

Commission Delegated Regulation (EU) 2019/331 of 19 December 2018 determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87/EC of the European Parliament and of the Council (Text with EEA relevance)

CHAPTER III

Allocation rules

^{F1}Article 14

National implementation measures

Textual Amendments

F1 Art. 14 omitted (31.12.2020) by virtue of [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), art. 2(2), **Sch. 1 para. 16**

Article 15

Historical activity level for incumbent installations

1 [^{F2}The regulator] shall assess the baseline data reports and verification reports submitted in accordance with Article 4(2) to ensure conformity with the requirements of this Regulation. Where appropriate, the [^{F3}regulator] shall request corrections by the operators of any non-conformities or any errors, which impact on the determination of the historical activity levels. The [^{F3}regulator] may request operators to submit more data in addition to the information and documents to be provided in accordance with Article 4(2).

2 On the basis of the assessed baseline data reports and verification reports, [^{F4}the regulator] shall determine historical activity levels of each sub-installation and installation for the relevant baseline period. [^{F5}But the regulator must not determine historical activity levels for an installation unless:

- a) the data relating to an installation has been verified as satisfactory or, where it has not been verified as satisfactory, the regulator considers that any data gaps referred to in the verifier's opinion are due to exceptional and unforeseeable circumstances that could not have been avoided even if all due care had been exercised; and
- b) any corrections requested under paragraph 1 have been made.]

3 The product-related historical activity level shall, for each product for which a product benchmark has been determined as referred to in Annex I, refer to the arithmetic mean of annual historical production of that product in the installation concerned during the baseline period.

4 The heat-related historical activity level shall refer to the arithmetic mean of annual historical import from an installation covered by the EU ETS [^{F6}or UK ETS], production, or both, during the baseline period, of net measurable heat consumed within the installation's boundaries for the production of products, for the production of mechanical energy other

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than used for the production of electricity, for heating or cooling with the exception of the consumption for the production of electricity, or exported to an installation or other entity not covered by the EU ETS [^{F6}or UK ETS] with the exception of the export for the production of electricity expressed as terajoule per year.

The district heating-related historical activity level shall refer to the arithmetic mean of annual historical import from an installation covered by the EU ETS [^{F6}or UK ETS], production, or both, during the baseline period, of measurable heat which is exported for the purposes of district heating expressed as terajoule per year.

5 The fuel-related historical activity level shall refer to the arithmetic mean of annual historical consumption of fuels used for the production of non-measurable heat consumed for the production of products, for the production of mechanical energy other than used for the production of electricity, for heating or cooling with the exception of the consumption for the production of electricity, including safety flaring, during the baseline period expressed as terajoule per year.

6 For process emissions, which occurred in relation with the production of products in the installation concerned during the baseline period, the process-related historical activity level shall refer to the arithmetic mean of annual historical process emissions expressed as tonnes of carbon dioxide equivalent.

7 For the purposes of the determination of the arithmetic mean values referred to in paragraphs 3 to 6, only calendar years during which the installation has been operating for at least one day shall be taken into account.

If a sub-installation has been operating for less than two calendar years during the relevant baseline period, the historical activity levels shall be the activity levels of the first calendar year of operation after the start of normal operation of this sub-installation.

If a sub-installation has not been operating for a [^{F7}full calendar year] after the start of normal operation during the baseline period, the historical activity level shall be determined when the activity level report after the first [^{F7}full calendar year] of operation is submitted [^{F8}(see Article 3a of the Activity Level Changes Regulation)]; and in Articles 16 to 16b:

- a) “sub-installation” does not include such a sub-installation;
- b) a reference to an installation must be treated as a reference to the installation excluding such a sub-installation or, where the installation consists entirely of such sub-installations, as excluding the installation.]

8 By way of derogation from paragraph 3, [^{F9}the regulator] shall determine the product-related historical activity level for products to which the product benchmarks referred to in Annex III apply on the basis of the arithmetic mean of annual historical production according to the formulas set out in that Annex.

Textual Amendments

- F2** Words in Art. 15(1) substituted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), art. 2(2), **Sch. 1 para. 17(2)**
- F3** Words in Regulation substituted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), art. 2(2), **Sch. 1 para. 2**
- F4** Words in Art. 15(2) substituted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), art. 2(2), **Sch. 1 para. 17(3)(a)**
- F5** Words in Art. 15(2) substituted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), art. 2(2), **Sch. 1 para. 17(3)(b)**

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- F6** Words in Art. 15(4) inserted (31.12.2020) by The Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020 (S.I. 2020/1557), art. 2(2), **Sch. 1 para. 17(4)**
- F7** Words in Art. 15(7) substituted (31.12.2020) by The Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020 (S.I. 2020/1557), art. 2(2), **Sch. 1 para. 17(5)(a)**
- F8** Words in Art. 15(7) inserted (31.12.2020) by The Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020 (S.I. 2020/1557), art. 2(2), **Sch. 1 para. 17(5)(b)**
- F9** Words in Art. 15(8) substituted (31.12.2020) by The Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020 (S.I. 2020/1557), art. 2(2), **Sch. 1 para. 17(6)**

^{F10}Article 15a

Assessment of applications for free allocation by operators of incumbent installations

- 1 This Article applies where:
- a deemed application for free allocation in the 2021-2025 allocation period has been made by the operator of an incumbent installation; or
 - an application under Article 4 for free allocation in the 2026-2030 allocation period has been made by the operator of an incumbent installation.
- 2 The regulator must send the information set out in paragraph 3 to the UK ETS authority:
- where paragraph 1(a) applies, as soon as reasonably practicable after IP completion day;
 - where paragraph 1(b) applies, on or before 30 September [^{F11}2025].
- 3 The information is:
- details of the installation, including details of any permit in force;
 - the information contained in the baseline data report submitted with the application;
 - the historical activity levels (if any) of the installation and each sub-installation determined under Article 15 or, if the regulator has not determined historical activity levels by virtue of Article 15(2), the regulator's explanation.
- 4 The UK ETS authority must as soon as reasonably practicable:
- assess the application for free allocation and, where relevant, the regulator's explanation under paragraph 3(c); and
 - inform the regulator whether or not the application is valid, making any corrections to the historical activity levels that the UK ETS authority considers appropriate.
- 5 Where the application is not valid, the regulator must give notice to the operator of the installation of that fact and the reasons for it.
- 6 For the purposes of this Article, an application for free allocation is valid if:
- ^{F12}a
 - b the application is ^{F13}... in accordance with this Regulation.]

Textual Amendments

- F10** Art. 15a inserted (31.12.2020) by The Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020 (S.I. 2020/1557), art. 2(2), **Sch. 1 para. 18**
- F11** Word in Art. 15a(2)(b) substituted (31.3.2024) by The Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2024 (S.I. 2024/192), arts. 2, **13(2)**

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- F12** Art. 15a(6)(a) omitted (1.1.2024 immediately after S.I. 2023/850 comes into force) by virtue of [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) \(No. 2\) Order 2023 \(S.I. 2023/1387\)](#), arts. 2(1), **17(2)(a)**
- F13** Word in Art. 15a(6)(b) omitted (1.1.2024 immediately after S.I. 2023/850 comes into force) by virtue of [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) \(No. 2\) Order 2023 \(S.I. 2023/1387\)](#), arts. 2(1), **17(2)(b)**

Article 16

[^{F14}Preliminary allocation] at installation level for incumbent installations

- [^{F15}1 Where the UK ETS authority informs the regulator under Article 15a(4)(b) that:
- a a deemed application for free allocation in the 2021-2025 allocation period is valid, the regulator must calculate the preliminary annual number of allowances to be allocated in respect of the installation for each scheme year in the 2021-2025 allocation period;
 - b an application for free allocation in the 2026-2030 allocation period under Article 4 is valid, the regulator must calculate the preliminary annual number of allowances to be allocated in respect of the installation for each scheme year in the 2026-2030 allocation period.]
- 2 For the purpose of the calculation referred to in paragraph 1, [^{F16}the regulator] shall first determine the preliminary annual number of emission allowances allocated free of charge for each sub-installation separately, as follows:
- a for product benchmark sub-installations, the preliminary annual number of emission allowances allocated free of charge for a given year shall correspond to the value of that product benchmark for the relevant allocation period [^{F17}set out in Annex 8], multiplied by the relevant product-related historical activity level;
 - b for heat benchmark sub-installations, the preliminary annual number of emission allowances allocated free of charge for a given year shall correspond to the value of the heat benchmark for measurable heat for the relevant allocation period [^{F17}set out in Annex 8], multiplied by the heat-related historical activity level for the consumption or export to non-ETS installations or other entities of measurable heat other than district heating;
 - c for district heating sub-installations, the preliminary annual number of emission allowances allocated free of charge for a given year shall correspond to the value of the heat benchmark for measurable heat for the relevant allocation period [^{F17}set out in Annex 8], multiplied by the district heating-related historical activity level;
 - d for fuel benchmark sub-installations, the preliminary annual number of emission allowances allocated free of charge for a given year shall correspond to the value of the fuel benchmark for the relevant [^{F18}allocation] period [^{F17}set out in Annex 8], multiplied by the fuel-related historical activity level for the fuel consumed;
 - e for process emissions sub-installations, the preliminary annual number of emission allowances allocated free of charge for a given year shall correspond to the process-related historical activity level multiplied by 0,97.

[^{F19} ...

- 3 [^{F20}The] factors determined in Annex V to this Regulation shall be applied to the preliminary annual number of emission allowances allocated free of charge determined for each sub-installation pursuant to paragraph 2 of this Article for the year concerned where the processes in those sub-installations serve sectors or subsectors [^{F21}other than those set out in the Annex to Commission Delegated Decision (EU) 2019/708].

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By way of derogation from the first subparagraph, for district heating sub-installations, the factor to be applied shall be 0,3.

4 Where the processes in the sub-installations referred to in paragraph 2 serve sectors or subsectors deemed to be exposed to a significant risk of carbon leakage [^{F22}set out in the Annex to Commission Delegated Decision (EU) 2019/708], the factor to be applied shall be 1.

5 The preliminary annual number of emission allowances allocated free of charge for sub-installations that received measurable heat from sub-installations producing products covered by the nitric acid benchmark shall be reduced by the annual historical consumption of that heat during the relevant baseline periods, multiplied by the value of the heat benchmark for this measurable heat for the relevant allocation period [^{F23}set out in Annex 8].

[^{F24}In the case of an application for free allocation in the 2026-2030 allocation period under Article 4], the preliminary annual number of emission allowances allocated free of charge for product benchmark sub-installations for the relevant allocation period shall be reduced by the annual historical emissions stemming from waste gases flared, with the exception of safety flaring, and not used for the purpose of the production of measurable heat, non-measurable heat or electricity.

6 The preliminary annual amount of emission allowances allocated free of charge for each installation shall be the sum of all sub-installations' preliminary annual numbers of emission allowances allocated free of charge calculated in accordance with paragraphs 2 to 5.

Where an installation encompasses sub-installations producing pulp (short fibre kraft pulp, long fibre kraft pulp, thermo-mechanical pulp and mechanical pulp, sulphite pulp or other pulp not covered by a product benchmark) exporting measurable heat to other technically connected sub-installations, the preliminary amount of emission allowances allocated free of charge shall, without prejudice to the preliminary annual numbers of emission allowances allocated free of charge for other sub-installations of the installation concerned, only take into account the preliminary annual number of emission allowances allocated free of charge, to the extent that pulp products produced by this sub-installation are placed on the market and not processed into paper in the same or other technically connected installations.

7 When determining the preliminary annual amount of emission allowances allocated free of charge for each installation, [^{F25}the regulator] shall ensure that emissions or activity levels are not double-counted and that the allocation is not negative. In particular, where an intermediate product that is covered by a product benchmark according to the definition of the respective system boundaries set out in Annex I is imported by an installation, emissions shall not be double-counted when determining the preliminary annual amount of emission allowances allocated free of charge for both installations concerned.

^{F26}g

9 For the purpose of the calculations referred to in paragraphs 1 to [^{F27}], the number of allowances for sub-installations and installations shall be expressed as the nearest integer [^{F28}, taking 0.5 as nearest to the previous integer].

[^{F29}10 The regulator must send the preliminary annual number of allowances calculated in respect of each installation and each sub-installation of each installation to the UK ETS authority as soon as reasonably practicable after [^{F30}benchmarks for the 2026-2030 allocation period are set out in Annex 8 but, if no such benchmarks are set out in Annex 8 on or before [^{F31}31 January 2026], as soon as reasonably practicable thereafter (using the benchmarks for the 2021-2025 allocation period set out in Annex 8 for the calculation)].

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11 The regulator must make any corrections to the calculation required by the UK ETS authority.

12 In this Article and in Articles 19 to 22, “relevant allocation period” means, in relation to a benchmark [^{F32}set out in Annex 8]:

- a in the case of a deemed application for free allocation in the 2021-2025 allocation period or an application for free allocation in the 2021-2025 allocation period under Article 5(1)(a), [^{F33}the 2021-2025 allocation period];
- b in the case of an application for free allocation in the 2026-2030 allocation period under Article 4 or an application for free allocation in the 2026-2030 allocation period under Article 5(1)(b), [^{F34}the 2026-2030 allocation period].]

Textual Amendments

- F14** Words in Art. 16 heading substituted (31.12.2020) by The Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020 (S.I. 2020/1557), art. 2(2), **Sch. 1 para. 19(2)**
- F15** Art. 16(1) substituted (31.12.2020) by The Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020 (S.I. 2020/1557), art. 2(2), **Sch. 1 para. 19(3)**
- F16** Words in Art. 16(2) substituted (31.12.2020) by The Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020 (S.I. 2020/1557), art. 2(2), **Sch. 1 para. 19(4)(a)(i)**
- F17** Words in art. 16(2)(a)-(d) substituted (1.1.2024) by The Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2023 (S.I. 2023/850), arts. 2, **12(2)**
- F18** Word in Art. 16(2)(d) substituted (31.12.2020) by The Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020 (S.I. 2020/1557), art. 2(2), **Sch. 1 para. 19(4)(a)(ii)**
- F19** Words in Art. 16(2) omitted (31.12.2020) by virtue of The Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020 (S.I. 2020/1557), art. 2(2), **Sch. 1 para. 19(4)(b)**
- F20** Word in Art. 16(3) substituted (31.12.2020) by The Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020 (S.I. 2020/1557), art. 2(2), **Sch. 1 para. 19(5)(a)**
- F21** Words in Art. 16(3) substituted (31.12.2020) by The Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020 (S.I. 2020/1557), art. 2(2), **Sch. 1 para. 19(5)(b)**
- F22** Words in Art. 16(4) substituted (31.12.2020) by The Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020 (S.I. 2020/1557), art. 2(2), **Sch. 1 para. 19(6)**
- F23** Words in Art. 16(5) substituted (1.1.2024) by The Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2023 (S.I. 2023/850), arts. 2, **12(3)**
- F24** Words in Art. 16(5) substituted (31.12.2020) by The Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020 (S.I. 2020/1557), art. 2(2), **Sch. 1 para. 19(7)**
- F25** Words in Art. 16(7) substituted (31.12.2020) by The Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020 (S.I. 2020/1557), art. 2(2), **Sch. 1 para. 19(8)**
- F26** Art. 16(8) omitted (31.12.2020) by virtue of The Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020 (S.I. 2020/1557), art. 2(2), **Sch. 1 para. 19(9)**
- F27** Word in Art. 16(9) substituted (31.12.2020) by The Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020 (S.I. 2020/1557), art. 2(2), **Sch. 1 para. 19(10)(a)**
- F28** Words in Art. 16(9) inserted (31.12.2020) by The Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020 (S.I. 2020/1557), art. 2(2), **Sch. 1 para. 19(10)(b)**
- F29** Art. 16(10)-(12) inserted (31.12.2020) by The Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020 (S.I. 2020/1557), art. 2(2), **Sch. 1 para. 19(11)**
- F30** Words in Art. 16(10) substituted (1.1.2024) by The Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2023 (S.I. 2023/850), arts. 2, **12(4)**
- F31** Words in Art. 16(10) substituted (31.3.2024) by The Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2024 (S.I. 2024/192), arts. 2, **14(2)**
- F32** Words in Art. 16(12) substituted (1.1.2024) by The Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2023 (S.I. 2023/850), arts. 2, **12(5)(a)**

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- F33** Words in Art. 16(12)(a) substituted (1.1.2024) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2023 \(S.I. 2023/850\)](#), arts. 2, **12(5)(b)**
- F34** Words in Art. 16(12)(b) substituted (1.1.2024) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2023 \(S.I. 2023/850\)](#), arts. 2, **12(5)(c)**

^{F35} Article 16a

Cross-sectoral correction factors

1 This Article applies where, for a scheme year (the “relevant scheme year”) in an allocation period:

- a the sum (“PFA”) of the preliminary annual number of allowances to be allocated in respect of all installations in the relevant scheme year calculated under Article 16 (including any corrections required under Article 16(11)) is greater than the industry cap (“IC”) for the relevant scheme year; and
- b the amount by which PFA exceeds IC is greater than the previous unallocated amount.

2 The previous unallocated amount is $TIC + FS - TFA$, where:

- a TIC is the sum of the industry cap for each scheme year in the trading period preceding the relevant scheme year;
- b FS is 40,984,970 allowances (the flexible share);
- c TFA is the sum of the final allocation for each scheme year in the trading period preceding the relevant scheme year.

3 The final allocation for a scheme year is the sum of—

- a the total preliminary annual number of allowances calculated under Article 16 to be allocated in the scheme year in respect of all installations other than electricity generators multiplied by the cross-sectoral correction factor (if any) for the scheme year determined under this Article; and
- b the total preliminary annual number of allowances calculated under Article 16 to be allocated in the scheme year in respect of all electricity generators multiplied by the cross-sectoral correction factor (if any) for the scheme year determined under this Article or, if there is no cross-sectoral correction factor for the scheme year, the reduction factor for the scheme year.

4 The UK ETS authority must determine the cross-sectoral correction factor for the relevant scheme year, that is to say the factor that reduces PFA by such amount that $TIC + IC + FS = TFA +$ the final allocation for the relevant scheme year.

5 The UK ETS authority must, as soon as reasonably practicable, publish for each allocation period:

- a the cross-sectoral correction factors for scheme years in the allocation period determined under paragraph 4; or
- b if there is no cross-sectoral correction factor for any scheme year in the allocation period, a statement to that effect.

6 For the purposes of this Article:

- a the industry cap for a scheme year set out in column 1 of table A is the number of allowances set out in the corresponding entry in column 2;
- b the reduction factor for a scheme year set out in column 1 of table A is the value set out in the corresponding entry in column 3.

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Table A

Column 1	Column 2	Column 3
Scheme year	Industry cap	Reduction factor
2021	57,856,572	0.8562
2022	56,273,432	0.8342
2023	54,690,292	0.8122
2024	53,107,152	0.7902
2025	51,524,012	0.7682
2026	49,940,872	0.7462
2027	48,357,732	0.7242
2028	46,774,592	0.7022
2029	45,191,452	0.6802
2030	43,608,312	0.6582

- 7 In this Article and Article 16b, “installation” does not include an installation if:
- a deemed application for free allocation in the 2021-2025 allocation period was made in respect of the installation and the installation is included in the hospital and small emitter list for 2021-2025 or the ultra-small emitter list for 2021-2025; or
 - an application for free allocation in the 2026-2030 allocation period is made in respect of the installation under Article 4 and the installation is included in the hospital and small emitter list for 2026-2030 or the ultra-small emitter list for 2026-2030.

8 Accordingly, the matters referred to in paragraph 5 must not, in relation to the 2026-2030 allocation period, be published before the publication of the hospital and small emitter list for 2026-2030 and the ultra-small emitter list for 2026-2030 under the UK ETS Order (see paragraph 5(5) of Schedule 7, and paragraph 3(6) of Schedule 8, to that Order)

Textual Amendments

F35 Arts. 16a, 16b inserted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), art. 2(2), **Sch. 1 para. 20**

Article 16b

Final allocation at installation level for incumbent installations

1 Where the preliminary annual number of allowances to be allocated in respect of an installation has been calculated under Article 16, the regulator must, as soon as reasonably practicable after the publication of the matters referred to in Article 16a(5):

- calculate the final annual number of allowances to be allocated in respect of each installation and each sub-installation of each installation:
 - in the case of a deemed application for free allocation in the 2021-2025 allocation period, for each scheme year in the 2021-2025 allocation period;

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- ii in the case of an application for free allocation in the 2026-2030 allocation period under Article 4, for each scheme year in the 2026-2030 allocation period; and
 - b send the calculation to the UK ETS authority.
- 2 The final annual number of allowances to be allocated for a scheme year in respect of a sub-installation is the preliminary annual number of allowances calculated under Article 16 (including any corrections required under Article 16(11)) multiplied by:
 - a in the case of sub-installation of an installation other than an electricity generator, the cross-sectoral correction factor for the scheme year (if any) determined under Article 16a;
 - b in the case of a sub-installation of an electricity generator, the cross-sectoral correction factor for the scheme year determined under Article 16a or, if there is no cross-sectoral correction factor for the scheme year, the reduction factor for the scheme year (see Article 16a(6)).
- 3 The final annual number of allowances to be allocated in respect of an installation for a scheme year is the sum of the final annual number of allowances to be allocated in respect of all sub-installations of the installation.
- 4 The UK ETS authority must:
 - a approve the final annual number allowances, making any corrections to the calculation that the UK ETS authority considers appropriate;
 - b inform the regulator accordingly.
- 5 For the purpose of the calculation referred to in paragraphs 2 and 3, the number of allowances for sub-installations and installations must be expressed as the nearest integer, taking 0.5 as nearest to the previous integer.]

Textual Amendments

F35 Arts. 16a, 16b inserted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), art. 2(2), **Sch. 1 para. 20**

Article 17

Historical activity level for new entrants

[^{F36}1] [^{F37}Where an application for free allocation is made under Article 5, the regulator] shall determine historical activity levels of each new entrant and its sub-installations as follows:

- (a) the product-related historical activity level shall be, for each product for which a product benchmark has been determined as referred to in Annex I to this Regulation ^{F38}..., the activity level of the first calendar year after the start of normal operation for the production of this product of the sub-installation concerned;
- (b) the heat-related historical activity level shall be the activity level of the first calendar year after the start of normal operation for the import from an installation covered by the EU ETS [^{F39}or UK ETS], production, or both, of measurable heat consumed within the installation's boundaries for the production of products, for the production of mechanical energy other than used for the production of electricity, for heating or cooling with the exception of the consumption for the production of electricity, or

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- exported to an installation or other entity not covered by the EU ETS [^{F39}or UK ETS] with the exception of the export for the production of electricity;
- (c) the district heating-related historical activity level shall be the activity level of the first calendar year after the start of normal operation for the import from an installation covered by the EU ETS [^{F40}or UK ETS], production, or both, of measurable heat which is exported for the purposes of district heating;
- (d) the fuel-related historical activity level shall be the activity level of the first calendar year after the start of normal operation for the consumption of fuels used for the production of non-measurable heat consumed for the production of products, for the production of mechanical energy other than used for the production of electricity, for heating or cooling with the exception of the consumption for the production of electricity, including safety flaring, of the installation concerned;
- (e) the process emissions-related activity level shall be the activity level of the first calendar year after the start of normal operation for the production of process emissions of the process unit;
- (f) By way of derogation from point (a), the product-related historical activity level for products to which the product benchmarks referred to in Annex III apply shall be the activity level of the first calendar year after the start of normal operation for the production of this product of the sub-installation concerned, determined according to the formulas set out in that Annex.

[^{F412} But if a sub-installation has not been operating for a full calendar year after the start of normal operation, the historical activity level must be determined when the activity level report after the first full calendar year of operation is submitted (see Article 3a of the Activity Level Changes Regulation).]

Textual Amendments

- F36** Art. 17 renumbered as Art. 17(1) (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), art. 2(2), **Sch. 1 para. 21(2)**
- F37** Words in Art. 17(1) substituted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), art. 2(2), **Sch. 1 para. 21(3)(a)**
- F38** Words in Art. 17(1)(a) omitted (31.12.2020) by virtue of [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), art. 2(2), **Sch. 1 para. 21(3)(b)**
- F39** Words in Art. 17(1)(b) inserted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), art. 2(2), **Sch. 1 para. 21(3)(c)**
- F40** Words in Art. 17(1)(c) inserted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), art. 2(2), **Sch. 1 para. 21(3)(d)**
- F41** Art. 17(2) inserted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), art. 2(2), **Sch. 1 para. 21(4)**

Article 18

[^{F42}Preliminary allocation] to new entrants

[^{F43}A1 The regulator must calculate the preliminary annual number of allowances to be allocated free of charge in respect of a new entrant for scheme years in the relevant allocation period in accordance with this Article

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A2 Where the start of normal operation of a new entrant is before the date on which the permit (including a permit within the meaning of GGETSR 2012) for the installation comes into force, for the purposes of this Article and Article 18a:

- a the start of normal operation must be treated as the date on which the permit comes into force; and
- b the activity level of the year in which the start of normal operation occurs must be treated as the activity level of that year excluding any days before the date on which the permit comes into force.]

1 [F44]Where the historical activity level of a sub-installation of the new entrant has been determined under Article 17, the preliminary annual number of allowances to be allocated free of charge in respect of the sub-installation for the first scheme year in the relevant allocation period after the year in which the start of normal operation occurs and for each subsequent scheme year in the relevant allocation period is], as follows:

- a for each product benchmark sub-installation, heat benchmark sub-installation and fuel benchmark sub-installation, the preliminary annual number of emission allowances allocated free of charge for a given year shall correspond to the value of that benchmark for the relevant period multiplied by the relevant historical activity level [F45]; and in this point “benchmark for the relevant period” means the benchmark for the relevant allocation period (as defined in Article 16(12)) [F46set out in Annex 8]];
- b for each process emissions sub-installation, the preliminary annual number of emission allowances allocated free of charge for a given year shall correspond to the process-related historical activity level multiplied by 0,97.

Article 16(3), (4), (5) and (7) shall apply *mutatis mutandis* to the calculation of the preliminary annual number of emission allowances allocated free of charge [F47; in respect of new entrants under this paragraph and paragraph 2].

2 [F48]Where the start of normal operation of a sub-installation of a new entrant occurs in a scheme year in the relevant allocation period, the preliminary] annual number of emission allowances allocated free of charge for the [F49scheme year] shall correspond to the value of the applicable benchmark value for each sub-installation multiplied by the activity level of that year.

[F50]2A Paragraph 2 applies whether or not the historical activity level of the sub-installation has been determined under Article 17.]

3 The preliminary annual amount of emission allowances allocated free of charge for each installation shall be the sum of all sub-installations' preliminary annual numbers of emission allowances allocated free of charge calculated in accordance with paragraphs 1 and 2. The second subparagraph of Article 16(6) shall apply.

F51 4

F52 5

6 For the purpose of the calculations referred to in paragraphs [F53]1 to 3], the number of allowances for sub-installations and installations shall be expressed as the nearest integer [F54, taking 0.5 as nearest to the previous integer].

[F55]7 In this Article (except as provided in paragraph 1(a)) and Article 18b, “relevant allocation period” means:

- a in relation to an application for free allocation made under Article 5(1)(a), the 2021-2025 allocation period;
- b in relation to an application for free allocation made under Article 5(1)(b), the 2026-2030 allocation period.]

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Textual Amendments

- F42** Words in Art. 18 heading substituted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), art. 2(2), **Sch. 1 para. 22(2)**
- F43** Art. 18(A1)(A2) inserted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), art. 2(2), **Sch. 1 para. 22(3)**
- F44** Words in Art. 18(1) substituted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), art. 2(2), **Sch. 1 para. 22(4)(a)(i)**
- F45** Words in Art. 18(1)(a) inserted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), art. 2(2), **Sch. 1 para. 22(4)(a)(ii)**
- F46** Words in Art. 18(1)(a) substituted (1.1.2024) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2023 \(S.I. 2023/850\)](#), arts. 2, **13(2)**
- F47** Words in Art. 18(1)(b) substituted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), art. 2(2), **Sch. 1 para. 22(4)(b)**
- F48** Words in Art. 18(2) substituted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), art. 2(2), **Sch. 1 para. 22(5)(a)**
- F49** Words in Art. 18(2) substituted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), art. 2(2), **Sch. 1 para. 22(5)(b)**
- F50** Art. 18(2A) inserted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), art. 2(2), **Sch. 1 para. 22(6)**
- F51** Art. 18(4) omitted (31.12.2020) by virtue of [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), art. 2(2), **Sch. 1 para. 22(7)**
- F52** Art. 18(5) omitted (31.12.2020) by virtue of [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), art. 2(2), **Sch. 1 para. 22(7)**
- F53** Words in Art. 18(6) substituted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), art. 2(2), **Sch. 1 para. 22(8)(a)**
- F54** Words in Art. 18(6) inserted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), art. 2(2), **Sch. 1 para. 22(8)(b)**
- F55** Art. 18(7) inserted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), art. 2(2), **Sch. 1 para. 22(9)**

^{F56}Article 18a

Assessment of applications and final allocation at installation level for new entrants

1 Where an application for free allocation is made by a new entrant under Article 5, the regulator must send the information set out in paragraph 2 to the UK ETS authority as soon as reasonably practicable.

2 The information is:

- a) details of the installation, including details of the greenhouse gas emissions permit in force;
- b) the information contained in the new entrant data report submitted with the application under Article 5;
- c) the historical activity levels (if any) determined under Article 17;
- d) the preliminary annual number of allowances to be allocated in respect of the installation and of each sub-installation separately, as calculated under Article 18;
- e) where the regulator has not, by virtue of Article 5(6)(c), determined historical activity levels or the preliminary annual number of allowances, the regulator's explanation;

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- f) except where point (e) applies, the final annual number of allowances to be allocated in respect of each sub-installation of the installation:
 - i) for the scheme year in the relevant allocation period in which the start of normal operation of the sub-installation occurs; and
 - ii) where the historical activity level of the sub-installation has been determined under Article 17, for each subsequent scheme year in the relevant allocation period;
- g) except where point (e) applies, the final annual number of allowances to be allocated in respect of the installation for each scheme year in the relevant allocation period;
- h) whether or not a monitoring methodology plan has been approved in relation to the installation under Article 8.

3 The final annual number of allowances to be allocated in respect of a sub-installation for a scheme year is the preliminary annual number of allowances calculated under Article 18 multiplied by the reduction factor for the scheme year.

4 The final annual number of allowances to be allocated in respect of an installation for a scheme year is the sum of the final annual number of allowances to be allocated in respect of all sub-installations of the installation for the scheme year.

5 The UK ETS authority must as soon as reasonably practicable:

- a assess the application for free allocation and, where relevant, the regulator's explanation under paragraph 2(e); and
- b inform the regulator whether or not the application is valid.

6 Where the application is valid, the UK ETS authority must also:

- a approve the final annual number of allowances, making any corrections to the historical activity levels, preliminary annual number of allowances and final annual number of allowances that the UK ETS authority considers appropriate; and
- b inform the regulator of the matters referred to in point (a).

7 But where a monitoring methodology plan has not been approved in relation to the installation at the date on which the information set out in paragraph 2 is sent to the UK ETS authority, paragraph 6 applies only after the regulator informs the UK ETS authority that the monitoring methodology plan submitted to the regulator for approval has been approved and does not apply if the regulator informs the UK ETS authority that the monitoring methodology plan has been rejected.

8 The regulator must give notice to the operator of the installation of the following:

- a whether or not the application is valid;
- b if the application is not valid, the reasons why it is not valid.

9 Where the application is valid, the regulator must also give notice to the operator:

- a of the final annual number of allowances approved under paragraph 6; or
- b that a final annual number of allowances has not been approved because the monitoring methodology plan submitted to the regulator for approval has been rejected.

10 For the purpose of the calculations referred to in paragraphs 3 and 4, the number of allowances for sub-installations and installations must be expressed as the nearest integer, taking 0.5 as nearest to the previous integer.

11 For the purposes of this Article, the reduction factor for a scheme year set out in column 1 of table B is the value set out in the corresponding entry in column 2.

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Table B

<i>Column 1</i>	<i>Column 2</i>
<i>Scheme year</i>	<i>Reduction factor</i>
2021, 2026	1
2022, 2027	0.978
2023, 2028	0.956
2024, 2029	0.934
2025, 2030	0.912

12 For the purposes of this Article, an application for free allocation is valid if:

- ^{F57}a
b the application is ^{F58}... in accordance with this Regulation.]

Textual Amendments

- F56** Art. 18a inserted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), art. 2(2), **Sch. 1 para. 23**
- F57** Art. 18a(12)(a) omitted (1.1.2024 immediately after [S.I. 2023/850](#) comes into force) by virtue of [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) \(No. 2\) Order 2023 \(S.I. 2023/1387\)](#), arts. 2(1), **18(2)(a)**
- F58** Word in Art. 18a(12)(b) omitted (1.1.2024 immediately after [S.I. 2023/850](#) comes into force) by virtue of [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) \(No. 2\) Order 2023 \(S.I. 2023/1387\)](#), arts. 2(1), **18(2)(b)**

Article 19

Allocation in respect of steam cracking

By way of derogation from Article 16(2)(a) and Article 18(1)(a), the preliminary annual number of emission allowances allocated free of charge for a product benchmark sub-installation relating to the production of high value chemicals ('HVC') shall correspond to the value of the steam cracking product benchmark for the relevant allocation period multiplied by the historical activity level determined in accordance with Annex III and multiplied by the quotient of the total direct emissions including emissions from net imported heat over the baseline period referred to in Article 15(2) or of the first calendar year after the start of normal operation referred to in [^{F59}Article 17(1)(a)], as appropriate, calculated in accordance with Article 22(2) and expressed as tonnes of carbon dioxide equivalent and the sum of these total direct emissions and the relevant indirect emissions over the baseline period referred to in Article 15(2) or of the first calendar year after the start of normal operation referred to in [^{F59}Article 17(1)(a)], as appropriate, calculated in accordance with Article 22(3). To the result of that calculation, 1,78 tonnes of carbon dioxide per ton of hydrogen times the mean historical production of hydrogen from supplemental feed expressed in tons of hydrogen, 0,24 tonnes of carbon dioxide per ton of ethylene times the mean historical production of ethylene from supplemental feed expressed in tons of ethylene, and 0,16 tonnes of carbon dioxide per ton of HVC times the mean historical production of other high value chemicals than hydrogen and ethylene from supplemental feed expressed in tons of HVC, shall be added.

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Textual Amendments

F59 Words in Art. 19 substituted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), art. 2(2), **Sch. 1 para. 24(2)**

Article 20

Allocation in respect of vinyl chloride monomer

By way of derogation from Article 16(2)(a) and Article 18(1)(a), the preliminary annual number of emission allowances allocated free of charge for a sub-installation relating to the production of vinyl chloride monomer ('VCM') shall correspond to the value of the VCM benchmark for the relevant allocation period multiplied by the historical activity level for VCM production expressed as tonnes and multiplied by the quotient of the direct emissions for the production of VCM including emissions from net imported heat over the baseline period referred to in Article 15(2) or of the first calendar year after the start of normal operation referred to in [F60 Article 17(1)(a)], as appropriate, calculated in accordance with Article 22(2), expressed as tonnes of carbon dioxide equivalent and the sum of those direct emissions and the hydrogen-related emissions for the production of VCM over the baseline period referred to in Article 15(2) or of the first calendar year after the start of normal operation referred to in [F60 Article 17(1)(a)], as appropriate, expressed as tonnes of carbon dioxide equivalent calculated on the basis of the historical heat consumption stemming from hydrogen combustion expressed as terajoules times the value of the heat benchmark for the relevant allocation period.

Textual Amendments

F60 Words in Art. 20 substituted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), art. 2(2), **Sch. 1 para. 25(2)**

Article 21

Heat flows between installations

Where a product-benchmark sub-installation encompasses measurable heat imported from an installation or other entity not included in the EU ETS [F61 or UK ETS], the preliminary annual number of emission allowances allocated free of charge for the product benchmark sub-installation concerned determined pursuant to Article 16(2)(a) or Article 18(1)(a), as appropriate, shall be reduced by the amount of heat historically imported from an installation or other entity not included in the EU ETS [F61 or UK ETS] in the year concerned multiplied by the value of the heat benchmark for measurable heat for the relevant allocation period.

Textual Amendments

F61 Words in Art. 21 inserted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), art. 2(2), **Sch. 1 para. 26(2)**

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Article 22

Exchangeability of fuel and electricity

1 For each product benchmark sub-installation corresponding to a product benchmark defined in section 2 of Annex I with consideration of exchangeability of fuel and electricity, the preliminary annual number of emission allowances allocated free of charge shall correspond to the value of the relevant product benchmark for the relevant allocation period multiplied by the product-related historical activity level and multiplied by the quotient of the total direct emissions including emissions from net imported heat over the baseline period referred to in Article 15(2) or of the first calendar year after the start of normal operation referred to in [F62 Article 17(1)(a)], as appropriate, calculated in accordance with paragraph 2, expressed as tonnes of carbon dioxide equivalent and the sum of these total direct emissions and the relevant indirect emissions over the baseline period referred to in Article 15(2) or of the first calendar year after the start of normal operation referred to in [F62 Article 17(1)(a)], as appropriate, calculated in accordance with paragraph 3.

2 For the purposes of the calculation of emissions from net imported heat, the amount of measurable heat for the production of the product concerned imported from installations covered by the EU ETS [F63 or UK ETS] during the baseline period referred to in Article 15(2) or of the first calendar year after the start of normal operation referred to in [F62 Article 17(1)(a)], as appropriate, shall be multiplied by the value of the heat benchmark for the relevant allocation period.

3 For the purposes of the calculation of indirect emissions, the relevant indirect emissions refer to the relevant electricity consumption as specified in the definition of processes and emissions covered in Annex I during the baseline period referred to in Article 15(2) or of the first calendar year after the start of normal operation referred to in [F62 Article 17(1)(a)], as appropriate, expressed in megawatt-hours for the production of the product concerned times 0,376 tonnes of carbon dioxide per megawatt-hour and expressed as tonnes of carbon dioxide.

Textual Amendments

- F62** Word in Art. 22 substituted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), art. 2(2), **Sch. 1 para. 27(2)**
- F63** Words in Art. 22(2) inserted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), art. 2(2), **Sch. 1 para. 27(3)**

^{F64} Article 23

Changes to the allocation of an installation

Textual Amendments

- F64** Art. 23 omitted (31.12.2020) by virtue of [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), art. 2(2), **Sch. 1 para. 28**

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^{F65} Article 24

Renunciation of free allocation of allowances

1 Where an installation is an FA installation for the 2021-2025 allocation period, the operator of the installation may by giving notice (a “renunciation notice”) to the regulator renounce free allocation in respect of the remaining scheme years in the 2021-2025 allocation period beginning with the scheme year after the year in which the notice is given.

2 Where an installation is an FA installation for the 2026-2030 allocation period, the operator of the installation may by giving notice (a “renunciation notice”) to the regulator renounce free allocation in respect of the remaining scheme years in the 2026-2030 allocation period beginning with the scheme year after the year in which the notice is given.

3 The renunciation notice must set out:

- a) whether the renunciation is made in respect of:
 - i) the installation as a whole; or
 - ii) one or more sub-installations of the installation (but not all of them); and
- b) where point (a)(ii) applies, the sub-installation or sub-installations in respect of which the renunciation is made.

4 Where a renunciation notice is given, the regulator must:

- a) recalculate the final annual number of allowances to be allocated in respect of the installation for each of the remaining scheme years of the allocation period, to take account of the renunciation notice;
- b) send the calculation to the UK ETS authority.

5 The UK ETS authority must:

- a) approve the final annual number of allowances to be allocated in respect of the installation, making any corrections that the UK ETS authority considers appropriate; and
- b) inform the regulator accordingly.

6 The regulator must inform the operator of the final annual number of allowances approved.

7 Where an application under paragraph 7 of Schedule 6 to the UK ETS Order for the transfer of a greenhouse gas emissions permit containing a statement by the new operator (as defined in paragraph 7 of that Schedule) that the new operator renounces free allocation in respect of the transferred units (as defined in that paragraph) is granted under paragraph 9 of that Schedule:

- a) for the purposes of this Article, the new operator must be treated as giving a renunciation notice in respect of the transferred units; and
- b) in the case of a transfer other than a partial transfer, for the purposes of article 4A(3) (b) and (5)(b) of the UK ETS Order, the renunciation notice must be treated as having been given by the new operator in respect of the installation as a whole.]

Textual Amendments

F65 Art. 24 substituted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), art. 2(2), **Sch. 1 para. 29**

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^{F66} Article 25

Mergers and splits

1 This Article applies where an application for the transfer of a greenhouse gas emissions permit of an installation that is an FA installation at the transfer date is granted under paragraph 9 of Schedule 6 to the UK ETS Order.

2 But this Article does not apply if the application contains a statement by the new operator (as defined in paragraph 7 of that Schedule) that the new operator renounces free allocation in respect of the transferred units (as defined in that paragraph).

3 The operators of installations (“new installations”) resulting from a merger or split must submit the following to the regulator:

- a the relevant report or reports (see paragraphs 4 and 5);
- b a report on [^{F67}the activity level (if any) of each sub-installation of each new installation in the first relevant calendar year] containing the information referred to in Article 3(2) of the Activity Level Changes Regulation, as if the merger or split had taken place at the beginning of that year;
- c a verification report on the reports referred to in points (a) and (b) in accordance with the Verification Regulation 2018.

4 In the case of a merger, the relevant report is:

- a if at least one of the installations before the merger was an incumbent installation whose start of normal operation occurred before the end of the baseline period, a report verified in accordance with the Verification Regulation 2018 containing the data referred to in Article 4(2)(a) covering the baseline period for the new installation and its sub-installations, as if the merger had taken place at the beginning of the baseline period;
- b in any other case, a report verified in accordance with the Verification Regulation 2018 on the activity level of the first calendar year after the start of normal operation of the following installations before the merger and their sub-installations:
 - i the installation with the earliest start of normal operation; and
 - ii any other installation whose start of normal operation occurred in the same year as the installation with the earliest start of normal operation.

5 In the case of a split, the relevant reports are:

- a if the installation before the split was an incumbent installation whose start of normal operation occurred before the end of the baseline period, a report verified in accordance with the Verification Regulation 2018 containing the data referred to in Article 4(2)(a) covering the baseline period for each new installation and its sub-installations, as if the split had taken place at the beginning of the baseline period;
- b in any other case, a report verified in accordance with the Verification Regulation 2018 on the activity level of the installation in the first calendar year after the start of normal operation for each new installation and its sub-installations, as if the split had taken place at the beginning of that year.

6 After assessing the reports referred to in paragraph 3, the regulator must:

- a determine the historical activity level of each sub-installation of each new installation:
 - i where paragraph 4(a) or 5(a) applies, in accordance with Article 15;
 - ii where paragraph 4(b) or 5(b) applies in accordance with Article 17;

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- b based on the historical activity levels, calculate the preliminary and final annual number of allowances to be allocated in respect of each new installation and of each sub-installation of each new installation for each scheme year in the relevant allocation period beginning with the [^{F68}first recalculated scheme year]:
 - i where paragraph 4(a) or 5(a) applies, in accordance with Articles 16 and 16b;
 - ii where paragraph 4(b) or 5(b) applies, in accordance with Article 18 and 18a;
 - c send the information contained in the relevant report or reports referred to in paragraph 3(a), the determination referred to in point (a) and the calculation referred to in point (b) to the UK ETS authority.
- 7 For the purposes of paragraph 6:
- a where a sub-installation of an installation before a split is split into 2 or more sub-installations, the historical activity level and allocation in respect of the sub-installation of the new installation must be based on the historical activity level of the respective stationary technical units of the installation before the split;
 - b the final annual number of allowances to be allocated in respect of the new installation or installations for a scheme year must correspond to the final annual number of allowances to be allocated in respect of the installation or installations before the merger or split for the scheme year.
- 8 The UK ETS authority must:
- a approve the final annual number of allowances to be allocated in respect of each new installation for each scheme year in the relevant allocation period beginning with the [^{F69}first recalculated scheme year], making any corrections that the UK ETS authority considers appropriate; and
 - b inform the regulator accordingly.
- 9 The regulator must give notice to the operator of each new installation:
- a of the final annual number of allowances approved; and
 - b where the final annual number of allowances to be allocated in respect of a new installation for each scheme year in the relevant allocation period [^{F70}beginning with the first recalculated scheme year] is zero, that the installation is not an FA installation for the relevant allocation period.
- [^{F71}9a Paragraph 9(b) does not apply to a new installation:
- a in the case of a split, if the installation before the split was an electricity generator;
 - b in the case of a merger, if any installation before the merger was an electricity generator.]
- 10 In this Article:
- a “relevant allocation period” means:
 - i where any installation before the split or merger is an FA installation for the 2021-2025 allocation period, the 2021-2025 allocation period;
 - ii where any installation before the split or merger is an FA installation for the 2026-2030 allocation period, the 2026-2030 allocation period;
 - b “transfer date”, in relation to the transfer referred to in paragraph 1, has the meaning given in paragraph 9 of Schedule 6 to the UK ETS Order.]
 - [^{F72}c “first relevant calendar year” means—
 - i where the transfer date is before 31 March in a scheme year, the calendar year beginning 2 years before the scheme year in which the transfer date occurs;
 - ii where the transfer date is on or after 31 March in a scheme year, the calendar year before the scheme year in which the transfer date occurs;

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- d “first recalculated scheme year” means—
- i where the transfer date is before 31 March in a scheme year, the scheme year in which the transfer date occurs;
 - ii where the transfer date is on or after 31 March in a scheme year, the scheme year after the scheme year in which the transfer date occurs.]

Textual Amendments

- F66** Art. 25 substituted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), art. 2(2), **Sch. 1 para. 30**
- F67** Words in Art. 25(3)(b) substituted (1.1.2023) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) \(No. 2\) Order 2022 \(S.I. 2022/1173\)](#), arts. 2, **22(2)**
- F68** Words in Art. 25(6)(b) substituted (1.1.2023) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) \(No. 2\) Order 2022 \(S.I. 2022/1173\)](#), arts. 2, **22(3)**
- F69** Words in Art. 25(8)(a) substituted (1.1.2023) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) \(No. 2\) Order 2022 \(S.I. 2022/1173\)](#), arts. 2, **22(4)**
- F70** Words in Art. 25(9)(b) substituted (1.1.2023) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) \(No. 2\) Order 2022 \(S.I. 2022/1173\)](#), arts. 2, **22(5)**
- F71** Art. 25(9a) inserted (1.1.2024 immediately after S.I. 2023/850 comes into force) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) \(No. 2\) Order 2023 \(S.I. 2023/1387\)](#), arts. 2(1), **19(2)**
- F72** Art. 25(10)(c)(d) inserted (1.1.2023) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) \(No. 2\) Order 2022 \(S.I. 2022/1173\)](#), arts. 2, **22(6)**

^{F73} Article 26

Cessation of operations of an installation

- 1 This Article applies where:
- a an installation that is an FA installation has ceased operation; or
 - b the greenhouse gas emissions permit of such an installation is surrendered under paragraph 11(2) of Schedule 6 to the UK ETS Order or revoked under paragraph 12(3) of that Schedule.
- ^{F74}2 No allowances may be allocated in respect of the installation for the first non-entitled scheme year and all subsequent scheme years; and in this paragraph the “first non-entitled scheme year” means the earlier of:
- a) the scheme year after the year in which the installation ceased operation; and
 - b) where paragraph 1(b) applies, the scheme year after the year in which the surrender or revocation of the permit takes effect.]
- 3 The regulator must:
- a recalculate the final annual number of allowances to be allocated in respect of the installation for those scheme years as zero; and
 - b send the calculation to the UK ETS authority.
- 4 The UK ETS authority must:
- a approve the final annual number of allowances to be allocated in respect of the installation; and
 - b inform the regulator accordingly.

Changes to legislation: This version of this Regulation was derived from EUR-Lex on IP completion day
(31 December 2020 11:00 p.m.). It has not been amended by the UK since then. Find out more about
legislation originating from the EU as published on legislation.gov.uk. (See end of Document for details)

5 The regulator must give notice to the operator of the installation of the UK ETS authority's approval.]

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Textual Amendments

- F73** Art. 26 substituted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), art. 2(2), **Sch. 1 para. 31**
- F74** Art. 26(2) substituted (1.1.2023) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) \(No. 2\) Order 2022 \(S.I. 2022/1173\)](#), arts. 2, **23(2)**

Changes to legislation:

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