

## SCHEDULE 6

### Permits

## 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<sup>(1)</sup>.

(4) A permit is revoked by giving a notice (a “revocation notice”) to the operator.

(5) The revocation notice must—

(a) set out a date (the “end date”) on which the revocation of the permit takes effect;

(b) require the operator to—

(i) submit to the regulator on or before a date set out in the notice a report of the installation’s reportable emissions in the period beginning on 1st January in the scheme year (the “end year”) in which the end date falls and ending on the end date;

(ii) ensure that the report is prepared and verified in accordance with the monitoring and reporting conditions of the permit;

(iii) where the permit is a greenhouse gas emissions permit, on or before a date set out in the notice, 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.

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(1) 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.

**Draft Legislation:** This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: The Greenhouse Gas Emissions Trading Scheme Order 2020 No. 1265