This Statutory Instrument has been made in consequence of defects in S.I. 2020/1265 and 2020/1557 and is being issued free of charge to all known recipients of those Statutory Instruments.

STATUTORY INSTRUMENTS

2021 No. 1455

CLIMATE CHANGE

The Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021

Made - - - -	*15th December 2021*
Laid before Parliament	*16th December 2021*
Laid before the Northern Ireland Assembly - -	*16th December 2021*
Laid before the Scottish Parliament - - - -	*16th December 2021*
Laid before Senedd Cymru	*16th December 2021*
Coming into force - -	*7th February 2022*

At the Court at Windsor Castle, the 15th day of December 2021

Present,

The Queen's Most Excellent Majesty in Council

This Order is made in exercise of the powers conferred by sections 44, 54 and 90(3) of, and Schedule 2 and paragraph 9 of Schedule 3 to, the Climate Change Act 2008(**1**).

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 was obtained and taken into account; and

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

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

(**1**) 2008 c. 27.

PART 1

Preliminary

Citation

1. This Order may be cited as the Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021.

Commencement

2. This Order comes into force on 7th February 2022.

Extent

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

PART 2

Greenhouse Gas Emissions Trading Scheme Order 2020 amended

Greenhouse Gas Emissions Trading Scheme Order 2020 amended

4. The Greenhouse Gas Emissions Trading Scheme Order 2020(**2**) is amended in accordance with this Part.

Article 4 amended (interpretation)

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

(2) After paragraph (2) insert—

"(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(**3**) is zero.".

Article 4A amended (meaning of FA installation, etc.)

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

(2) After paragraph (2)(b)(i) insert—

"(ia) paragraph 4(7) of Schedule 8A (former hospital or small emitters or ultra-small emitters);".

(3) After paragraph (4)(b)(i) insert—

"(ia) paragraph 4(7) of Schedule 8A (former hospital or small emitters or ultra-small emitters);".

Article 28 amended (application for emissions monitoring plans)

7.—(1) Article 28 is amended as follows.

(**2**) S.I. 2020/1265, amended by S.I. 2020/1557.

(**3**) "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.

(2) In paragraph (1)—

(a) after "aircraft operator must" insert ", and any other person may,";

(b) for "aircraft operator's" substitute "applicant's".

(3) In paragraph (2) for "An aircraft operator that" substitute "A person who".

(4) In paragraph (3)—

(a) for "an aircraft operator submits a monitoring plan" substitute "a monitoring plan is submitted";

(b) after "Monitoring and Reporting Regulation 2018" insert "; 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".

Article 29 amended (issue of emissions monitoring plans)

8.—(1) Article 29 is amended as follows.

(2) In paragraph (1)—

(a) in the words before sub-paragraph (a) after "an aircraft operator" insert "or other person";

(b) in sub-paragraph (b) for "aircraft operator" substitute "applicant".

(3) In paragraph (2) for "aircraft operator" substitute "applicant".

Article 30 amended (refusal of application for emissions monitoring plans)

9.—(1) Article 30 is amended as follows.

(2) In paragraph (4) for "under paragraph (3)" substitute "to which paragraph (5) applies".

(3) After paragraph (4) insert—

"(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.".

Article 34B amended (allocation tables: supplementary)

10.—(1) Article 34B is amended as follows.

(2) In paragraph (3) after "Article 18a of that Regulation" insert "or under paragraph 4 of Schedule 8A to this Order".

Article 34C amended (allocation tables: updates)

11.—(1) Article 34C is amended as follows.

(2) After paragraph (1)(f) insert—

"(g) paragraph 4 of Schedule 8A to this Order (former hospital or small emitters and ultra-small emitters).".

Article 34G amended (new entrants' reserve)

12.—(1) Article 34G is amended as follows.

(2) For paragraph (4) substitute—

"(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(**4**), 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(**5**), on which the operator submitted sufficient information to enable the historical activity level of the sub-installation to be determined.".

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

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

(2) For paragraph (1) substitute—

"(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.".

(3) In paragraph (6) in the words before sub-paragraph (a) for the words from "that, as a result of the relevant error" to "but for the relevant error" substitute "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".

Article 34HA inserted

14. After article 34H insert—

"**Free allocation for former hospital or small emitters and ultra-small emitters**

34HA. Schedule 8A (free allocation for former hospital or small emitters and ultra-small emitters) has effect.".

Article 34J amended (meaning of historical aviation activity level and attributable)

15.—(1) Article 34J is amended as follows.

(**4**) 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.)

(**5**) EUR 2019/1842, amended by S.I. 2020/1557. ("Activity Level Changes Regulation" is defined in article 4(1) of S.I. 2020/1265.)

(2) In paragraph (1)(c)(ii) for "the person's 2010 to 2014 growth in Annex 1 activities" substitute "the number of tonne-kilometres of Annex 1 activities performed by the person in 2014".

(3) In paragraph (2)—

(a) omit the following definitions—

"2010 to 2014 growth in Annex 1 activities";

"2010 to 2014 growth in aviation activity";

(b) for the definition of "aviation activity ratio" substitute—

""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;".

Article 34N amended (aviation allocation table for 2021-2025 allocation period)

16.—(1) Article 34N is amended as follows.

(2) In paragraph (4) after "article 34R (errors in aviation allocation table)" insert "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)".

Article 34R amended (errors in aviation allocation table)

17.—(1) Article 34R is amended as follows.

(2) For paragraph (1) substitute—

"(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.".

(3) In paragraph (5) in the words before sub-paragraph (a) for the words from "but for the relevant error" to "materially less" substitute "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".

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

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

(2) In paragraph (4)—

(a) for "(RE x CP) – PP" substitute "((RE – FA) x CP) – PP";

(b) after the definition of "RE" insert—

"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(**6**) 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;".

Article 60 amended (ultra-small emitters: failure to notify where reportable emissions exceed maximum amount)

19.—(1) Article 60 is amended as follows.

(2) In paragraph (2)(b)—

(a) for "CA + (RE x CP)" substitute "CA + ((RE – FA) x CP)";

(b) after the definition of "RE" insert—

"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;".

(3) After paragraph (2) insert—

"(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.".

(**6**) Section 93(2) of the Climate Change Act 2008 defines "tonnes of carbon dioxide equivalent".

Article 70 amended (right of appeal)

20.—(1) Article 70 is amended as follows.

(2) After paragraph (2)(o) insert—

"(p) Article 12(4)(b) of the Monitoring and Reporting Regulation 2018 (notice rejecting monitoring plan).".

Article 72 amended (effect of appeals)

21.—(1) Article 72 is amended as follows.

(2) After paragraph (2)(c)(vi) insert—

"(vii) Article 12(4)(b) of the Monitoring and Reporting Regulation 2018 (notice rejecting monitoring plan).".

Schedule 4 amended (Monitoring and Reporting Regulation 2018)

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

Paragraph 8 substituted (Article 12)

(2) For paragraph 8 substitute—

"**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.)".".

Paragraph 14 amended (Article 19)

(3) After paragraph 14(a) insert—

"(aa) in point (c) for "points (a) and (b)" there were substituted "points (a), (b) and (ba)";".

Paragraph 20A inserted (Article 43)

(4) After paragraph 20 insert—

"**20A.** Article 43(4)(c) is to be read as if for "Commission" there were substituted "UK ETS authority".".

Paragraph 27 substituted (Article 54)

(5) For paragraph 27 substitute—

"**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 referred to in the Schedule to the Renewable Transport Fuel Obligations Order 2007(**7**), 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 those criteria, the carbon content of the biofuel shall be treated as fossil carbon.”.”.

Paragraph 35 amended (Annex 1)

(6) For paragraph 35(c) substitute—

“(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 referred to in the Schedule to the Renewable Transport Fuel Obligations Order 2007;

(g) where applicable, a description of the procedure used to determine biofuel quantities based on purchase records in accordance with Article 54(3).”.”.

Paragraph 36 substituted (Annex 2)

(7) For paragraph 36 substitute—

“**36.** Annex 2 is to be read as if—

(a) in section 2—

(i) in the first subparagraph before section 2.1—

(**7**) S.I. 2007/3072; relevant amending instruments are S.I. 2011/2937 and 2018/374.

(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_2 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_2 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_2 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.".

Paragraph 38 amended (Annex 4)

(8) For paragraph 38(a) and (aa) substitute—

"(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 "F_{CF2F6}" in both places there were substituted "F_{C2F6}";

(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".".

Paragraph 40 amended (Annex 10)

(9) In paragraph 40—

(a) in sub-paragraph (b)—

(i) before paragraph (i) insert—

"(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;";";

(ii) after paragraph (i) insert—

"(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";";

(b) after sub-paragraph (c)(iii) insert—

"(iiia) for point (12) there were substituted—

"(12) Memo-items:

(a) amount of biofuels used during the reporting year (in tonnes or m^3) listed per fuel type, and whether the biofuels meet

the sustainability criteria referred to in the Schedule to the Renewable Transport Fuel Obligations Order 2007;

(b) the net calorific value of biofuels and alternative fuels;";".

Schedule 5A amended (registry)

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

Paragraph 6A inserted

(2) After paragraph 6 insert—

"**Reportable emissions and aviation emissions to be recorded in registry**

6A.—(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.".

Paragraph 8A inserted

(3) After paragraph 8 insert—

"**Exemption from liability**

8A.—(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(**8**);

(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

(**8**) Section 95(1) of the Climate Change Act 2008 defines "national authority".

(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(**9**).".

Paragraph 22 amended (transfer reversals)

(4) After paragraph 22(5) insert—

"(6) The registry administrator may reverse the transfer of an allowance from the allocation account if the transfer was made in error.".

Paragraph 25 amended (suspension of accounts)

(5) In paragraph 25—

(a) after sub-paragraph (1)(c) insert—

"(d) at the request of the account holder.";

(b) in sub-paragraph (3) after "suspends an account" insert "under sub-paragraph (1)(a), (b) or (c)".

Schedule 6 amended (permits)

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

Paragraph 3 substituted

(2) For paragraph 3 substitute—

"**Greenhouse gas emissions permits: issue of permit**

3. 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.".

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

(3) In paragraph 4—

(a) in sub-paragraph (1)(f) omit "Articles 11 to 13 of" in each place;

(b) for sub-paragraph (6)(b) substitute—

"(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(**10**) and to submit the report (and the verification report) to the regulator—

(i) on or before 31st March in each scheme year; or

(**9**) 1998 c. 42.

(**10**) "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.

(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;".

Paragraph 6 amended (variation of permits)

(4) In paragraph 6(3)—

(a) in paragraph (a) for "paragraph 9(3)" substitute "paragraph 9(3), (3A)";

(b) after paragraph (b)(ii) insert—

"(iia) paragraph 19C (capacity increases);".

Paragraph 7 amended (transfer of permits: application)

(5) In paragraph 7(5) in the definition of "existing permit" for "paragraph 9(5)" substitute "paragraph 9(3A) or (5)".

Paragraph 8 amended (transfer of permits: contents of application)

(6) In paragraph 8—

(a) after sub-paragraph (1) insert—

"(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.";

(b) after sub-paragraph (3) insert—

"(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.".

Paragraph 9 amended (transfer of permits: grant of application)

(7) In paragraph 9—

(a) for sub-paragraph (1) substitute—

"(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)).";

(b) in sub-paragraph (1A) for "sub-paragraph (1)(c) does not apply" substitute "sub-paragraph (1)(a)(iii) and (c) do not apply";

(c) after sub-paragraph (3) insert—

"(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.".

Paragraph 10 amended (transfer of permits: underreporting discovered after transfer)

(8) In paragraph 10(5) for "sub-paragraph (5)" substitute "sub-paragraph (3A) or (5)".

Schedule 7 amended (hospitals and small emitters)

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

Paragraph 9 substituted

(2) For paragraph 9 substitute—

"**Hospital or small emitter permits: issue of permit**

9. 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.".

Paragraph 11 amended (hospital or small emitter permits: content of permit)

(3) In paragraph 11(1)(g) omit "Articles 11 to 13 of" in each place.

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

(4) After paragraph 13(5)(a) insert—

"(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";".

Paragraphs 19A to 19G inserted

(5) After paragraph 19 insert—

"**Capacity increases: application to increase emissions targets**

19A.—(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.

Capacity increases: content of application

19B.—(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.

Capacity increases: grant of application

19C.—(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.

Capacity increases: net change in installed capacity at installation since reference date

19D.—(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.

Capacity increases: increase in emissions targets for scheme years

19E.—(1) The increase in an installation's emissions target for each scheme year for which the application is made is NC x CCUF x RF x 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.

Capacity increases: combined capacity utilisation factor

19F.—(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 relates—

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.

Capacity increases: interpretation

19G.—(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.".

Paragraph 22 amended (emissions targets: errors)

(6) In paragraph 22(1) for "paragraph 20" substitute "paragraph 19C or 20",

Paragraph 24 amended (conversion notices)

(7) In paragraph 24—

(a) for sub-paragraph (1)(d) substitute—

"(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.".

(b) for sub-paragraph (3) substitute—

"(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.".

Paragraph 26 amended (end of hospital or small emitter status: end of allocation period)

(8) In paragraph 26—

(a) for sub-paragraph (1)(b) substitute—

"(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.";

(b) for sub-paragraph (4) substitute—

"(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.".

Schedule 8 amended

26.—(1) Schedule 8 is amended as follows.

Paragraph 5 amended (duty to monitor reportable emissions, etc.)

(2) In paragraph 5(2) omit "Articles 11 to 13 of" in both places.

Schedule 8A inserted

27. After Schedule 8 insert—

"SCHEDULE 8A Article 34HA

Free allocation for former hospital or small emitters and ultra-small emitters

Interpretation

1. 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 of Schedule 7, 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.

Application

2. 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 of Schedule 7;

(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.

Monitoring methodology plan to be submitted for approval

3.—(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.

Calculation and approval of final allocation

4.—(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 18(11) 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.

Modifications to Activity Level Changes Regulation

5.—(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)".".

PART 3

Other

Installations: transitional provision for reporting in 2021 and 2022 scheme years

28.—(1) In preparing a report of an installation's reportable emissions in the 2021 or 2022 scheme year in accordance with the condition referred to in paragraph 4(2)(b) of Schedule 6, or paragraph 11(2)(b) of Schedule 7, to the Greenhouse Gas Emissions Trading Scheme Order 2020, the operator of the installation may do so as if the amendments made by article 22(7) and (8) of this Order were in force throughout the scheme year.

(2) This article must be interpreted as if it were part of the Greenhouse Gas Emissions Trading Scheme Order 2020.

Aviation: recalculation of aviation free allocation entitlement of certain applicants

29.—(1) In this article, "relevant applicant" means a person who applied for an aviation free allocation entitlement in accordance with article 34L of the Greenhouse Gas Emissions Trading Scheme Order 2020 (the "UK ETS Order") on or before 31st March 2021 in reliance on a person's historical aviation activity level within article 34J(1)(c) of that Order.

(2) As soon as reasonably practicable after this Order comes into force, the regulator must, for every relevant applicant, submit to the UK ETS authority a recalculation of the relevant applicant's aviation free allocation entitlement for each scheme year in the 2021-2025 allocation period, applying article 34M(2) to (6) of the UK ETS Order and taking account of the amendments to article 34J of that Order made by article 15 of this Order.

(3) The UK ETS authority must—

(a) approve the relevant applicant's aviation free allocation entitlement, making any corrections to the recalculation referred to in paragraph (2) that the UK ETS authority considers appropriate;

(b) inform the regulator accordingly.

(4) Where, as a result of approvals of the UK ETS authority under paragraph (3) in respect of every relevant applicant, there is an increase in the total number of allowances representing the aviation free allocation entitlements for the 2021 scheme year of all relevant applicants, the number of allowances representing the increase must be treated, for the purpose of determining "AFA" within regulation 9(1)(b)(i) of the Greenhouse Gas Emissions Trading Scheme Auctioning Regulations

2021(**11**), as allowances to be allocated free of charge in the 2022 scheme year (and not in the 2021 scheme year).

(5) This article must be interpreted as if it were part of Chapter 2 of Part 4A of the UK ETS Order.

Free Allocation Regulation amended

30.—(1) Commission Delegated Regulation (EU) 2019/331 is amended as follows.

(2) After Article 8(7)(b) insert—

"(c) where the monitoring methodology plan must, by virtue of paragraph 8(4) of Schedule 6, or paragraph 3(2) of Schedule 8A, to the UK ETS Order, be treated as if it had been submitted under this Article, as soon as reasonably practicable.".

Richard Tilbrook
Clerk of the Privy Council

(**11**) S.I. 2021/484, amended by S.I. 2021/513, 2021/561 and 2021/917.

EXPLANATORY NOTE

(This note is not part of the Order)

The United Kingdom Emissions Trading Scheme (the "UK ETS") was established by the Greenhouse Gas Emissions Trading Scheme Order 2020 (the "UK ETS Order"). The UK ETS runs for ten "scheme years" beginning in 2021. Operators of certain industrial installations and certain aircraft operators are required to monitor, report on, and surrender "allowances" equivalent to, their greenhouse gas emissions in each scheme year. Some operators and aircraft operators receive an allocation of allowances free of charge, details of which are published in allocation tables. Allowances are held in accounts in the UK ETS registry, and there is a cap on the number of allowances that may be created. For installations that meet the eligibility criteria, there are two opt-out schemes, one for "hospital or small emitters", the other for "ultra-small emitters". Such installations are not required to surrender allowances.

This Order amends the UK ETS Order and Commission Delegated Regulation (EU) 2019/331 (the "Free Allocation Regulation"). Article 24 of the UK ETS Order provides that Commission Implementing Regulation (EU) 2018/2066 (the "Monitoring and Reporting Regulation 2018") has effect for the purposes of the UK ETS, with modifications, and this Order makes further modifications. The main changes made by this Order are as follows.

Installations

Provision is made for the regulator to reject an installation's monitoring plan and for the operator to appeal against the decision (see amendments to articles 70 and 72 and substituted paragraph 8 of Schedule 4, which modifies Article 12 of the Monitoring and Reporting Regulation 2018). The regulator may refuse to issue a permit unless a monitoring plan has been approved under that Regulation or to convert a hospital or small emitter permit into a greenhouse gas emissions permit unless the monitoring plan complies with that Regulation (see substituted paragraph 3 of Schedule 6, substituted paragraph 9 of Schedule 7 and amendments to paragraphs 24 and 26 of Schedule 7).

When an application is made for an installation's permit to be transferred from one operator to another, the regulator must approve the new operator's monitoring plan and any monitoring methodology plan required for free allocation purposes, or any variations of the existing plans, before granting the application (see amendments to paragraphs 8 and 9 of Schedule 6). Where some units of an installation are transferred to an operator of an installation on the same site as the transferred units, the regulator may vary the operator's existing permit to include the transferred units instead of issuing a new permit (see amendments to paragraphs 7, 9 and 10 of Schedule 6).

A number of technical amendments are made to align more closely the monitoring and reporting rules for process emissions from all forms of carbon (see substituted paragraph 36, and amendments to paragraph 38, of Schedule 4, which modify Annexes 2 and 4 of the Monitoring and Reporting Regulation 2018).

Hospital or small emitters and ultra-small emitters

Hospital or small emitters may apply to increase their emissions targets if the capacity of an installation is increased (see new paragraphs 19A to 19G of Schedule 7). It is made clear that, where a verifier is used to verify the reportable emissions of a hospital or small emitter, the operator is exempt from the requirement in Article 69(4) of the Monitoring and Reporting Regulation 2018 to submit a report if the verifier either finds outstanding non-conformities or makes recommendations

for improvements (see amendments to paragraph 13 of Schedule 7 (which modifies Article 47(3) of the Monitoring and Reporting Regulation 2018 as it applies to such installations)).

Hospital or small emitters and ultra-small emitters that cease to be eligible for the relevant opt-out scheme and join the main scheme may claim a free allocation of allowances if a successful application for free allocation was previously made (see amendments to articles 4A, 34B, 34C and 34G and paragraph 4 of Schedule 6, new article 34HA and new Schedule 8A). The amount of the civil penalty that may be imposed on operators of such installations who fail to comply with the requirements to notify that they are no longer eligible is reduced to take into account of free allocation (see amendments to articles 57 and 60).

Aviation

A person who is not an "aircraft operator" may apply for an emissions monitoring plan (see amendments to articles 28, 29 and 30). The UK ETS Order contained an error in the methodology for calculating the "aviation free allocation entitlement" of certain applicants. The error is corrected, and provision is made for the entitlement of those applicants to be recalculated (see article 29 of this Order and the amendments to articles 34J and 34N of the UK ETS Order).

It is made clear that, if a biofuel meets the "sustainability criteria" under the Renewable Transport Fuel Obligations Order 2007, the "emission factor" is zero. Provision is made for the biomass fraction of mixed fuels to be determined by using purchase records (see amendment to article 4 and substituted paragraph 27 of Schedule 4 (which further modifies the Monitoring and Reporting Regulation 2018, including by substituting Article 54)).

Registry

Reportable emissions of installations and aviation emissions of aircraft operators must be recorded in the registry (see new paragraph 6A of Schedule 5A). An exemption from liability in damages is expressly provided to those exercising registry functions (see new paragraph 8A of Schedule 5A). Errors made when allocating allowances free of charge may be reversed (see new paragraph 22(6) of Schedule 5A). Account holders may apply for an account to be suspended (see amendments to paragraph 25 of Schedule 5A).

Miscellaneous

It is made clear that the process for correcting errors in allocation tables applies even if the error is a failure to include an installation or an aircraft operator in the table (see amendments to articles 34H and 34R).

A regulatory impact assessment of the effect that the UK ETS will have on the costs of business, the voluntary sector and the public sector is available from the Industrial Energy Directorate, Department for Business, Energy and Industrial Strategy, 1 Victoria Street, London SW1H 0ET and is available alongside the UK ETS Order on .