
DRAFT STATUTORY INSTRUMENTS

2023 No.

The Greenhouse Gas Emissions Trading
Scheme (Amendment) (No. 2) Order 2023

PART 3

Free Allocation Regulation amended

Article 2a amended (eligibility for free allocation)

13.—(1) Article 2a is amended as follows.

(2) In paragraph 1—

(a) omit point (a);

(b) in point (b)(i) omit “in the relevant period, calculated over the relevant period as a whole”.

(3) In paragraph 2—

(a) in the opening words for “paragraph 1(b)(i)” substitute “this Article”;

(b) in point (a)(ii) after “Article 5” insert “made after the end of the first full calendar year after the start of normal operation of a heat benchmark sub-installation”.

(4) After paragraph 2 insert—

“**3.** An application for free allocation may be made in respect of an electricity generator in relation to measurable heat whether or not at the date of the application the electricity generator has produced measurable heat by means of high-efficiency cogeneration or has exported measurable heat for the purposes of district heating.

4. Paragraphs 5 and 6 apply where an application for free allocation is made in respect of an electricity generator in relation to measurable heat.

5. For the purposes of Chapter 3 of this Regulation and Articles 3a to 6a of the Activity Level Changes Regulation⁽¹⁾ (which relate to the calculation of free allocation), the installation must be treated as not including any heat benchmark sub-installation unless the heat benchmark sub-installation:

- (a) in a case where the installation includes the heat benchmark sub-installation at the date of the application and the application is made under Article 4 or under Article 5 after the end of the first full calendar year after the start of normal operation of the sub-installation, produced measurable heat by means of high-efficiency cogeneration in the relevant period, calculated over the relevant period as a whole;
or

⁽¹⁾ EUR 2019/1842, amended by [S.I. 2020/1557](#), [2022/1173](#), [2023/850](#) and this Order. Article 4(1) of [S.I. 2020/1265](#) defines “Activity Level Changes Regulation” as Commission Implementing [Regulation \(EU\) 2019/1842](#) of 31 October 2019, as it forms part of domestic law.

- (b) in any other case, produces measurable heat by means of high-efficiency cogeneration in any subsequent qualifying period, calculated over the subsequent qualifying period as a whole.

6. Where paragraph 5(b) applies, Article 3a of the Activity Level Changes Regulation applies to the heat benchmark sub-installation as if its start of normal operation, if before the beginning of the subsequent qualifying period, were at the beginning of the subsequent qualifying period.

7. In paragraphs 5 and 6, “subsequent qualifying period” means, in relation to a heat benchmark sub-installation, any period including at least one full calendar year of operation of the heat benchmark sub-installation that:

- (a) ends with 31 December:
 - (i) in the case of an application under Article 4, in any scheme year (“year 2”) beginning with the second scheme year after the baseline period;
 - (ii) in the case of an application under Article 5, in any scheme year (“year 2”) beginning with the first scheme year for which a report on the activity level of the sub-installation in that year is required under Article 3 of the Activity Level Changes Regulation; and
- (b) begins with 1 January in the scheme year preceding year 2 or, if the start of normal operation of the heat benchmark sub-installation is later, the start of normal operation of the sub-installation.

8. The following regulated activities are not eligible for free allocation:

- (a) the capture of greenhouse gases from a regulated activity for the purpose of transport and geological storage in a storage site;
- (b) the transport of greenhouse gases by pipelines for geological storage in a storage site;
- (c) the geological storage of greenhouse gases in a storage site.”.