STATUTORY INSTRUMENTS

2020 No. 1265

CLIMATE CHANGE

The Greenhouse Gas Emissions Trading Scheme Order 2020

Made - - - - 11th November 2020

Coming into force in accordance with article 2

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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(**a**).

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:

(**a**) 2008 c. 27.

PART 1

Preliminary

Citation

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

Commencement

2.—(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.

Extent

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

Interpretation

4.—(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;

"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;

"allocation period" means—

(a) the 2021-2025 allocation period; or

(b) the 2026-2030 allocation period;

"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 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;

"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(**a**);

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

"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;

(**a**) Treaty Series No. 8 (1953); Cmd 8742.
(**b**) S.R. 2013 No. 160.

"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(**a**);

"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(**b**);

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

"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;

"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(**c**);

"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;

(**a**) OJ No. L 275, 25.10.2003, p. 32.
(**b**) 1982 c. 16. Section 24 was amended by section 3(1) of the Civil Aviation (Eurocontrol) Act 1983 (c. 11).
(**c**) S.I. 2012/3038, to which there are amendments not relevant to this Order.

"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(**a**);

"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(**b**) 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(**c**);

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

"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);

"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(**d**)) 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(**e**);

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

(**a**) OJ No. L 181, 12.7.2012, p. 30.
(**b**) OJ No. L 334, 31.12.2018, p. 1.
(**c**) The Natural Resources Body for Wales was established by article 3 of S.I. 2012/1903 (W.230).
(**d**) Section 93(2) of the Climate Change Act 2008 defines "tonne of carbon dioxide equivalent".
(**e**) The Scottish Environment Protection Agency was established by section 20 of the Environment Act 1995 (c. 25).

"surrender", in relation to an allowance, means use the allowance to account for reportable emissions or aviation emissions in a particular scheme year in such a way that the allowance ceases to be available for any other purpose;

"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(**a**);

"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(**b**).

(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.

(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(**c**);

(b) any Order in Council made under section 126(2) of the Scotland Act 1998(**d**);

(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(**e**).

Meaning of operator

5.—(1) In this Order, the "operator" of an installation is the person who has control over its operation.

(2) But where—

(**a**) OJ No. L 181, 12.7.2012, p. 1.

(**b**) 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.

(**c**) 1998 c. 47.

(**d**) 1998 c. 46.

(**e**) 2006 c. 32. 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.

(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.

Meaning of aircraft operator

6.—(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.

Exempt commercial air transport operators

7.—(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.

Exempt non-commercial air transport operators

8. 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.

Meaning of regulator

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

(a) the chief inspector;

(b) the Environment Agency(**a**);

(c) NRW;

(d) the Secretary of State;

(e) SEPA.

(**a**) The Environment Agency was established by section 1 of the Environment Act 1995 (c. 25).

(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.

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

Meaning of regulator: installations

10.—(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

Column 1 *Installation*	*Column 2* *Regulator*
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(**a**));

(b) a purpose connected with an activity referred to in section 2(3) of the Energy Act 2008(**b**) (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.

Meaning of regulator: aircraft operators

11.—(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.

Aircraft operator: change in regulator

12.—(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.

(**a**) 1998 c. 17.
(**b**) 2008 c. 32.

(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.

Aircraft operator: change in registered office

13.—(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.

Meaning of UK ETS authority, etc.

14.—(1) A reference in this Order to the "UK ETS authority" is a reference to all of the national authorities(**a**).

(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.

Applications, notices, etc.

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

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

(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.

PART 2

Basic elements of the UK ETS

CHAPTER 1

Establishment of the UK ETS and requirement for review

UK Emissions Trading Scheme

16.—(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(**a**) in the trading period from the carrying out of—

(a) regulated activities by operators of installations; and

(b) aviation activities by aircraft operators.

Review of UK ETS

17.—(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.

CHAPTER 2

Allowances and caps

Allowances

18.—(1) The UK ETS authority may direct that allowances be created for the purposes of the UK ETS.

(2) An allowance is an allowance to emit 1 tonne of carbon dioxide equivalent.

Cap for trading period

19. 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.

(**a**) Section 92(1) of the Climate Change Act 2008 defines "greenhouse gas".

Cap for scheme years

20.—(1) The number of allowances created in a scheme year may not exceed the base for the scheme year multiplied by—

(a) if the scheme year is in the 2021-2025 allocation period, the 2021-2025 hospital and small emitter reduction factor;

(b) if the scheme year is in the 2026-2030 allocation period, the 2026-2030 hospital and small emitter reduction factor.

(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(**a**).

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

Cap: hospital and small emitter reduction factors

21.—(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 in accordance with the Verification Regulation 2012 or the Verification Regulation 2018;

(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.

Cap: base for scheme years

22. 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

Column 1 *Scheme year*	*Column 2* *Base*
2021	155,671,581
2022	151,437,134
2023	147,202,686
2024	142,968,239
2025	138,733,792

(**a**) 2020 c. 14.

2026	134,499,344
2027	130,264,897
2028	126,030,449
2029	121,796,002
2030	117,561,555

Trading in allowances

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

CHAPTER 3

Monitoring, reporting and verification

Monitoring and reporting of emissions

24. 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(**a**) 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).

Verification of data and accreditation of verifiers

25. Schedule 5 (amendments to the Verification Regulation 2018 adapting its provisions for the purpose of the UK ETS) has effect.

PART 3

Installations

Installations: requirement for permit to carry out regulated activity

26.—(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.

Installations: requirement to surrender allowances

27. 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.

(**a**) OJ No. L 334, 31.12.2018, p. 1.

PART 4

Aviation

Application for emissions monitoring plans

28.—(1) An aircraft operator must apply to the regulator for a plan setting out how the aircraft operator's aviation emissions are to be monitored for the purposes of this Order ("an emissions monitoring plan").

(2) An aircraft operator that 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 an aircraft operator submits a monitoring plan to the regulator for approval under Article 12 of the Monitoring and Reporting Regulation 2018.

(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.

Issue of emissions monitoring plans

29.—(1) If an aircraft operator 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 aircraft operator 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 aircraft operator.

(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.

Refusal of application for emissions monitoring plans

30.—(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 under paragraph (3) 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.

Variation of emissions monitoring plans

31.—(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.

Monitoring emissions and emissions monitoring plan conditions

32.—(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).

Reporting aviation emissions

33.—(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 in accordance with the Verification Regulation 2018.

(2) The obligation for the report to be verified in accordance 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) must be submitted to the regulator on or before 31st March in the year following the scheme year to which it relates.

Surrender of allowances by aircraft operators

34.—(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.

PART 5

Charging

Charges

35.—(1) The regulator may charge an applicant, operator, aircraft operator or any other person an amount as a means of recovering costs incurred by the regulator 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.

(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 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 has cleared funds for the full amount due and a charge, if unpaid, may be recovered by the regulator as a civil debt.

(6) The regulator may require a charge to be paid before it carries out the activity to which the charge relates.

(7) If the regulator does not require a charge to be paid in accordance with paragraph (6), it is payable on demand.

(8) The regulator is not 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.

Approval, publication and revision of charges

36.—(1) The regulator must publish a document ("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 its proposals to the attention of the persons likely to be affected by them; and

(b) specify the period within which representations or objections to the proposals may be made.

(3) A charging scheme cannot be published unless it has been approved—

(a) in the case of proposals by the Environment Agency, by the Secretary of State;

(b) in the case of proposals by SEPA, by the Scottish Ministers;

(c) in the case of proposals by NRW, by the Welsh Ministers;

(d) in the case of proposals by the chief inspector, by the Department of Agriculture, Environment and Rural Affairs.

(4) Where a proposed charging scheme has been submitted for approval under paragraph (3), the appropriate national authority—

(a) must consider any representations or objections made under paragraph (2)(b); and

(b) may make such modifications to the proposal as they consider 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 to a charging scheme prepared and published by the Secretary of State.

Remittance of charges

37.—(1) The Environment Agency must pay the Secretary of State any charge received by it.

(2) SEPA must pay the Scottish Ministers any charge received by it.

(3) NRW must pay the Welsh Ministers any charge received by it.

(4) The chief inspector must pay the Department of Agriculture, Environment and Rural Affairs any charge received by it.

PART 6

Monitoring compliance

Authorised persons

38.—(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(**a**).

Inspections

39.—(1) The regulator may, at a reasonable time, inspect any premises and any thing in or on those premises in order to monitor compliance with this Order.

(**a**) 1995 c. 25; section 108(1) was relevantly amended by section 46(2)(a) of the Regulatory Reform (Scotland) Act 2014 (asp 3).

(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(**a**); or

(b) any other premises to which the Crown restricts access on the ground of national security.

Powers of entry, etc.

40.—(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;

(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.

(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.

(**a**) 1911 c. 28.

(4) It is an offence for a person—

(a) to fail to comply with a requirement imposed pursuant to this article; or

(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.

(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.

Warrants

41.—(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.

Admissible evidence

42.—(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(**a**);

(b) section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995(**b**); or

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(**a**) 1911 c. 6.

(**b**) 1995 c. 39; section 44(2) was amended by section 200(2)(b) of the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13).

(c) article 10 of the Perjury (Northern Ireland) Order 1979(**a**).

Legal professional privilege

43. 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.

PART 7

Enforcement

CHAPTER 1

Enforcement notices and determination of emissions by regulator

Enforcement notices

44.—(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;

(ii) the Monitoring and Reporting Regulation 2018;

(b) a condition of a permit;

(c) a condition of an emissions monitoring plan.

(3) An enforcement notice must set out—

(a) the relevant requirement that the regulator 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 may withdraw an enforcement notice at any time by giving notice of the withdrawal to the person to whom the enforcement notice is given.

Determination of reportable emissions or aviation emissions by regulator

45.—(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.

(**a**) 1979 No. 1714 (N.I. 19).

(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) if the operator of the installation fails to satisfy the regulator in accordance with a condition of a permit included under paragraph 4(2)(c) of Schedule 6 (as to sustainability criteria in respect of the use of bioliquids);

(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) In making a determination under paragraph (3)(a), the regulator may substitute an emission factor of greater than zero for the factor reported in respect of the bioliquids concerned.

(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.

CHAPTER 2

Civil penalties

Carbon price

46.—(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.

Penalty notices

47.—(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 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.

(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), 65(2)(b) or 66(2)(b);

"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.

Penalty notices: supplementary

48.—(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).

Regulator must publish names of persons subject to civil penalty under article 52

49.—(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.

Installations: carrying out regulated activity without permit contrary to article 26

50.—(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 x 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.

Installations: failure to comply with conditions of permit, etc.

51.—(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.

Failure to surrender allowances

52.—(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;

(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 $(CPI_2\text{-}CPI_1)/CPI_1$ 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(**a**); or

(**a**) The Statistics Board was established by section 1 of the Statistics and Registration Service Act 2007 (c. 18).

(b) if that index is not published for a month, any substituted index or index figures published for that month by the Statistics Board.

Installations: failure to transfer or surrender allowances where underreporting discovered after transfer

53.—(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).

Hospitals and small emitters: exceeding emissions target

54.—(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) x 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.

Hospitals and small emitters: failure to pay civil penalty for exceeding emissions target

55.—(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.

Hospitals and small emitters: under-reporting of emissions

56.—(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.

Hospitals and small emitters: failure to notify when ceasing to meet criteria

57.—(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 x CP) – PP, 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) of Schedule 7 did not apply) in the penalty year;

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.

Installations: failure to apply to surrender permit

58. 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.

Ultra-small emitters: reportable emissions exceeding maximum amount

59.—(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.

Ultra-small emitters: failure to notify where reportable emissions exceed maximum amount

60.—(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 x CP) 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;

CP is the carbon price for the scheme year.

(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.

Aviation: failure to apply or make revised application for emissions monitoring plan

61.—(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.

Aviation: failure to comply with condition of emissions monitoring plan

62.—(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.

Aviation: failure to monitor aviation emissions

63.—(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.

Aviation: failure to report aviation emissions

64.—(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.

Failure to comply with enforcement notice given by regulator

65.—(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 by the regulator 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.

Failure to comply with information notice

66.—(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.

Providing false or misleading information, etc.

67. 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.

Inspection: refusal to allow access to premises

68. 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).

PART 8

Appeals

Interpretation

69. 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.

Right of appeal

70.—(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 determining an application made by the person under this Order;

(b) a person who is aggrieved by a notice given to the person, under a provision referred to in paragraph (2).

(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);

(c) article 44(1) (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);

(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).

(3) An appeal under paragraph (1) may not be made to the extent that the decision implements—

(a) a direction given under—

(i) section 40 of the Environment Act 1995(**a**);

(ii) section 52 of CCA 2008;

(iii) article 11 of the Natural Resources Body for Wales (Establishment) Order 2012(**b**);

(iv) regulation 40 of the Pollution Prevention and Control (Industrial Emissions) Regulations (Northern Ireland) 2013(**c**);

(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 preliminary assessment under—

(a) paragraph 5(3) of Schedule 7;

(b) paragraph 3(3) of Schedule 8.

Appeal body

71.—(1) In an appeal against a decision of SEPA, the appeal body is the Scottish Land Court(**d**).

(2) In an appeal against a decision of the chief inspector, the appeal body is the Planning Appeals Commission(**e**).

(**a**) 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.
(**b**) S.I. 2012/1903 (W. 230).
(**c**) S.R. (NI) 2013 No. 160.
(**d**) 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).
(**e**) The Planning Appeals Commission was continued by section 203(1) of the Planning Act (Northern Ireland) 2011 (c. 25).

(3) In an appeal against any other decision, the appeal body is the First-tier Tribunal(**a**).

Effect of appeals

72.—(1) Subject to paragraphs (2) to (4), 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);

(ii) article 44(1) (enforcement notices);

(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).

(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).

Determination of appeals

73.—(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 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.

Procedure for appeals

74.—(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.

(**a**) The First-tier Tribunal was established by section 3(1) of the Tribunals, Courts and Enforcement Act 2007 (c. 15).

PART 9

Miscellaneous

Information notices

75.—(1) The UK ETS authority, a national authority or a regulator 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.

(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.

Crown application

76.—(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.

Transitional provisions

77.—(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.

Richard Tilbrook
Clerk of the Privy Council

SCHEDULE 1

Article 4(1)

Aviation activity

Aviation activity

1.—(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.

Excluded flights

2.—(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.

SCHEDULE 2

Article 4(1)

Meaning of installation and regulated activity

Interpretation

1.—(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(**a**);

(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(**a**);

(**a**) S.R. 2005/300, to which there are amendments not relevant to this Order.

(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(**b**);

(d) in any other case, hazardous waste for the purposes of regulation 6 of the Hazardous Waste (England and Wales) Regulations 2005(**c**);

"municipal waste" has the meaning given in section 21(3) of the Waste and Emissions Trading Act 2003(**d**).

(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.

Meaning of installation

2.—(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.

Meaning of regulated activity, etc.

3.—(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

Column 1 *Activities*	*Column 2* *Greenhouse gases*

(**a**) S.I. 1996/972. 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.
(**b**) S.I. 2005/1806. Regulation 6 was amended by regulation 3(5) of S.I. 2015/1417.
(**c**) S.I. 2005/894, to which there are amendments not relevant to this Order.
(**d**) 2003 c. 33. Section 21(3) was amended by regulation 6(2)(b) of S.I. 2011/2499.

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
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_2) and synthesis gas by reforming or partial	Carbon dioxide

oxidation with a production capacity exceeding 25 tonnes per day	
Production of soda ash (Na_2CO_3) and sodium bicarbonate ($NaHCO_3$)	Carbon dioxide
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.

SCHEDULE 3

Article 15

Applications, notices, etc.

PART 1

Applications, notices, etc. submitted to regulators

Submission of applications, notices, etc. to regulators

1.—(1) This paragraph applies to an application, notice or report submitted to a regulator under—

(a) this Order;

(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, 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 the regulator may require 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.

Determination of applications by regulators

2.—(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—

(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).

PART 2

Notices, etc. given by regulators, national authorities or UK ETS authority

Service of notices, etc.

3.—(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.

(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;

(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).

(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.

Service on certain Crown operators

4.—(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.

SCHEDULE 4

Article 24

Modifications to Commission Regulation (EU) 2018/2066

1. Commission Implementing Regulation (EU) 2018/2066 is to be read as if—

(a) for "competent authority" in each place it occurs there were substituted "regulator";

(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.

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".

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_2 emissions from aviation activity and tonne-kilometre data from aviation activity".

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_2 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) '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;";

(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(**a**) and other domestic legislation which immediately before IP completion day implemented Directive 2009/31/EC(**b**);".

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".

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".

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".

8. Article 12 is to be read as if paragraph 3 were omitted.

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".

10. Article 14(1) is to be read as if "in accordance with Article 7 of Directive 2003/87/EC" were omitted.

11. Article 15 is to be read as if—

(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—

(**a**) 2008 c. 32.
(**b**) OJ No. L 140, 5.6.2009, p. 114.

(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".

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".

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".

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_2 per year;";

(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".

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".

16. Article 26(3) is to be read as if after "source streams" there were inserted "and marginal source streams".

17. Article 31(1)(b) is to be read as if for "Member State" there were substituted "United Kingdom".

18. Article 38 is to be read as if—

(a) in paragraph 2, after "zero" there were inserted ", but 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";

(b) in paragraph 4, after "*de minimis*" there were inserted "or marginal".

19. Article 39 is to be read as if—

(a) in paragraph 2, the third subparagraph were omitted;

(b) in paragraph 3, for "Articles 2(j) and 15 of Directive 2009/28/EC" there were substituted "the Electricity (Guarantees of Origin of Electricity Produced from Renewable Energy Sources) Regulations 2003(**a**) or the Electricity (Guarantees of Origin of Electricity Produced from Renewable Energy Sources) Regulations (Northern Ireland) 2003(**b**)".

20. Article 42(1) is to be read as if, in the second subparagraph, ", standards published by the Commission" were omitted.

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".

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".

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.".

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_2O as relevant" there were substituted "regulated activities in respect of which N_2O 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.".

25. Article 51 is to be read as if—

(**a**) S.I. 2003/2562, amended by S.I. 2010/2715 and 2011/1043 and amended prospectively by S.I. 2018/1093 with effect from IP completion day.

(**b**) S.R. 2003 No. 470, amended by S.R. 2010 No. 374 and S.I. 2011/1043; there are other amending instruments, but none is relevant.

(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.

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"(**a**);

(b) in paragraph 3, for "section 1 of Annex III" there were substituted "Appendix 2 to Annex 16, Volume IV to the Chicago Convention".

27. Article 54 is to be read as if—

(a) the second, third and fourth subparagraphs were omitted;

(b) in the fifth subparagraph, for "Article 18 of Directive 2009/28/EC" there were substituted "Articles 12 and 13A of the Renewable Transport Fuel Obligations Order 2007(**b**)".

28. Article 55(2) is to be read as if for "Commission" there were substituted "UK ETS authority".

29. Article 58(1) is to be read as if the second subparagraph were omitted.

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.".

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(**c**), the exception in regulation 12(5)(e) of the Environmental Information Regulations 2004(**d**) or the exception in regulation 10(5)(e) of the Environmental Information (Scotland) Regulations 2004(**e**)".

32. Article 72(3) is to be read as if "calculating the distance and payload pursuant to Article 57 and" were omitted.

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;

(c) for point (d) there were substituted—

(**a**) 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.

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

(**c**) 2000 c. 36.

(**d**) S.I. 2004/3391, to which there are amendments not relevant to this Order.

(**e**) S.S.I. 2004/520, to which there are amendments not relevant to this Order.

"(d) the UK Standard Industrial Classification (SIC) of Economic Activities, issued under section 9 of the Statistics and Registration Service Act 2007(**a**), and as updated from time to time.".

34. Article 78 is to be read as if the words from "However" to the end were omitted.

35. Annex 1 is to be read as if—

(a) in section 1, in point (2)(b), for "and *de minimis*" in both places it occurs there were substituted ", *de minimis* and marginal";

(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(b)(i), the words "(Method A or Method B)" were omitted.

36. Annex 2 is to be read as if, before section 2.1, in the first subparagraph, 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".

37. Annex 3 is to be read as if section 1 were omitted.

38. Annex 4 is to be read as if—

(a) in section 1, 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";

(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 "T_{end}", after "with", there were inserted "domestic legislation which immediately before IP completion day implemented".

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".

40. Annex 10 is to be read as if—

(**a**) 2007 c. 18.

(a) in the heading, for "68(3)" there were substituted "68";

(b) in section 1—

(i) in point (6), for "Information" there were substituted "Subject to the subparagraph after point (13), information";

(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";

(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".

SCHEDULE 5

Article 25

Amendments to the Verification Regulation 2018

1. The Verification Regulation 2018 is amended as follows.

2. For "competent authority" in each place it occurs substitute "regulator".

3. In Article 1, for "2012 Regulations" substitute "2020 Order".

4. In Article 2, for the words from "2019" to the end substitute "2021, reported pursuant to Implementing Regulation (EU) 2018/2066".

5. In Article 3—

(a) for the words before point (A1), substitute—

"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 and expressions used in that Regulation have the same meaning as in that Regulation; in addition:";

(b) omit point (A1);

(c) in point (2), for "a" in the first place it occurs substitute "the";

(d) in point (3), for "a national" substitute "the national";

(e) after point (3), insert—

"(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(**a**);";

(f) omit point (4a);

(g) omit point (4b);

(h) in point (7), for "regulation 35(4) and paragraph 2(1)(e)(ii) of Schedule 4 to the 2012 Regulations" substitute "a permit issued in accordance with Schedule 6 or 7 to the 2020 Order or pursuant to article 33 of the 2020 Order";

(i) omit point (7a);

(j) omit point (7b);

(k) omit point (12a);

(l) in point (13)(a), omit "greenhouse gas emissions";

(m) in points (22) and (23), for "EU" in each place it occurs substitute "UK";

(n) in point (22), for "an" in the first place it occurs substitute "a";

(o) in point (26), for "a" in the second place it occurs substitute "the".

6. Omit Article 3a.

7. In Article 5, for "bodies" substitute "body".

8. In Article 7—

(a) in paragraph 3, for "competent authorities" substitute "regulator";

(b) in paragraph 4(b), omit "greenhouse gas emissions".

9. In Article 10(1)(a), omit "greenhouse gas emissions".

10. In Article 17(4) for "and the CO_2" substitute "or transferred N_2O is not counted in accordance with Article 50 of that Regulation and the CO_2 or N_2O transferred".

11. In Article 27(3)(g), for "activity, other than aviation, listed in Annex 1 to Directive 2003/87/EC" substitute "regulated activity".

12. In Article 31—

(a) in paragraph 1, for "a" in the first place it occurs substitute "the";

(b) in paragraph 3(b), at the beginning insert "in the case of installations which are not within Article 32(5),";

(c) after paragraph 3, insert—

"3A. The verifier must carry out site visits to installations within Article 32(5) at least twice in the trading period.".

13. In Article 36—

(a) in paragraphs 2(b) and 6, for "EU" in each place it occurs substitute "UK";

(b) in paragraph 6, for "an" substitute "a".

14. In Article 37—

(a) in paragraph 2, for "an" substitute "a";

(b) in paragraphs 2 and 6, for "EU" in each place it occurs substitute "UK";

(c) in paragraph 5, in the first subparagraph, omit the second sentence.

15. In Article 38—

(a) for "EU ETS" in each place it occurs (including the heading) substitute "UK ETS";

(**a**) Regulation (EC) 765/2008 is amended prospectively by S.I. 2019/696 with effect from IP completion day.

(b) in paragraph 1, in the words before point (a), for "An" substitute "A";

(c) in paragraph 1(a)—

(i) for "Directive 2003/87/EC" substitute "the 2020 Order";

(ii) for "Secretary of State" substitute "the national authorities".

(d) in paragraph 2—

(i) for "An" substitute "A";

(ii) for "an" substitute "a".

16. In Article 39(2), for "an EU" substitute "a UK".

17. In Article 40, for "EU" in each place it occurs substitute "UK".

18. In Article 43(1), at the end insert "or under the trading scheme established by the 2020 Order".

19. In Article 45, in the words before point (a), for "each" substitute "the".

20. In Article 47(1), for "each" substitute "the".

21. In Article 59(1)(b), for "Directive 2003/87/EC" substitute "the 2020 Order".

22. In Article 60(2)(a), for "Directive 2003/87/EC" substitute "the 2020 Order".

23. In Article 69—

(a) in paragraph 1, omit "in accordance with Article 74(1) of Implementing Regulation (EU) 2018/2066";

(b) in paragraph 2, omit "in accordance with Article 74(2) of Implementing Regulation (EU) 2018/2066".

24. In Article 70—

(a) in paragraph 1—

(i) for "the Secretary of State" substitute "UK ETS authority";

(ii) for "their" substitute "the";

(b) in paragraph 2—

(i) for the words from "Where" to "competent authorities" substitute "The Environment Agency or such other regulator as may be designated by the national authorities from time to time is";

(ii) after "information" insert "for the purposes of this Chapter".

25. In Article 71—

(a) in paragraph 1, in the words before point (a), for "that" in the first place it occurs substitute "the";

(b) in paragraph 3—

(i) in the words before point (a), for "that" in the second place it occurs substitute "the";

(ii) in point (a), for "that" in the second place it occurs substitute "the".

26. In Article 76(1)—

(a) for "National accreditation bodies, or where applicable national authorities referred to in Article 55(2)," substitute "The national accreditation body";

(b) for "competent authorities" substitute "regulators".

SCHEDULE 6

Article 26(3)

Permits

PART 1

Application for greenhouse gas emissions permits

Greenhouse gas emissions permits: application

1.—(1) The operator of an installation may apply to the regulator for a greenhouse gas emissions permit for the installation(**a**).

(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).

Greenhouse gas emissions permits: content of application

2.—(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(**b**);

(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;

(**a**) Paragraphs 24 and 26 of Schedule 7 and paragraph 1 of Schedule 11 provide for the conversion of permits into greenhouse gas emissions permits.

(**b**) 2006 c. 46. In section 1159 of the Companies Act 2006, "company" includes any body corporate.

(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(**a**);

(ii) the Industrial Pollution Control (Northern Ireland) Order 1997(**b**);

(b) a permit under—

(i) the Pollution Prevention and Control (Scotland) Regulations 2012(**c**);

(ii) the Offshore Combustion Installations (Pollution Prevention and Control) Regulations 2013(**d**);

(iii) the Pollution Prevention and Control (Industrial Emissions) Regulations (Northern Ireland) 2013(**e**);

(iv) the Environmental Permitting (England and Wales) Regulations 2016(**f**);

(v) the Environmental Authorisations (Scotland) Regulations 2018(**g**).

Greenhouse gas emissions permits: issue of permit

3. A greenhouse gas emissions permit may be issued only if 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.

Greenhouse gas emissions permits: content of permit

4.—(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 Articles 11 to 13 of the Monitoring and Reporting Regulation 2018;

(ii) where an existing permit is converted into a greenhouse gas emissions permit, approved in relation to the installation under Articles 11 to 13 of the Monitoring and

(**a**) 1990 c. 43.
(**b**) S.I. 1997/2777 (N.I. 18).
(**c**) S.S.I. 2012/360.
(**d**) S.I. 2013/971.
(**e**) S.R. 2013/160.
(**f**) S.I. 2016/1154.
(**g**) S.S.I. 2018/219.

Reporting Regulation 2012 or Articles 11 to 13 of the Monitoring and Reporting Regulation 2018 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));

(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 in accordance with the Verification Regulation 2018 and to submit the report to the regulator on or before 31st March in the following year;

(c) a condition requiring the operator to satisfy the regulator, if an emission factor of zero is reported in respect of the use of bioliquids, that the sustainability criteria set out in Article 17(2) to (5) of Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources(**a**) have been fulfilled; and

(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.

Greenhouse gas emissions permits: effect of permit, etc.

5.—(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.

(**a**) O.J. No. L 140, 5.6.2009, p. 16, amended by Council Directive 2013/18/EU (O.J. No. L 158, 10.6.2013, p. 230) and Directive (EU) 2015/1513 (O.J. No. L 239, 15.9.2015, p. 1).

PART 2

Greenhouse gas emissions permits and hospital or small emitter permits

Variation of permits

6.—(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.

(3) The regulator may vary a permit to comply with—

(a) paragraph 9(3), (4) or (5) (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);

(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.

Transfer of permits: application

7.—(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(5);

"new operator" has the meaning given in sub-paragraph (1);

"transferred activities" has the meaning given in paragraph 8(a);

"transferred units" has the meaning given in paragraph 8(a);

"transferring operator" has the meaning given in sub-paragraph (1).

Transfer of permits: contents of application

8. 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.

Transfer of permits: grant of application

9.—(1) An application for the transfer or partial transfer of a permit may be granted only if the regulator considers that from the transfer date, the new operator—

(a) will be the operator of the installation; and

(b) 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).

(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).

(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.

(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.

Transfer of permits: underreporting discovered after transfer

10.—(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 (5) of that paragraph.

Surrender of permits

11.—(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, surrender allowances equal to the installation's reportable emissions in the period referred to in sub-paragraph (i).

(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.

(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 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 condition referred to in paragraph 4(2)(b) 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).

Revocation of permits

12.—(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;

(ii) a condition of the permit; or

(b) the operator of an installation fails to pay the charge for maintaining the permit in force(**a**).

(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, surrender allowances equal to the installation's reportable emissions in the period referred to in sub-paragraph (i).

(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.

(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 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 condition referred to in paragraph 4(2)(b) 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).

(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.

SCHEDULE 7

Article 26(4)

Hospitals and small emitters

PART 1

Preliminary

Interpretation

1.—(1) In this Schedule—

"conversion notice" has the meaning given in paragraph 23;

"emissions report" has the meaning given in paragraph 11(2)(b);

(**a**) 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.

"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.

Meaning of installation that primarily provides services to a hospital in scheme year

2.—(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.

PART 2

Hospital or small emitter status

Hospital or small emitter status

3.—(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(**a**).

(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.

Hospital or small emitter status: former ultra-small emitters

4.—(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

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(**a**) 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. 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.

(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.

Obtaining hospital or small emitter status for 2026-2030 allocation period

5.—(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 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.

Obtaining hospital or small emitter status for 2026-2030 allocation period: Conditions A, B and C

6.—(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.

PART 3

Hospital or small emitter permits

Hospital or small emitter permits: application

7.—(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(**a**).

(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).

Hospital or small emitter permits: content of application

8. 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.

Hospital or small emitter permits: issue of permit

9. A hospital or small emitter permit may be issued only if the regulator considers that—

(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; and

(b) 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.

(**a**) Paragraph 10 of Schedule 7 and paragraph 1 of Schedule 11 provide for the conversion of permits into hospital or small emitter permits.

Hospital or small emitter permits: conversion of existing greenhouse gas emissions permit for 2026-2030 allocation period

10.—(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.

Hospital or small emitter permits: content of permit

11.—(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 Articles 11 to 13 of the Monitoring and Reporting Regulation 2018;

(ii) where an existing permit is converted into a hospital or small emitter permit, approved in relation to the installation under Articles 11 to 13 of the Monitoring and Reporting Regulation 2012 or Articles 11 to 13 of the Monitoring and Reporting Regulation 2018 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 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 any declaration) 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.

Hospital or small emitter permits: effect of permit, etc.

12.—(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.

Hospitals and small emitters: modifications to Monitoring and Reporting Regulation 2018

13.—(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) References in the Monitoring and Reporting Regulation 2018 to a greenhouse gas emissions permit are to be read as references to a hospital or small emitter permit.

(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(2) is to be read as if—

(a) in the first subparagraph ", but 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;

(b) in the second subparagraph for "each fuel" there were substituted "a mixed fuel".

(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);

(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 in accordance 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.

Former ultra-small emitters: hospital or small emitter permits coming into force after beginning of scheme year

14.—(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 (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).

PART 4

Emissions targets

Emissions targets other than for hospital-qualifying installations may not exceed maximum amount

15.—(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.

Emissions targets for 2021-2025 allocation period

16.—(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

Column 1 *Scheme year*	*Column 2* *Reduction factor*
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 in accordance with the Verification Regulation 2012 or the Verification Regulation 2018;

(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.

Emissions targets for 2026-2030 allocation period

17.—(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

Column 1 *Scheme year*	*Column 2* *Reduction factor*
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 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).

(9) This paragraph is subject to paragraph 14.

Emissions targets: calculation of later targets where initial targets based on estimates

18.—(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.

Emissions targets: hospital or small emitters must not exceed targets

19.—(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.

Emissions targets: banking overachieved target

20.—(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.

Emissions targets: targets for 2026-2030 allocation period for hospital or small emitters in 2021-2025 allocation period

21.—(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).

Emissions targets: errors

22.—(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 20) 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.

PART 5

End of hospital or small emitter status

End of hospital or small emitter status: ceasing to meet criteria

23.—(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.

Conversion notices

24.—(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 the operator must apply to vary the monitoring plan to comply with the requirements of a greenhouse gas emissions permit.

(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) But 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, the regulator must revoke the permit under paragraph 12 of Schedule 6 instead of converting it.

(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.

End of hospital or small emitter status: ceasing to meet criteria: publication

25.—(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).

End of hospital or small emitter status: end of allocation period

26.—(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) requesting the operator to submit any proposed changes to the monitoring plan approved in relation to the installation under Articles 11 to 13 of the Monitoring and Reporting Regulation 2012 or Articles 11 to 13 of the Monitoring and Reporting Regulation 2018 to the regulator on or before 30th September 2025.

(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) But if, after the date referred to in paragraph (1)(b), 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, the regulator must revoke the permit under paragraph 12 of Schedule 6 instead of converting it.

(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.

SCHEDULE 8

Article 26(5)

Ultra-small emitters

Interpretation

1.—(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.

Ultra-small emitter status

2.—(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(**a**).

(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.

(**a**) 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. 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.

(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.

Obtaining ultra-small emitter status for 2026-2030 allocation period

3.—(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 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.

Obtaining ultra-small emitter status for 2026-2030 allocation period: modifications to Verification Regulation 2018 for ultra-small emitters in 2021-2025 allocation period

4.—(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) Article 2 is to be read as if "reported pursuant to Implementing Regulation (EU) 2018/2066" were omitted.

(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) "and meets the requirements laid down in Annex X to Implementing Regulation (EU) 2018/2066" were omitted;

(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 (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 the Verification Regulation 2018 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 2021-2026 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.

Duty to monitor reportable emissions, etc.

5.—(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 Articles 11 to 13 of the Monitoring and Reporting Regulation 2018 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 Articles 11 to 13 of the Monitoring and Reporting Regulation 2012 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.

Reportable emissions must not exceed maximum amount

6. 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.

End of ultra-small emitter status: ceasing to meet criteria

7.—(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.

End of ultra-small emitter status: publication

8.—(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).

SCHEDULE 9

Article 74(1)

Appeals to Scottish Land Court

1.—(1) A person who wishes to appeal to the Scottish Land Court under article 70 against a decision of the regulator 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 regulator 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 regulator;

(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(**a**);

"decision" includes a deemed refusal under this Order.

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.

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.

4.—(1) The regulator must, within 16 days of receipt of the copy of the appropriate form, give notice of it to any person who appears to the regulator 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 regulator 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 regulator 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.

(**a**) S.S.I. 2014/229.

(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 regulator 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 regulator must give notice to all interested parties about the withdrawal.

SCHEDULE 10

Article 74(2)

Appeals to Planning Appeals Commission (Northern Ireland)

1.—(1) A person who wishes to appeal to the Planning Appeals Commission under article 70 against a decision of the regulator 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 regulator.

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 regulator takes effect.

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 regulator of the withdrawal as soon as reasonably practicable.

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.

SCHEDULE 11

Article 77

Transitional provisions: installations

Permits under GGETSR 2012

1.—(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 the Verification Regulation 2018 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.

Applications for permits, etc. under GGETSR 2012

2.—(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.

Schedule does not apply to permits for relevant Northern Ireland electricity generators, etc.

3.—(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.

EXPLANATORY NOTE

(This note is not part of the Order)

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.

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