
STATUTORY INSTRUMENTS

2020 No. 1265

The Greenhouse Gas Emissions Trading Scheme Order 2020

[^{F1}PART 4A

Free Allocation

[^{F1}CHAPTER 3

Common provisions

Textual Amendments

- F1** Pt. 4A inserted (31.12.2020) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2020 \(S.I. 2020/1557\)](#), arts. 2(1), **18**

Return of allowances: installations

34S.—(1) This article applies where—

- (a) allowances are allocated under article 34E to a person in respect of an installation for a scheme year in accordance with an allocation table; and
- (b) the final annual number of allowances set out in the allocation table to be allocated in respect of the installation for the scheme year is subsequently reduced in consequence of an update to the allocation table to take account of any approval of the UK ETS authority under a provision referred to in article 34C(1)(b) to (f) [^{F2}or (j)].

(2) The regulator may give a notice under article 34U or 34V (or both).

(3) For the purposes of this Chapter, the person to whom the allowances are allocated is “not entitled” to any allowances which would not have been allocated in respect of the installation if the allocation table had been updated before the allocation of allowances referred to in paragraph (1)(a).

Textual Amendments

- F2** Words in art. 34S(1)(b) inserted (E.W.S.) (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), **7(2)**

Return of allowances: aviation

34T.—(1) This article applies where—

- (a) allowances are allocated under article 34O to a person for a scheme year in accordance with the aviation allocation table; and
- (b) [^{F3}either][^{F3}any of the following applies] —

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- (i) the number of allowances set out in the aviation allocation table to be allocated to that person for the scheme year is subsequently reduced in consequence of an update to the aviation allocation table; [^{F4}or]
- (ii) the person was not an aircraft operator in relation to the scheme year.
[in relation to allowances allocated for the 2024 or 2025 scheme year, the number of ^{F5}(iii) allowances allocated to the person for the scheme year exceeds the person's aviation emissions for the scheme year.]
- (2) The regulator may give a notice under article 34U or 34V (or both).
- (3) For the purposes of this Chapter, the person to whom the allowances are allocated is “not entitled” to any allowances which—
 - (a) would not have been allocated if the aviation allocation table had been updated before the allocation of allowances referred to in paragraph (1)(a); [^{F6}or]
 - (b) are allocated for a scheme year in relation to which the person is not an aircraft operator [^{F7}; or]
 - [^{F8}(c) in relation to allowances allocated for the 2024 or 2025 scheme year, exceed the person's aviation emissions for the scheme year for which the allowances are allocated.]

Textual Amendments

- F3** Words in art. 34T(1)(b) substituted (E.W.S.) (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), **8(2)(a)**
- F4** Word in art. 34T(1)(b)(i) omitted (E.W.S.) (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), **8(2)(b)**
- F5** Art. 34T(1)(b)(iii) inserted (E.W.S.) (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), **8(2)(c)**
- F6** Word in art. 34T(3)(a) omitted (E.W.S.) (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), **8(3)(a)**
- F7** Word in art. 34T(3)(b) inserted (E.W.S.) (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), **8(3)(b)**
- F8** Art. 34T(3)(c) inserted (E.W.S.) (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), **8(3)(c)**

Return of allowances: notice to registry administrator

34U.—(1) A notice under this article is a notice to the registry administrator requiring the registry administrator to transfer allowances equal to the number of allowances to which a person is not entitled from the person's operator holding account or aircraft operator holding account to a central account.

- (2) The notice must set out—
 - (a) the number of allowances to which the person is not entitled;
 - (b) the reason why the person is not entitled to the allowances;

- (c) the operator and installation from whose operator holding account, or the person from whose aircraft operator holding account, the transfer must be made.
- (3) The registry administrator—
 - (a) must comply with the notice to the extent that there are sufficient allowances in the person's account;
 - (b) may suspend other transfers from the account until the notice is complied with.
- (4) Paragraph (3)(a) does not apply until the period for bringing an appeal against the notice under article 70 has expired or, if an appeal is brought, until the appeal is determined or withdrawn.
- (5) Where the regulator gives a notice under this article to the registry administrator, the regulator must also give a copy of the notice to the person who is not entitled to the allowances.

Return of allowances: notice to operator, etc.

34V.—(1) A notice under this article is a notice to a person requiring the person to return allowances equal to the number of allowances to which the person is not entitled.

- (2) The notice must set out—
 - (a) the number of allowances to which the person is not entitled;
 - (b) the reason why the person is not entitled to the allowances;
 - (c) the process by which the allowances must be returned;
 - (d) the date by which the allowances must be returned.
- (3) The person to whom the notice is given must comply with the notice.
- (4) Where a notice is given under this article to a transferring operator in respect of allowances to which the transferring operator is not entitled that were allocated before the transfer of a greenhouse gas emissions permit under paragraph 9 of Schedule 6 takes effect, the notice may provide for the transferring operator to transfer allowances to the new operator and for the process by which the allowances must be returned by the new operator; and in such a case the notice must be given to the new operator as well as the transferring operator and both must comply with the notice.
- (5) In paragraph (4), “new operator” and “transferring operator” have the meanings given in paragraph 7(5) of Schedule 6.

Notice to withhold allowances

34W.—(1) The regulator may, by notice (a “notice to withhold”) to the registry administrator, require the registry administrator to withhold allowances that would otherwise have been allocated in respect of an installation under article 34E or to a person with an entry in the aviation allocation table under article 34O in any of the following circumstances—

- (a) if the regulator is investigating whether the installation has ceased operation;
- (b) if the operator of the installation has applied to surrender the installation's permit under paragraph 11 of Schedule 6 but the application has not yet been determined;
- (c) if a surrender notice under that paragraph or a revocation notice under paragraph 12 of that Schedule has been given to the operator of the installation but the surrender or revocation of the permit has not yet taken effect;
- (d) if an appeal against a revocation notice given to the operator of the installation has been made and has not been determined or withdrawn;
- (e) if the regulator is assessing a renunciation notice given by the operator of the installation under Article 24 of the Free Allocation Regulation;

- (f) if, following an application for the transfer of the installation's permit under paragraph 7 of Schedule 6, the regulator—
- (i) considers that, if the application is granted, there may be a merger or split (as defined in Article 2(17) and (18) of the Free Allocation Regulation); or
 - (ii) is assessing the reports referred to in Article 25(3) of that Regulation;
- (g) in a case where allowances have not already been allocated in respect of the installation for a scheme year, if the regulator is investigating whether, as a result of a relevant error (as defined in article 34H), the final annual number of allowances set out in the allocation table to be allocated in respect of the installation for the scheme year exceeds the number that would otherwise have been set out in the table but for the relevant error;
- [in relation to allowances that would otherwise have been allocated in respect of the
- ^{F9}(ga) installation for the 2023 scheme year, if the operator of the installation has made an application under Article 5a of the Activity Level Changes Regulation that has not been determined or has been granted an extension of time to make such an application that has not expired;]
- [if the regulator is investigating for the purposes of Article 2b(4)(b) of the Free Allocation
- ^{F10}(gb) Regulation whether the installation has produced electricity for sale for consumption outside the installation;]
- (h) if the regulator is investigating whether the person with an entry in the aviation allocation table has permanently ceased to perform aviation activity under article 34P;
- (i) if the regulator is assessing an application under article 34Q for the transfer of some or all of the aviation free allocation entitlement of the person with an entry in the aviation allocation table;
- (j) in a case where allowances have not already been allocated to a person for a scheme year under article 34O, if the regulator is investigating whether, but for a relevant error (as defined in article 34R), the number of allowances set out in the aviation allocation table as the person's aviation free allocation entitlement for the scheme year would be materially less.
- (2) The notice to withhold must set out the installation referred to in [^{F11}paragraph (1)(a) to (ga)] [^{F11}paragraph (1)(a) to (gb)] or the person referred to in paragraph (1)(h) to (j).
- (3) Where a notice to withhold is given, no allowances may be allocated in respect of the installation set out in the notice, or to the person set out in the notice, until a further notice under paragraph (4) is given.
- (4) The regulator may by further notice to the registry administrator withdraw the notice to withhold at any time, and must do so as soon as reasonably practicable after the circumstances for giving the notice to withhold no longer apply and, where relevant, the UK ETS authority has updated the allocation table in consequence of those circumstances.
- (5) Where the regulator gives a notice to withhold, the regulator must also give notice to the operator of the installation set out in the notice to withhold, or to the person set out in the notice to withhold, setting out the reasons for giving the notice.
- (6) Where the regulator gives a further notice under paragraph (4), the regulator must also give notice to the operator of the installation set out in the notice to withhold, or to the person set out in the notice to withhold, setting out any explanation that the regulator considers appropriate.]

Textual Amendments

- F9** Art. 34W(1)(ga) inserted (1.1.2023) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) \(No. 2\) Order 2022 \(S.I. 2022/1173\)](#), arts. 2, **7(2)**

- F10** Art. 34W(1)(gb) inserted (E.W.S.) (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), **9(2)**
- F11** Words in art. 34W(2) substituted (E.W.S.) (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), **9(3)**

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