation must be determined by taking into account only capacity increases and capacity decreases (other than capacity decreases that are temporary) that relate to the sub-installation since the reference date;
- (b) where capacity decreases exceed capacity increases at a sub-installation, the net change in installed capacity must be a negative value;
- (c) in calculating the net change in installed capacity at a district heating sub- installation or a heat benchmark sub-installation of an installation that consumes or exports measurable heat produced outside the installation, any capacity increase or capacity decrease that relates to the sub-installation must not be taken into account unless it is solely associated with measurable heat produced at the installation.

(3) In this paragraph, "relevant sub-installation" means—

- (a) the sub-installation to which the capacity increase relates;
- (b) any other sub-installation to which a capacity decrease at the installation since the reference date relates.

] <sup>1</sup>

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**Notes**

- <sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021/1455 Pt 2 art.25(5) (February 7, 2022)

**Extent**

Sch. 7(4) para. 19D(1)-(3)(b): United Kingdom

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**[ 19E.— Capacity increases: increase in emissions targets for scheme years**

(1) The increase in an installation's emissions target for each scheme year for which the application is made is  $NC \times CCUF \times RF \times FYF$ , where—

NC is the net change in installed capacity at the installation since the reference date (*see* paragraph 19D);

CCUF is the combined capacity utilisation factor (*see* paragraph 19F); RF is the reduction factor for the scheme year;

FYF is the first year factor.

(2) The reduction factor—

- (a) for a scheme year set out in column 1 of table D in paragraph 16 is the value set out in the corresponding entry in column 2;
  - (b) for a scheme year set out in column 1 of table E in paragraph 17 is the value set out in the corresponding entry in column 2.
- (3) The first year factor is—
- (a) for the scheme year in which the capacity increase is put into operation,  $(Y-D)/Y$ ;
  - (b) for any other scheme year, 1.
- (4) For the purposes of sub-paragraph (3)—
- (a) Y is the number of days in the scheme year;
  - (b) D is the number of days in the scheme year before the date on which the capacity increase is put into operation.
- (5) Where an application is made in respect of two or more capacity increases, for the purpose of calculating the first year factor, the capacity increases must be treated as being put into operation on the date on which the last capacity increase is put into operation.


]<sup>1</sup>

#### Notes

- <sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021/1455 Pt 2 art.25(5) (February 7, 2022)

#### Extent

Sch. 7(4) para. 19E(1)-(5): United Kingdom

 Law In Force

### [ 19F.— Capacity increases: combined capacity utilisation factor

- (1) The combined capacity utilisation factor must be calculated as follows.

#### Step 1

Calculate the following for each sub-installation to which the capacity increase relates—

---

the capacity increase x the benchmark for the sub-installation x the capacity utilisation factor.

---

#### Step 2

Add up all calculations done under Step 1.

#### Step 3

Calculate the following for each sub-installation to which the capacity increase relate—

---

the capacity increase x the benchmark for the sub-installation.

---

#### Step 4

Add up all calculations done under Step 3.

#### Step 5

Divide the result of Step 2 by the result of Step 4.

The combined capacity utilisation factor is the result of Step 5.

- (2) In calculating the combined capacity utilisation factor, a capacity increase that relates to a district heating sub-installation or a heat benchmark sub- installation of an installation that consumes

or exports measurable heat produced outside the installation must not be taken into account unless it is solely associated with measurable heat produced at the installation.

(3) Where an application is made in respect of two or more capacity increases that relate to the same sub-installation, for the purpose of calculating the combined capacity utilisation factor, the calculations under Steps 1 and 3 must be done separately for each such capacity increase as if the capacity increases related to separate sub-installations.

(4) In this paragraph, "capacity utilisation factor", in relation to a capacity increase, means the expected level of production or consumption, expressed as a proportion of the increase in installed capacity.

] <sup>1</sup>

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#### Notes

<sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021/1455 Pt 2 art.25(5) (February 7, 2022)

#### Extent

Sch. 7(4) para. 19F(1)-(4): United Kingdom

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 Law In Force

### [ 19G.— Capacity increases: interpretation

(1) In this paragraph and paragraphs 19A to 19F—

"benchmark" means—

(a) in relation to a sub-installation other than a process emissions sub-installation, the benchmark referred to in Article 16(2) of the Free Allocation Regulation used to determine the preliminary annual number of allowances allocated free of charge in respect of the sub-installation—

(i) where an application is made to increase an installation's emissions targets for scheme years in the 2021-2025 allocation period, for scheme years in that allocation period;

(ii) where an application is made to increase an installation's emissions targets for scheme years in the 2026-2030 allocation period, for scheme years in that allocation period;

(b) in relation to a process emissions sub-installation, 0.97;

"capacity decrease", in relation to an installation or a sub-installation, means a decrease in installed capacity as a result of one or more physical changes relating to its technical configuration and functioning;

"capacity increase", in relation to an installation or a sub-installation, means an increase in installed capacity as a result of one or more physical changes relating to its technical configuration and functioning;

"district heating sub-installation" has the meaning given in point (5) of Article 2(1) of the Free Allocation Regulation;

"fuel benchmark sub-installation" has the meaning given in point (6) of Article 2(1) of the Free Allocation Regulation;

"heat benchmark sub-installation" has the meaning given in point (3) of Article 2(1) of the Free Allocation Regulation;

"installed capacity" means the maximum capacity—

- (a) in the case of a product benchmark sub-installation, for producing a product;
- (b) in the case of a district heating sub-installation or a heat benchmark sub-installation, for producing measurable heat;
- (c) in the case of a fuel benchmark sub-installation, for consuming fuel;
- (d) in the case of a process emissions sub-installation, for producing the emissions referred to in point (10) of Article 2(1) of the Free Allocation Regulation;

"measurable heat" has the meaning given in point (7) of Article 2(1) of the Free Allocation Regulation;

"process emissions sub-installation" has the meaning given in point (10) of Article 2(1) of the Free Allocation Regulation;

"product benchmark sub-installation" has the meaning given in point (2) of Article 2(1) of the Free Allocation Regulation;

"reference date" must be determined in accordance with sub-paragraphs (2) to (5);

"sub-installation" means a district heating sub-installation, a fuel benchmark sub-installation, a heat benchmark sub-installation, a process emissions sub-installation or a product benchmark sub-installation.

(2) Where an application is to increase an installation's emissions targets for scheme years in the 2021-2025 allocation period, the reference date is—

- (a) where a regulated activity began to be carried out at the installation before 2018, 31st December 2018;
- (b) where a regulated activity began to be carried out at the installation in 2018, 31st December 2019;
- (c) where a regulated activity began to be carried out at the installation in 2019 or 2020, 31st December 2020.

(3) But if the installation's emissions targets for scheme years in the 2021-2025 allocation period were increased following an application in respect of a previous capacity increase, the reference date is the date on which the last such capacity increase was put into operation.

(4) Where an application is to increase an installation's emissions targets for scheme years in the 2026-2030 allocation period, the reference date is—

- (a) where a regulated activity begins to be carried out at the installation before 2023, 31st December 2023;
- (b) where a regulated activity begins to be carried out at the installation in 2023, 31st December 2024;
- (c) where a regulated activity begins to be carried out at the installation in 2024 or 2025, 31st December 2025.

(5) But if the installation's emissions targets for scheme years in the 2026-2030 allocation period were increased following an application in respect of a previous capacity increase, the reference date is the date on which the last such capacity increase was put into operation.

(6) For the purpose of calculating the net change in installed capacity at an installation since the reference date under paragraph 19D or the combined capacity utilisation factor under paragraph 19F, a capacity increase or a capacity decrease at a sub-installation must be expressed in the following units—

- (a) if the capacity increase or capacity decrease relates to a product benchmark sub-installation, tonnes of product produced per year;
- (b) if the capacity increase or capacity decrease relates to a district heating sub- installation or a heat benchmark sub-installation, terajoules of measurable heat produced per year;
- (c) if the capacity increase or capacity decrease relates to a fuel benchmark sub- installation, terajoules of fuel consumed per year;
- (d) if the capacity increase or capacity decrease relates to a process emissions sub-installation, tonnes of carbon dioxide equivalent emitted per year.

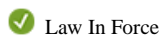
] <sup>1</sup>

## Notes

- <sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021/1455 Pt 2 art.25(5) (February 7, 2022)

## Extent

Sch. 7(4) para. 19G(1)-(6)(d): United Kingdom



Law In Force

## 20.— Emissions targets: banking overachieved target

(1) In this paragraph, an installation's "bankable amount", in relation to a scheme year, means

$$ET - RE,$$

where—

ET is the installation's emissions target for that year;

RE is the reportable emissions stated in the installation's emissions report for that year.

(2) But if the installation's emissions target for a scheme year is calculated in accordance with any of the following provisions (emissions targets based on estimates), for the purposes of this paragraph the installation's bankable amount for that scheme year must be treated as zero—

- (a) paragraph 16(4)(a);
- (b) paragraph 16(5)(a) or (b);
- (c) paragraph 17(4)(a);
- (d) paragraph 17(5)(a) or (b).

(3) Subject to sub-paragraphs (5) and (6), where an installation's bankable amount for a scheme year (the "scheme year in question") is greater than zero—

- (a) the regulator may increase the installation's emissions target for the following scheme year (the "next scheme year") by the bankable amount; and
- (b) if the regulator does so, the regulator must vary the installation's hospital or small emitter permit under paragraph 6 of Schedule 6 by substituting the increased emissions target for the existing target.

(4) Subject to sub-paragraph (6), where the amount of reportable emissions stated in the installation's emissions report for the scheme year in question is amended following a determination of emissions under article 45, the regulator must—

- (a) calculate the bankable amount for the scheme year in question as if RE in sub-paragraph (1) were the amount of reportable emissions for that year as amended following the determination; and
  - (b) where an increased emissions target for the next scheme year has been substituted under sub-paragraph (3)(b), further vary the permit under paragraph 6 of Schedule 6 by substituting a revised emissions target for that year, based on the revised calculation of the bankable amount under paragraph (a).
- (5) Sub-paragraph (3) does not apply if the scheme year in question is—
- (a) the 2025 scheme year;
  - (b) the 2030 scheme year.
- (6) Except where the installation is a hospital-qualifying installation, if increasing the emissions target for the next scheme year would result in an emissions target that exceeds the maximum amount, the emissions target must be increased by such amount as results in an emissions target of the maximum amount.

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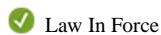
#### Commencement

Sch. 7(4) para. 20(1)-(6): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

#### Extent

Sch. 7(4) para. 20(1)-(6): United Kingdom

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Law In Force

### **21.— Emissions targets: targets for 2026-2030 allocation period for hospital or small emitters in 2021-2025 allocation period**

- (1) This paragraph applies where—
- (a) a hospital or small emitter permit is in force for an installation that contains emissions targets for a scheme year in the 2021-2025 allocation period; and
  - (b) the installation is included in the hospital and small emitter list for 2026-2030.
- (2) The regulator must, on or before 31st December 2025—
- (a) calculate an emissions target for the installation for each scheme year in the 2026-2030 allocation period; and
  - (b) vary the installation's hospital or small emitter permit under paragraph 6 of Schedule 6 to include those emissions targets.
- (3) But sub-paragraph (2) does not apply if the regulator has given a conversion notice to the operator of the installation (the effect of which is that the installation will not be a hospital or small emitter for the scheme years in the 2026-2030 allocation period).



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**Commencement**

Sch. 7(4) para. 21(1)-(3): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

**Extent**

Sch. 7(4) para. 21(1)-(3): United Kingdom

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✓ Law In Force

**22.— Emissions targets: errors**

(1) This paragraph applies where the amount of an installation's reportable emissions used to calculate the installation's emission targets (including revised emissions targets under [ paragraph 19C or 20 ]<sup>1</sup>) for scheme years in an allocation period is amended following a determination of emissions under article 45.

(2) The regulator may calculate revised emissions targets for the current and future scheme years in the allocation period and, if the regulator does so, the regulator must vary the installation's hospital or small emitter permit under paragraph 6 of Schedule 6 to include those emissions targets.

(3) In calculating revised emissions targets under sub-paragraph (2), the regulator may take account of what revised emissions targets for past scheme years in the allocation period calculated under this paragraph might have been if the determination had been made earlier (but may not calculate revised emissions targets for past years).

(4) In this paragraph—

(a) a reference to reportable emissions used to calculate emissions targets for the 2021-2025 allocation period includes a reference to reportable emissions within the meaning of GGETSR 2012; and

(b) a reference to a determination of emissions under article 45 includes, in the case of reportable emissions referred to in paragraph (a), a reference to a determination of emissions under regulation 44(3) of GGETSR 2012 or Article 70(1) of the Monitoring and Reporting Regulation 2012.

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**Notes**

<sup>1</sup> Words substituted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021/1455 Pt 2 art.25(6) (February 7, 2022)

**Commencement**

Sch. 7(4) para. 22(1)-(4)(b): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

**Extent**

Sch. 7(4) para. 22(1)-(4)(b): United Kingdom

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✓ Law In Force

### **[ 22A.— Publication of emissions targets and reportable emissions**

- (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).
- ] <sup>1</sup>

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#### **Notes**

- <sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2022/1173 Pt 2 art.17(4) (January 1, 2023)

#### **Extent**

Sch. 7(4) para. 22A(1)-(3): United Kingdom

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## **PART 5**

### **End of hospital or small emitter status**

✓ Law In Force

### **23.— End of hospital or small emitter status: ceasing to meet criteria**

- (1) Where—
  - (a) an installation (other than a hospital-qualifying installation) is a hospital or small emitter for any of the 2021, 2022, 2023, 2026, 2027 and 2028 scheme years; and
  - (b) the regulator considers that the installation's reportable emissions in any of those years exceed the maximum amount,
 the regulator must, as soon as reasonably practicable, give a notice (a "conversion notice") to the operator of the installation.
- (2) Where the regulator considers that a hospital-qualifying installation ceases to be an installation that primarily provides services to a hospital in a scheme year (the "relevant scheme year") for which the installation is a hospital or small emitter, the regulator must, as soon as reasonably practicable, give a notice (a "conversion notice") to the operator of the installation.
- (3) But sub-paragraph (2) does not apply—
  - (a) where the relevant scheme year is in the 2021-2025 allocation period and the installation was in operation in any of the 2016, 2017 and 2018 scheme years (within the meaning of GGETSR 2012), if—

- (i) the installation's reportable emissions in each of those years did not exceed the maximum amount; and
  - (ii) where the activity referred to in column 1 of the first entry in table C in Schedule 2 (combustion of fuels) was carried out at the installation, the installation's rated thermal input was below 35 megawatts in each of those years.
- (b) where the relevant scheme year is in the 2026-2030 allocation period and the installation was in operation in any of the 2021, 2022 and 2023 scheme years, if—
- (i) the installation's reportable emissions in each of those years do not exceed the maximum amount; and
  - (ii) where the activity referred to in column 1 of the first entry in table C in Schedule 2 (combustion of fuels) is carried out at the installation, the installation's rated thermal input is below 35 megawatts in each of those years.
- (4) Where a hospital or small emitter permit may be revoked under paragraph 12 of Schedule 6, the regulator may instead of revoking the permit give a notice (a "conversion notice") to the operator of the installation.

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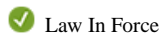
#### Commencement

Sch. 7(5) para. 23(1)-(4): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

#### Extent

Sch. 7(5) para. 23(1)-(4): United Kingdom

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Law In Force

### **[ 23A.— End of hospital or small emitter status: voluntary exit of status for 2024 and 2025 scheme years**

- (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.

] <sup>1</sup>

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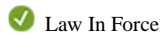
#### Notes

- <sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2022/1173 Pt 2 art.17(5) (January 1, 2023)

#### Extent

Sch. 7(5) para. 23A(1)-(3): United Kingdom

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## 24.— Conversion notices

(1) A conversion notice must—

- (a) set out the grounds for the notice;
- (b) state that the installation is not a hospital or small emitter for the scheme year following the year in which the notice is given;
- (c) state that the operator must comply with the conditions of a greenhouse gas emissions permit from 1st January (the "date of conversion") in the scheme year following the year in which the notice is given;
- [(d) state that, unless the monitoring plan already complies with the Monitoring and Reporting Regulation 2018, the operator must apply to the regulator to vary the monitoring plan so that it does comply with that Regulation. ]<sup>1</sup>

(2) Where a conversion notice is given, the regulator must convert, with effect from the date of conversion, the installation's hospital or small emitter permit (if any) into a greenhouse gas emissions permit by varying it under paragraph 6 of Schedule 6 so that the provisions of the permit are replaced by provisions that satisfy the requirements of paragraph 4 of Schedule 6.

[(3) Despite sub-paragraph (2)—

- (a) where the monitoring plan does not already comply with the Monitoring and Reporting Regulation 2018, the regulator may revoke the permit under paragraph 12 of Schedule 6 instead of converting it if—
  - (i) the operator fails to apply to the regulator to vary the monitoring plan; or
  - (ii) the variations applied for are not such that the plan would comply with that Regulation;
- (b) the regulator must revoke the permit instead of converting it if the regulator considers that the operator will not be capable of monitoring and reporting the installation's reportable emissions in accordance with the monitoring and reporting conditions of a greenhouse gas emissions permit.

] <sup>2</sup>

(4) When varying a permit, the regulator may make only such variations as the regulator considers necessary in consequence of the installation ceasing to be a hospital or small emitter.

(5) The conversion of the permit does not affect the obligations of the operator under the permit in respect of specified emissions before the date of conversion.

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### Notes

<sup>1</sup> Substituted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021/1455 Pt 2 art.25(7)(a) (February 7, 2022)

<sup>2</sup> Substituted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021/1455 Pt 2 art.25(7)(b) (February 7, 2022)

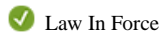
### Commencement

Sch. 7(5) para. 24(1)-(5): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

### Extent

Sch. 7(5) para. 24(1)-(5): United Kingdom

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## **25.— End of hospital or small emitter status: ceasing to meet criteria: publication**

- (1) The regulator must, as soon as reasonably practicable, inform the UK ETS authority about each installation in respect of which a conversion notice is given.
- (2) The UK ETS authority must, from time to time, publish the information referred to in sub-paragraph (1).

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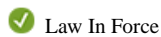
### **Commencement**

Sch. 7(5) para. 25(1)-(2): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

### **Extent**

Sch. 7(5) para. 25(1)-(2): United Kingdom

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## **26.— End of hospital or small emitter status: end of allocation period**

- (1) The regulator must, on or before 31st May 2025 give notice to the operator of an installation to which sub-paragraph (2) applies—
  - (a) stating that the operator must comply with the conditions of a greenhouse gas emissions permit from 1st January 2026; and
  - [(b) stating that, unless the monitoring plan already complies with the Monitoring and Reporting Regulation 2018, the operator must apply to the regulator on or before 30th September 2025 to vary the monitoring plan so that it does comply with that Regulation. ]<sup>1</sup>
- (2) This sub-paragraph applies to an installation that is a hospital or small emitter for the 2025 scheme year other than an installation that is included in—
  - (a) the hospital and small emitter list for 2026-2030; or
  - (b) the ultra-small emitter list for 2026-2030.
- (3) Where a notice under sub-paragraph (1) is given, the regulator must convert, with effect from 1st January 2026, the installation's hospital or small emitter permit (if any) into a greenhouse gas emissions permit by varying it under paragraph 6 of Schedule 6 so that the provisions of the permit are replaced by provisions that satisfy the requirements of paragraph 4 of Schedule 6.
- [(4) Despite sub-paragraph (3)—
  - (a) where the monitoring plan does not already comply with the Monitoring and Reporting Regulation 2018, the regulator may revoke the permit under paragraph 12 of Schedule 6 instead of converting it if—
    - (i) the operator fails to apply to the regulator on or before 30th September 2025 to vary the monitoring plan; or
    - (ii) the variations applied for are not such that the plan would comply with that Regulation;

(b) the regulator must revoke the permit instead of converting it if the regulator considers that the operator will not be capable of monitoring and reporting the installation's reportable emissions in accordance with the monitoring and reporting conditions of a greenhouse gas emissions permit.

]²

(5) When varying a permit, the regulator may make only such variations as the regulator considers necessary in consequence of the installation ceasing to be a hospital or small emitter.

(6) The conversion of the permit does not affect the obligations of the operator under the permit in respect of specified emissions before 1st January 2026.

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#### Notes

- <sup>1</sup> Substituted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021/1455 Pt 2 art.25(8)(a) (February 7, 2022)
- <sup>2</sup> Substituted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021/1455 Pt 2 art.25(8)(b) (February 7, 2022)

#### Commencement

Sch. 7(5) para. 26(1)-(6): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

#### Extent

Sch. 7(5) para. 26(1)-(6): United Kingdom

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## SCHEDULE 8

### Ultra-small emitters

#### Article 26(5)

 Law In Force

#### 1.— Interpretation

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

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

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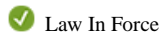
#### Commencement

Sch. 8 para. 1(1)-(2): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

#### Extent

Sch. 8 para. 1(1)-(2): United Kingdom

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Law In Force

## 2.— Ultra-small emitter status

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

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

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

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

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

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### Notes

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

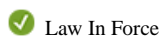
### Commencement

Sch. 8 para. 2(1)-(5): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

### Extent

Sch. 8 para. 2(1)-(5): United Kingdom

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Law In Force

## 3.— Obtaining ultra-small emitter status for 2026-2030 allocation period

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

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

(2) An application—

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

- (b) must be made on or before 30th June 2024.
- (3) After receiving an application, the regulator must on or before 30th September 2024—
  - (a) make a preliminary assessment of whether or not the installation meets the relevant condition; and
  - (b) send the preliminary assessment and the reasons for it to the UK ETS authority.
- (4) The relevant condition is that—
  - (a) a regulated activity begins to be carried out at the installation on or before 1st January 2021; and
  - (b) the installation's reportable emissions in each of the 2021, 2022 and 2023 scheme years do not exceed the maximum amount.
- (5) After receiving the preliminary assessment—
  - (a) the UK ETS authority must make a final assessment of whether or not the installation meets the relevant condition; and
  - (b) if the UK ETS authority considers that the installation meets the relevant condition, the UK ETS authority must include the installation in a list (the "ultra-small emitter list for 2026-2030").
- (6) The UK ETS authority must publish the ultra-small emitter list for 2026-2030 on or before 30th April 2025.
- (7) Evidence of an installation's reportable emissions may not be taken into account for the purposes of assessing whether or not an installation meets the relevant condition unless the evidence is—
  - (a) verified [as satisfactory]<sup>1</sup> in accordance with the Verification Regulation 2018; or
  - (b) where relevant, in an emissions report accompanied by the declaration referred to in paragraph 11(2)(b)(ii) of Schedule 7.
- (8) An application may not be made under this paragraph and paragraph 5 of Schedule 7.

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#### Notes

- <sup>1</sup> Words inserted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.40(2) (December 31, 2020)

#### Commencement

Sch. 8 para. 3(1)-(8): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

#### Extent

Sch. 8 para. 3(1)-(8): United Kingdom

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Law In Force

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

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



(2) References in the Verification Regulation 2018—

- (a) to the operator's report or emission report are to be read as references to the evidence of the installation's reportable emissions provided to the verifier by the operator for verification and intended to be submitted under paragraph 3(1)(b);
- (b) to the monitoring plan or the monitoring plan approved by the regulator are to be read as references to the appropriate monitoring plan referred to in paragraph 5, including any modifications to the plan made under Article 14 of the Monitoring and Reporting Regulation 2018, as applied by paragraph 5(4) of this Schedule (even though such modifications do not require the approval of the regulator: see paragraph 5(5)).

(3) [...]¹

(4) Article 3(13)(a) is to be read as if "the permit and" were omitted.

(5) Article 7 is to be read as if—

- (a) in paragraph 4—
  - [ (i) in point (a) the words from "and meets the requirements" to the end were omitted; ]²
  - (ii) in point (b) "the permit and" were omitted;
- (b) in paragraph 5 the reference to non-compliance with the Monitoring and Reporting Regulation 2018 were a reference to non-compliance with the provisions of that Regulation referred to in paragraph 5(4) to (6) of this Schedule;
- (c) paragraph 6 were omitted.

(6) Article 10(1) is to be read as if—

- (a) point (a) were omitted;
- (b) in point (b) "as well as any other relevant versions of the monitoring plan approved by the regulator, including evidence of the approval" were omitted;
- (c) points [ (c) and ]³ (l) to (n) were omitted.

(7) Article 11 is to be read as if paragraph 4(c) were omitted.

(8) Article 17 is to be read as if paragraph 4 were omitted.

(9) Article 18(1) is to be read as if—

- (a) the second subparagraph were omitted;
- (b) in the third subparagraph for "is not able to obtain such approval in time" there were substituted "uses methods other than those referred to in the first subparagraph".

(10) Article 19(1) is to be read as if for "Implementing Regulation (EU) 2018/2066" there were substituted "the monitoring plan".

(11) Article 21(1) is to be read as if after "verification process" there were inserted "but at least once during the 2021-2025 allocation period (as defined in the Greenhouse Gas Emissions Trading Scheme Order 2020)".

(12) Article 22 is to be read as if—

- (a) references to non-compliance with the Monitoring and Reporting Regulation 2018 were references to non-compliance with the provisions of that Regulation referred to in paragraph 5(4) to (6) of this Schedule;
- (b) in paragraph 1 in the third subparagraph "notify the regulator and" were omitted.

(13) Article 27 is to be read as if—

- (a) references to non-compliance with the Monitoring and Reporting Regulation 2018 were references to non-compliance with the provisions of that Regulation referred to in paragraph 5(4) to (6) of this Schedule;
- (b) in paragraph 3—
  - (i) point (n) were omitted;
  - (ii) for point (p) there were substituted—

"(p) a confirmation whether the method used to complete the data gap pursuant to the last subparagraph of Article 18(1) is conservative and whether it does or does not lead to material misstatements;"

(14) Article 29(1) is to be read as if—

- (a) the reference to the verification report related to the previous monitoring period were a reference to—
  - (i) the verification report under [Commission Implementing Regulation (EU) 2018/2067 (as it had effect in EU law)]<sup>4</sup> in respect of the scheme year (within the meaning of GGETSR 2012) beginning on 1st January 2020; or
  - (ii) where the operator has previously provided evidence of the installation's reportable emissions in the [2021-2025]<sup>5</sup> allocation period to the verifier for verification for the purposes of submission under paragraph 3(1)(b) of this Schedule, the verifier's last report under the Verification Regulation 2018 (as modified by this paragraph) on that evidence;
- (b) "according to the requirements on the operator referred to in Article 69(4) of Implementing Regulation (EU) 2018/2066, where relevant" were omitted;
- (c) "pursuant to Article 69(4) of Implementing Regulation (EU) 2018/2066" were omitted.

(15) The Verification Regulation 2018 is to be read as if Articles 30 to 32 were omitted.

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#### Notes

- <sup>1</sup> Revoked by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.40(3)(a) (December 31, 2020)
- <sup>2</sup> Substituted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.40(3)(b) (December 31, 2020)
- <sup>3</sup> Words inserted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.40(3)(c) (December 31, 2020)
- <sup>4</sup> Words substituted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.40(3)(d)(i) (December 31, 2020)
- <sup>5</sup> Word substituted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.40(3)(d)(ii) (December 31, 2020)

#### Commencement

Sch. 8 para. 4(1)-(15): December 31, 2020 shall come into force immediately after IP completion day (2020 c. 1 Pt 5 s. 39(1); SI 2020/1265 Pt 1 art. 2(2))

#### Extent

Sch. 8 para. 4(1)-(15): United Kingdom

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Law In Force

## 5.— Duty to monitor reportable emissions, etc.

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

(2) The appropriate monitoring plan is—

(a) the monitoring plan approved in relation to the installation under [ the Monitoring and Reporting Regulation 2018 ]<sup>1</sup> for the 2025 scheme year, including—

(i) any modifications approved by the regulator in that scheme year; and

(ii) any modifications that are not significant (within the meaning of Article 15(3) of that Regulation) notified to the regulator on or before 31st December 2025; or

(b) if there is no such monitoring plan, the monitoring plan approved in relation to the installation under [ the Monitoring and Reporting Regulation 2012 ]<sup>1</sup> for the purposes of the EU ETS for the scheme year (within the meaning of GGETSR 2012) beginning on 1st January 2020, including—

(i) any modifications approved by the regulator in that scheme year; and

(ii) any modifications that are not significant (within the meaning of Article 15(3) of that Regulation) notified to the regulator on or before 31st December 2020.

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

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

(a) references to the monitoring plan were references to the appropriate monitoring plan;

(b) in paragraph 1", and whether the monitoring methodology can be improved" were omitted;

(c) in paragraph 2—

(i) after "the following situations" there were inserted "and those referred to in Article 15(3)(c), (f) and (i)";

(ii) points (b) and (d) to (f) were omitted.

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

(a) the operator to give notice of the modifications to the regulator;

(b) the regulator to approve the modifications;

(c) the regulator to assess whether a monitoring methodology is technically feasible or would incur unreasonable costs.

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

(a) paragraphs 1 and 2 were omitted;

(b) in paragraph 3—

(i) references to the monitoring plan were references to the appropriate monitoring plan;

(ii) points (c) and (d) were omitted;

(iii) in point (e) "in accordance with paragraph 2 of this Article" were omitted.

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

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#### Notes

<sup>1</sup> Words revoked by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021/1455 Pt 2 art.26(2) (February 7, 2022)


#### Commencement

Sch. 8 para. 5(1)-(7): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

#### Extent

Sch. 8 para. 5(1)-(7): United Kingdom

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 Law In Force

### 6. Reportable emissions must not exceed maximum amount

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

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#### Commencement

Sch. 8 para. 6: November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

#### Extent

Sch. 8 para. 6: United Kingdom

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 Law In Force

### 7.— End of ultra-small emitter status: ceasing to meet criteria

(1) This paragraph applies where—

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

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

(3) The notice must—

- (a) set out the grounds for the notice;
- (b) state that the installation is not an ultra-small emitter—

- (i) where the notice is given in the scheme year following the excess year, for the scheme year following the scheme year in which the notice is given;
  - (ii) where the notice is given after the scheme year following the excess year, for the scheme year in which the notice is given;
- (c) state that the operator must—
  - (i) apply for a greenhouse gas emissions permit; and
  - (ii) comply with the conditions of the permit—
    - (aa) where paragraph (b)(i) applies, from 1st January in the scheme year following the year in which the notice is given; or
    - (bb) where paragraph (b)(ii) applies, from no later than the date (the "relevant date") set out in the notice.
- (4) But the notice must also state that, where sub-paragraph (5) applies, the operator must apply for a hospital or small emitter permit and comply with the requirements of that permit, instead of a greenhouse gas emissions permit.
- (5) This sub-paragraph applies where—
  - (a) the operator within 14 days of the date of the notice—
    - (i) gives notice to the regulator that the operator prefers to comply with the conditions of a hospital or small emitter permit instead of a greenhouse gas emissions permit; and
    - (ii) submits evidence to the regulator that the installation is not an ineligible installation for the purposes of paragraph 4 of Schedule 7; and
  - (b) the regulator gives notice to the operator that the regulator considers that the installation is not an ineligible installation.
- (6) Where sub-paragraph (3)(b)(ii) applies, although the installation is not an ultra-small emitter for the scheme year in which the notice is given (see paragraph 2), the operator—
  - (a) must comply with paragraph 5 in respect of the period beginning on 1st January in the scheme year in which the notice is given and ending on the earlier of—
    - (i) the day before a permit for the installation comes into force; and
    - (ii) the relevant date;
  - (b) is not liable to a civil penalty under article 50 in respect of that period (but is liable to a civil penalty under article 60).
- (7) Sub-paragraph (2) does not apply where—
  - (a) it is not possible for the notice to be given in the same allocation period as the excess year; or
  - (b) although it is possible for the notice to be given in the same allocation period as the excess year, the regulator considers that it would not be reasonable to expect the operator to apply for a permit before the end of the allocation period.

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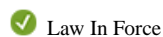
#### **Commencement**

Sch. 8 para. 7(1)-(7)(b): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

#### **Extent**

Sch. 8 para. 7(1)-(7)(b): United Kingdom

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Law In Force

## 8.— End of ultra-small emitter status: publication

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

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### Commencement

Sch. 8 para. 8(1)-(2): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

### Extent

Sch. 8 para. 8(1)-(2): United Kingdom

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## [ SCHEDULE 8A

### Free allocation for former hospital or small emitters and ultra-small emitters

#### Article 34HA

] <sup>1</sup>

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### Notes

- <sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021/1455 Pt 2 art.27 (February 7, 2022)
- 



Law In Force With Amendments Pending

## [ 1. Interpretation

In this Schedule—

"eligible scheme year" means—

- (a) the first eligible scheme year;
- (b) any subsequent scheme year in the relevant allocation period;

"first eligible scheme year" means—

- (a) if the relevant notice is a conversion notice under [paragraph 23 or 23A of Schedule 7] <sup>2</sup>, the scheme year following the year in which the conversion notice is given;
- (b) if the relevant notice is a notice under paragraph 7 of Schedule 8—
  - (i) where the notice is given in the scheme year following the excess year (as defined in sub-paragraph (1) of that paragraph), the scheme year following the year in which the notice is given;

- (ii) where the notice is given after the scheme year following the excess year, the scheme year in which the relevant date (as defined in sub-paragraph (3) (c)(ii) of that paragraph) falls;

"relevant allocation period" means the allocation period that the first eligible scheme year is in;

"relevant notice" has the meaning given in paragraph 2(a);

"sub-installation" has the same meaning as in the Free Allocation Regulation.

] <sup>1</sup>

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#### Notes

<sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021/1455 Pt 2 art.27 (February 7, 2022)

<sup>2</sup> Words inserted by Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2022/1173 Pt 2 art.18(2) (January 1, 2023)

#### Amendments Pending

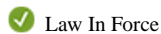
Sch. 8A para. 1 definition of "start of normal operation": definition inserted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2023/850, Pt 2 art. 10(2)(b) (January 1, 2024)

Sch. 8A para. 1 definition of "baseline period": definition inserted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2023/850, Pt 2 art. 10(2)(a) (January 1, 2024)

#### Extent

Sch. 8A para. 1 definition of "baseline period"- definition of "relevant allocation period": United Kingdom

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Law In Force

## [ 2. Application

This Schedule applies to an installation if—

- (a) the regulator gives to the operator of the installation either of the following notices (in either case, the "relevant notice")—

(i) a conversion notice under [ paragraph 23 or 23A of Schedule 7 ] <sup>2</sup>;

(ii) except where paragraph 7(5) of Schedule 8 applies, a notice under paragraph 7 of that Schedule; and

- (b) the UK ETS authority informed the regulator under Article 15a(4) of the Free Allocation Regulation that an application for free allocation in the relevant allocation period in respect of the installation was valid.

] <sup>1</sup>

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#### Notes

<sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021/1455 Pt 2 art.27 (February 7, 2022)

<sup>2</sup> Words inserted by Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2022/1173 Pt 2 art.18(3) (January 1, 2023)

**Extent**

Sch. 8A para. 2(b)-(a)(i): United Kingdom

 Law In Force With Amendments Pending
**[ 3.— Monitoring methodology plan to be submitted for approval**

(1) If the operator of the installation wants free allocation in respect of the installation for eligible scheme years, the operator must, within 2 months after the date on which the relevant notice is given, submit to the regulator the monitoring methodology plan previously submitted under the Free Allocation Regulation together with either—

- (a) any modifications necessary to ensure that the plan complies with Article 8 of, and Annex 6 to, that Regulation; or
- (b) a statement that no such modifications are necessary.

(2) Where the monitoring methodology plan and any modifications or a statement are submitted under sub-paragraph (1), the plan (with any modifications) must be treated as if it had been submitted to the regulator for approval under Article 8 of the Free Allocation Regulation.

] <sup>1</sup>**Notes**

- <sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021/1455 Pt 2 art.27 (February 7, 2022)

**Amendments Pending**

Sch. 8A para. 3(3): added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2023/850, Pt 2 art. 10(3)(c) (January 1, 2024)

Sch. 8A para. 3(1): substituted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2023/850, Pt 2 art. 10(3)(b) (January 1, 2024)

Sch. 8A para. 3: word inserted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2023/850, Pt 2 art. 10(3)(a) (January 1, 2024)

**Extent**

Sch. 8A para. 3(1)-(3)(b): United Kingdom

 Law In Force With Amendments Pending
**[ 4.— Calculation and approval of final allocation**

(1) This paragraph applies where—

- (a) either—
  - (i) the installation's hospital or small emitter permit is converted into a greenhouse gas emissions permit; or
  - (ii) a greenhouse gas emissions permit is issued for the installation; and
- (b) a monitoring methodology plan is approved in relation to the installation under Article 8 of the Free Allocation Regulation.



- (2) The regulator must as soon as reasonably practicable—
- (a) calculate the final annual number of allowances to be allocated in respect of the installation and of each sub-installation of the installation for each eligible scheme year;
  - (b) send the calculation to the UK ETS authority.
- (3) The final annual number of allowances to be allocated in respect of a sub-installation for an eligible scheme year is the preliminary annual number of allowances to be allocated for the scheme year calculated under Article 16 of the Free Allocation Regulation (including any corrections required under Article 16(11)) multiplied by the reduction factor for the scheme year (as defined in [Article 18a(11)]<sup>2</sup> of the Free Allocation Regulation).
- (4) But where the relevant notice is a notice under paragraph 7 of Schedule 8 and the first eligible scheme year is the scheme year referred to in paragraph (b)(ii) of the definition of that term in paragraph 1 of this Schedule, the final annual number of allowances to be allocated in respect of a sub-installation for the first eligible scheme year is the number calculated under sub-paragraph (3) of this paragraph multiplied by  $D/Y$ , where—
- $D$  is the number of days in the first eligible scheme year after the date on which the installation's greenhouse gas emissions permit comes into force;
- $Y$  is the number of days in the first eligible scheme year.
- (5) The final annual number of allowances to be allocated in respect of an installation for an eligible scheme year is the sum of the final annual number of allowances to be allocated in respect of all sub-installations of the installation for the scheme year.
- (6) On receipt of the calculation, the UK ETS authority must as soon as reasonably practicable—
- (a) approve the final annual number of allowances to be allocated in respect of the installation, making any corrections to the calculation that the UK ETS authority considers appropriate;
  - (b) inform the regulator accordingly.
- (7) The regulator must give notice to the operator of the final annual number of allowances approved under sub-paragraph (6).
- (8) For the purpose of the calculations referred to in sub-paragraphs (3) to (5), 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.
- J**<sup>1</sup>

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#### Notes

- <sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021/1455 Pt 2 art.27 (February 7, 2022)
- <sup>2</sup> Words substituted by Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2022/1173 Pt 2 art.18(4) (January 1, 2023)

#### Amendments Pending

Sch. 8A para. 4(6)(a): words inserted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2023/850, Pt 2 art. 10(4)(d)(ii) (January 1, 2024)

Sch. 8A para. 4(6): words inserted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2023/850, Pt 2 art. 10(4)(d)(i) (January 1, 2024)

Sch. 8A para. 4(3): substituted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2023/850, Pt 2 art. 10(4)(c) (January 1, 2024)

Sch. 8A para. 4(2)(b): words inserted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2023/850, Pt 2 art. 10(4)(b)(ii) (January 1, 2024)

Sch. 8A para. 4(2)(za): added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2023/850, Pt 2 art. 10(4)(b)(i) (January 1, 2024)


Sch. 8A para. 4(1)(c): added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2023/850, Pt 2 art. 10(4)(a)(iii) (January 1, 2024)

Sch. 8A para. 4(1)(b): word inserted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2023/850, Pt 2 art. 10(4)(a)(ii) (January 1, 2024)

Sch. 8A para. 4(1)(a)(ii): word repealed by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2023/850, Pt 2 art. 10(4)(a)(i) (January 1, 2024)

### Extent

Sch. 8A para. 4(1)-(4): United Kingdom

 Law In Force

## [ 5.— Modifications to Activity Level Changes Regulation

(1) Where an installation to which this Schedule applies becomes an FA installation, the Activity Level Changes Regulation has effect with the following modifications.

(2) Article 3 is to be read as if—

- (a) in paragraph 1 for "In 2021, this report" there were substituted "In the first eligible scheme year (within the meaning of Schedule 8A to the UK ETS Order), this report";
- (b) in paragraph 3 for "on or before 30 June in the 2021 scheme year" there were substituted "on or before 31 March in the first eligible scheme year (or, if later, within 3 months after the date on which the final annual number of allowances to be allocated in respect of the installation is approved under paragraph 4(6) of Schedule 8A to the UK ETS Order)".

] <sup>1</sup>

### Notes

- <sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021/1455 Pt 2 art.27 (February 7, 2022)

### Extent

Sch. 8A para. 5(1)-(2)(b): United Kingdom

## SCHEDULE 9

### Appeals to Scottish Land Court

#### Article 74(1)



## 1.—

(1) A person who wishes to appeal to the Scottish Land Court under article 70 against a decision of the regulator [ or the registry administrator (in either case, the "respondent") ]<sup>1</sup> must—

- (a) send the appropriate form to the Scottish Land Court together with the documents referred to in sub-paragraph (2);
- (b) at the same time, send a copy of that form to the [ respondent ]<sup>2</sup> together with copies of the documents referred to in sub-paragraph (2)(a) and (f).

(2) The documents are—

- (a) a statement of the grounds of appeal;
- (b) a copy of any relevant application;
- (c) a copy of any relevant plan;
- (d) a copy of any relevant correspondence between the appellant and the [ respondent ]<sup>3</sup> ;
- (e) a copy of any notice (or particulars of any deemed refusal) which is the subject matter of the appeal;
- (f) a statement indicating whether the appellant wishes the appeal to be—
  - (i) in the form of a hearing; or
  - (ii) to be disposed of on the basis of written representations.

(3) An appeal to the Scottish Land Court may be made on one or more of the following grounds—

- (a) the decision or notice was based on an error of fact;
- (b) the decision or notice was wrong in law;
- (c) the decision or notice was unreasonable for any other reason (including that the amount of a penalty was unreasonable);
- (d) any other reason.

(4) In this Schedule—

"appropriate form" has the meaning given in rule 3 of the Rules of the Scottish Land Court Order 2014;

"decision" includes a deemed refusal under this Order.

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### Notes

<sup>1</sup> Words inserted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.41(2)(a)(i) (December 31, 2020)

<sup>2</sup> Word substituted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.41(2)(a)(ii) (December 31, 2020)

<sup>3</sup> Word substituted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.41(2)(b) (December 31, 2020)

### Commencement

Sch. 9 para. 1(1)-(4) definition of "decision": November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

### Extent

Sch. 9 para. 1(1)-(4) definition of "decision": United Kingdom

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✓ Law In Force

## 2.—

(1) Subject to sub-paragraph (2), the appropriate form must be sent to the Scottish Land Court before the expiry of the period of 28 days beginning with the date of the decision.

(2) The Scottish Land Court may accept the appropriate form after the expiry of that period where satisfied that there was a good reason for the failure to bring the appeal in time.

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### Commencement

Sch. 9 para. 2(1)-(2): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

### Extent

Sch. 9 para. 2(1)-(2): United Kingdom

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✓ Law In Force

## 3.—

(1) The Scottish Land Court may determine an appeal, or any part of an appeal, on the basis of written representations and without a hearing where—

- (a) the parties agree; or
- (b) the Scottish Land Court considers it can determine the matter justly without a hearing.

(2) The Scottish Land Court must not determine the appeal without a hearing without first giving the parties notice of its intention to do so, and an opportunity to make written representations as to whether there should be a hearing.

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### Commencement

Sch. 9 para. 3(1)-(2): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

### Extent

Sch. 9 para. 3(1)-(2): United Kingdom

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✓ Law In Force

## 4.—

(1) The [respondent]<sup>1</sup> must, within 16 days of receipt of the copy of the appropriate form, give notice of it to any person who appears to the [respondent]<sup>1</sup> to have a particular interest in the appeal ("interested party").

(2) A notice under sub-paragraph (1) must—

- (a) state that an appeal has been initiated;
- (b) state the name of the appellant;
- (c) describe the decision or notice to which the appeal relates;

- (d) state that, if a hearing is to be held wholly or partly in public, an interested party will be notified of the date, time and location of the hearing;
  - (e) state that an interested party may request to be heard at a hearing.
- (3) An interested party may request the [respondent]<sup>1</sup> to provide the interested party with a copy of the documents set out in paragraph 1(2) only for the purposes of the appeal.
- (4) Where a request is made under sub-paragraph (3), the [respondent]<sup>1</sup> must provide the documents to the interested party as soon as reasonably practicable.
- (5) An interested party may—
- (a) make representations to the Scottish Land Court in relation to the appeal;
  - (b) be heard at a hearing in relation to the appeal.
- (6) The representations by an interested party must be made within 16 days of the date of the notice under sub-paragraph (1).
- (7) The Scottish Land Court must provide a copy of any representations to the parties.
- (8) The [respondent]<sup>1</sup> must, within 8 days of sending a notice under sub-paragraph (1), give notice to the Scottish Land Court of the persons to whom and the date on which the notice was sent.
- (9) If an appeal is withdrawn, the [respondent]<sup>1</sup> must give notice to all interested parties about the withdrawal.

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#### Notes

- <sup>1</sup> Word substituted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.41(3) (December 31, 2020)

#### Commencement

Sch. 9 para. 4(1)-(9): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

#### Extent

Sch. 9 para. 4(1)-(9): United Kingdom

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## SCHEDULE 10

### Appeals to Planning Appeals Commission (Northern Ireland)

#### Article 74(2)

 Law In Force

#### 1.—

- (1) A person who wishes to appeal to the Planning Appeals Commission under article 70 against a decision of the regulator [ or the registry administrator (in either case, the "respondent") ]<sup>1</sup> must give to the Planning Appeals Commission—

- (a) written notice of the appeal; and
- (b) a statement of the grounds of appeal.

(2) The notice of appeal must be accompanied by any fee for the appeal prescribed in regulations made under section 223(7)(b) of the Planning Act (Northern Ireland) 2011; and for that purpose section 223(7)(b) has effect as if the reference to an appeal under that Act included a reference to an appeal under this Order.

(3) The Planning Appeals Commission must as soon as reasonably practicable send a copy of the notice of appeal and the statement of grounds to the [respondent]<sup>2</sup>.

---

#### Notes

- <sup>1</sup> Words inserted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.42(2)(a) (December 31, 2020)
- <sup>2</sup> Word substituted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.42(2)(b) (December 31, 2020)


#### Commencement

Sch. 10 para. 1(1)-(3): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

#### Extent

Sch. 10 para. 1(1)-(3): United Kingdom

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 Law In Force

## 2.

A notice of appeal under paragraph 1 must be given before the expiry of the period of 47 days beginning with the date on which the decision of the [respondent]<sup>1</sup> takes effect.

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#### Notes

- <sup>1</sup> Word substituted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.42(3) (December 31, 2020)

#### Commencement

Sch. 10 para. 2: November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

#### Extent

Sch. 10 para. 2: United Kingdom

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 Law In Force

## 3.—

(1) An appellant may withdraw an appeal by giving notice to the Planning Appeals Commission.

(2) If an appellant withdraws an appeal, the Planning Appeals Commission must give notice to the [respondent]<sup>1</sup> of the withdrawal as soon as reasonably practicable.

---

**Notes**

- <sup>1</sup> Word substituted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.42(4) (December 31, 2020)


**Commencement**

Sch. 10 para. 3(1)-(2): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

**Extent**

Sch. 10 para. 3(1)-(2): United Kingdom

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 Law In Force

**4.—**

(1) The Planning Appeals Commission must determine the appeal; and section 204(1), (3) and (4) of the Planning Act (Northern Ireland) 2011 apply in relation to the determination of the appeal as they apply in relation to the determination of an appeal in accordance with that Act.

(2) The Planning Appeals Commission must—

- (a) determine the process for determining the appeal; and
- (b) when doing so, take into account any requests by either party to the appeal.

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**Commencement**

Sch. 10 para. 4(1)-(2)(b): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

**Extent**


Sch. 10 para. 4(1)-(2)(b): United Kingdom

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## **SCHEDULE 11**

### **Transitional provisions: installations**

#### **Article 77**

 Law In Force

**1.— Permits under GGETSR 2012**

(1) This paragraph applies to a permit within the meaning of GGETSR 2012 that immediately before this Schedule comes into force authorises a regulated activity to be carried out at an installation.

(2) But this paragraph does not apply to a permit—

- (a) in respect of which an application under regulation 13 of GGETSR 2012 for the surrender of the permit has been made but has yet to be determined;
  - (b) that is due, in accordance with provision made under GGETSR 2012, to be surrendered or revoked; or
  - (c) that authorises a regulated activity to be carried out at an installation included in the ultra- small emitter list for 2021-2025.
- (3) Where the installation is included in the hospital and small emitter list for 2021-2025, the regulator must—
  - (a) convert the permit into a hospital or small emitter permit the provisions of which satisfy the requirements of paragraph 11 of Schedule 7 and that authorises the regulated activity to be carried out at the installation from 1st January 2021; and
  - (b) give notice of the conversion to the operator of the installation.
- (4) In any other case, the regulator must—
  - (a) convert the permit into a greenhouse gas emissions permit the provisions of which satisfy the requirements of paragraph 4 of Schedule 6 and that authorises the regulated activity to be carried out at the installation from 1st January 2021; and
  - (b) give notice of the conversion to the operator of the installation.
- (5) When converting a permit under sub-paragraph (3) or (4), the regulator may make only such changes to the operator's obligations under the permit as the regulator considers necessary to convert the permit into a greenhouse gas emissions permit or, as the case may be, a hospital or small emitter permit.
- (6) But sub-paragraph (5) does not prevent the regulator correcting errors.
- (7) When converting a permit under sub-paragraph (4), the regulator may include under paragraph 4(2)(d) of Schedule 6 a condition to give proper effect to Article 69(4) of the Monitoring and Reporting Regulation 2018 that requires the operator to submit a report to the regulator relating to non-conformities or recommendations for improvements stated in a verification report under [ Commission Implementing Regulation (EU) 2018/2067 (as it had effect in EU law) ]<sup>1</sup> in respect of the scheme year (within the meaning of GGETSR 2012) beginning on 1st January 2020.
- (8) The conversion of a permit under sub-paragraph (3) or (4) does not affect the operator's obligations under the permit in respect of specified emissions before 1st January 2021 (and GGETSR 2012 continue to apply in relation to such obligations).
- (9) A permit that is converted under this paragraph continues in force as if issued under this Order until cancelled, surrendered or revoked under this Order.

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**Notes**

- <sup>1</sup> Words substituted by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.43(2) (December 31, 2020)

**Commencement**

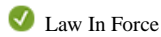
Sch. 11 para. 1(1)-(9): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

**Extent**

Sch. 11 para. 1(1)-(9): United Kingdom

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## 2.— Applications for permits, etc. under GGETSR 2012

(1) An application under regulation 10 of GGETSR 2012 for a permit for an installation that is made to the regulator before 1st January 2021, but not determined before that date—

- (a) where the installation is included in the hospital and small emitter list for 2021-2025, must be treated as an application for a hospital or small emitter permit under paragraph 7 of Schedule 7 to this Order;
- (b) in any other case (except where the installation is included in the ultra-small emitter list for 2021-2025), must be treated as an application for a greenhouse gas emissions permit under paragraph 1 of Schedule 6 to this Order.

(2) An application under regulation 11 of GGETSR 2012 to vary a permit that is made to the regulator before 1st January 2021, but not determined before that date, must be treated as an application to vary the permit under paragraph 6 of Schedule 6 to this Order.

(3) An application under regulation 12 of GGETSR 2012 for the transfer of a permit that is made to the regulator before 1st January 2021, but not determined before that date, must be treated as an application to transfer the permit under paragraph 7 of Schedule 6 to this Order.

[ (4) This sub-paragraph applies where—

- (a) a permit for an installation is converted into a greenhouse gas emissions permit under paragraph 1(4);
- (b) the monitoring methodology plan approved in respect of the installation under Article 8 of the Free Allocation Regulation is contained in the permit by virtue of paragraph 4(1)(hb) or (7) of Schedule 6; and
- (b) a significant modification of the monitoring methodology plan is notified for approval under Article 9 of the Free Allocation Regulation on or before 31st December 2020, but not approved before that date.

(5) Where sub-paragraph (4) applies, the notification of the significant modification must be treated as an application to vary the permit under paragraph 6 of Schedule 6 to make the significant modification. ]<sup>1</sup>

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### Notes

<sup>1</sup> Added by Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020/1557 Pt 2 art.43(3) (December 31, 2020)

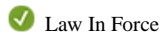
### Commencement

Sch. 11 para. 2(1)-(3): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

### Extent

Sch. 11 para. 2(1)-(5): United Kingdom

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Law In Force

### **3.— Schedule does not apply to permits for relevant Northern Ireland electricity generators, etc.**

(1) This Schedule does not apply to—

- (a) relevant Northern Ireland permits; or
- (b) applications for, or in relation to, relevant Northern Ireland permits.

(2) In this paragraph, "relevant Northern Ireland permit" means a permit within the meaning of GGETSR 2012 that authorises a regulated activity to be carried out at a relevant Northern Ireland electricity generator.

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#### **Commencement**

Sch. 11 para. 3(1)-(2): November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

#### **Extent**

Sch. 11 para. 3(1)-(2): United Kingdom

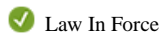
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## **EXPLANATORY NOTE**

*(This note is not part of the Order)*



Law In Force

This Order establishes a new emissions trading scheme covering greenhouse gas emissions from power and heat generation, energy intensive industries and aviation. The scheme will be called the UK Emissions Trading Scheme or UK ETS (see article 16). It is the successor, in the UK, to the EU Emissions Trading System (established by Directive 2003/87/EC).

Part 1 contains definitions that are used throughout the Order, including key concepts such as the "trading period" (1 January 2021 to 31 December 2030 — see article 4) the activities covered by the scheme ("regulated activity", defined in article 4 and Schedule 2, and "aviation activity", defined in article 4 and Schedule 1), the different greenhouse gases covered by the scheme (see article 4 and Schedule 2 for installations and the definition of "aviation emissions" for aircraft), the participants in the scheme ("operators" of installations, defined in article 5, and "aircraft operators", defined in articles 6 to 8) and who the scheme's "regulator" is for different purposes (articles 9 to 13). Article 15 introduces Schedule 3 which contains provision about applications, notices, etc.

Part 2, after introducing the scheme and establishing a review requirement (articles 16 and 17), sets out other elements of the scheme relevant to both operators of installations and aircraft operators. The basic proposition of the scheme is that, for each year, participants have to surrender "allowances" equivalent to their greenhouse gas emissions within the scope of the scheme. So article 18 sets out what an allowance is and articles 19 to 22 set out rules limiting the number of allowances that can

be issued. Article 23 permits allowances to be traded except where this is prohibited by other legislation. The rules on how allowances are to be issued do not, however, appear in this Order and will be the subject of separate legislation on free allocation of allowances and auctioning. Articles 24 and 25 introduce Schedules 4 and 5 which adapt existing EU legislation on monitoring and reporting of greenhouse gas emissions, and how reports of emissions are verified, for the purposes of the UK ETS.

Parts 3 and 4 contain provisions specific (respectively) to operators of installations and aircraft operators. The scheme has slightly different rules for these different types of participants. For operators of installations there is a general rule that they need a permit (article 26(1)) and need to surrender allowances to account for emissions (article 27). From the general rule, there are different levels of derogation for hospitals and small emitters and for ultra-small emitters. Detailed provision in respect of each category of operator is set out in Schedules 6 to 8, although for operators subject to the general rule, and for hospitals and small emitters, many of the rules take the form of specified contents of permits. For aircraft operators, there is no need for a permit as such. However, aircraft operators must apply for emissions monitoring plans which fulfil some of the same functions (article 28). For aircraft operators, provisions about reporting emissions and surrendering allowances are in articles 33 and 34.

Part 5 contains provision allowing the regulators to charge for the performance of their regulatory functions under the Order.

Part 6 contains provision allowing the regulators to monitor compliance with the Order, including through inspections of premises and exercising powers of entry.

Part 7 contains provision about enforcement, including a range of civil penalties (articles 50 to 68) that may be imposed in respect of specified breaches of the Order or of permit conditions. General provision about civil penalties is in articles 47 and 48. In addition, article 44 makes provision about enforcement notices and article 45 about circumstances where a regulator can determine the greenhouse gas emissions of a participant in the UK ETS.

Part 8, which is supplemented by Schedules 9 and 10, contains provision about appeals from decisions made by the regulator about applications and appeals in respect of a number of notices (specified in article 70(2)) that may be given under the Order.

Part 9 brings together provisions without a natural home elsewhere in the Order, covering information notices (article 75), Crown application (article 76) and transitional provisions (article 77 with Schedule 11).

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 instrument on [www.legislation.gov.uk](http://www.legislation.gov.uk).

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#### **Commencement**

para. 1: November 12, 2020 (SI 2020/1265 Pt 1 art. 2(1))

#### **Extent**

para. 1: United Kingdom

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