

## SCHEDULE 1

Article 46

### Free Allocation Regulation amended

#### **Free Allocation Regulation amended**

1. Commission Delegated Regulation (EU) 2019/331 is amended in accordance with this Schedule.

#### **“Regulator” substituted for “competent authority”**

2. For “competent authority” in each place substitute “regulator”.

#### **Article 1 amended (scope)**

3.—(1) Article 1 is amended as follows.

(2) For the words from “emission allowances under Chapter III” to the end substitute “allowances to installations under the UK ETS”.

#### **Article 2 amended (definitions)**

4.—(1) Article 2 is amended as follows.

(2) Renumber the existing text as paragraph 1.

(3) In paragraph 1—

(a) for point (1) substitute—

“(1) ‘incumbent installation’ means an installation in respect of which a deemed application for free allocation in the 2021-2025 allocation period or an application for free allocation in the 2026-2030 allocation period under Article 4 is made;”;

(b) in point (3) (heat benchmark sub-installation) after “EU ETS” in both places insert “or UK ETS”;

(c) in point (4) (district heating) after “EU ETS” insert “or UK ETS”;

(d) in point (5) (district heating sub-installation) after “EU ETS” insert “or UK ETS”;

(e) in point (10) (process emissions sub-installation) for “greenhouse gas emissions listed in Annex I to [Directive 2003/87/EC](#)” substitute “emissions of greenhouse gases set out in column 2 of table C in Schedule 2 to the UK ETS Order”;

(f) in point (11) (waste gas) for “Article 3(50) of Regulation (EU) No 601/2012” substitute “Article 3(52) of the Monitoring and Reporting Regulation 2018”;

(g) for point (14) substitute—

“(14) ‘baseline period’ means:

(a) in relation to a deemed application for free allocation in the 2021-2025 allocation period or an incumbent installation in respect of which such an application is made, the 5-year period beginning on 1 January 2014;

(b) in relation to an application for free allocation in the 2026-2030 allocation period under Article 4 or an incumbent installation in respect of which such an application is made, the 5-year period beginning on 1 January 2019;”;

(h) omit point (15);

(i) after point (18) insert—

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“(19) ‘deemed application for free allocation in the 2021-2025 allocation period’ must be construed in accordance with Article 3a;

(20) ‘electricity generator’ means an installation:

- (a) that, on or after 1 January 2005, produced electricity for sale to third parties; and
- (b) at which no regulated activity other than the regulated activity referred to in column 1 of the first entry in table C in Schedule 2 to the UK ETS Order (combustion of fuels) is carried out;

(21) ‘emission allowance’ means an allowance (as defined in the UK ETS Order);

(22) ‘new entrant’ means an installation in respect of which an application for free allocation under Article 5 is made;

(23) ‘UK ETS Order’ means the Greenhouse Gas Emissions Trading Scheme Order 2020.

(4) After paragraph 1 insert—

“2. Expressions used in this Regulation that are defined for the purposes of the Climate Change Act 2008 or the UK ETS Order have the meanings given in that Act or Order

3. A reference in this Regulation to a “non-ETS” entity, installation or process is a reference to an entity, installation or process that is not covered by either the EU ETS or the UK ETS.”.

#### **Article 2a inserted**

5. After Article 2 insert—

##### *“Article 2a*

##### *Eligibility for free allocation*

1. An application for free allocation of allowances may not be made under this Regulation in respect of:

- (a) an installation used for any of the following:
  - (i) the capture of greenhouse gases from other installations for the purpose of transport and geological storage in a storage site;
  - (ii) the transport of greenhouse gases by pipelines for geological storage in a storage site;
  - (iii) the geological storage of greenhouse gases in a storage site;
- (b) an electricity generator, except in relation to measurable heat:
  - (i) produced by an electricity generator that produced measurable heat by means of high-efficiency cogeneration (as defined in Article 2(34) of [Directive 2012/27/EU](#) of the European Parliament and of the Council of 25 October 2012<sup>(1)</sup>) in the relevant period, calculated over the relevant period as a whole; or
  - (ii) exported for the purposes of district heating.

2. For the purposes of paragraph 1(b)(i):

- (a) the “relevant period” is:

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(1) OJ No L 315, 14.11.2012, p. 1.

- (i) in the case of a deemed application for free allocation in the 2021-2025 allocation period or an application for free allocation in the 2026-2030 allocation period under Article 4, the baseline period;
- (ii) in the case of an application for free allocation under Article 5, the period from the start of normal operation until the end of the year before the year in which the application is made;
- (b) [Directive 2012/27/EU](#) has effect as if in Annex 2 in point (a) in the first indent after “heat and electricity” there were inserted “; and for the purposes of this indent, cogeneration production from cogeneration units certified under the standard applying from time to time for the purposes of the Combined Heat and Power Quality Assurance Programme<sup>(2)</sup> that provides primary energy savings during the period of certification must be treated as providing primary energy savings of at least 10% during that period”.

### **Article 3 omitted**

6. Article 3 is omitted.

### **Article 3a inserted**

7. After Article 2 and the cross-heading to Chapter 2 (application, data reporting and monitoring rules) insert—

#### *“Article 3a*

#### *Applications for free allocation under EU ETS to be treated as applications for free allocation in 2021-2025 allocation period by operators of incumbent installations*

1. This Article applies where before 1 January 2021, the operator of an installation made an application (an “EU ETS application”) under Article 4 for free allocation of emission allowances under the EU ETS in respect of the allocation period in the EU ETS beginning on 1 January 2021
2. For the purposes of this Regulation:
  - (a) the EU ETS application must be treated as an application (a “deemed application for free allocation in the 2021-2025 allocation period”) by the operator of the installation for free allocation of allowances under the UK ETS in the 2021-2025 allocation period;
  - (b) the determination of historical activity levels under Article 15, and anything else done in connection with the EU ETS application under this Regulation, before IP completion day must be treated as done in connection with the deemed application for free allocation in the 2021-2025 allocation period.
3. Without limiting paragraph 2, in this Regulation—
  - (a) a reference to a monitoring methodology plan includes a monitoring methodology plan approved for the purposes of the EU ETS application;

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(2) Details of the Combined Heat and Power Quality Assurance Programme are available at <https://www.gov.uk/guidance/combined-heat-power-quality-assurance-programme>. The current and previous standards can be accessed at <https://www.gov.uk/government/publications/chpqa-standard>. Copies may be inspected at the Department for Business, Energy and Industrial Strategy, 1 Victoria Street, London SW1H 0ET.

- (b) a reference to a baseline data report or a verification report includes a baseline data report or a verification report submitted for the purposes of the EU ETS application.”.

**Article 4 amended (application for free allocation in 2026-2030 allocation period by operators of incumbent installations)**

8.—(1) Article 4 is amended as follows.

(2) In the heading after “allocation” insert “in 2026-2030 allocation period”.

(3) For paragraph 1 substitute—

“1. The operator of any of the following installations may apply to the regulator for free allocation in the 2026-2030 allocation period:

- (a) an installation for which a permit is issued on or before 30 June 2024;
- (b) an installation that is an ultra-small emitter for the 2024 scheme year;
- (c) an installation for which an application for a permit has been made but not yet determined.

1A. An application:

- (a) may not be made before 1 April 2024;
- (b) must be made on or before 30 June 2024.”.

(4) In paragraph 2—

(a) in point (a)—

(i) for “verified as satisfactory in accordance with measures adopted pursuant to Article 15 of [Directive 2003/87/EC](#)” substitute “verified in accordance with the Verification Regulation 2018”;

(ii) omit “relating to the allocation period to which the application relates”;

(b) in point (b)—

(i) at the beginning insert “except where a monitoring methodology plan has already been approved in relation to the installation under Article 8,”;

(ii) after “in accordance with” insert “Article 8 and”;

(c) for point (c) substitute—

“(c) the verification report on the baseline data report, which (unless the monitoring methodology plan has already been approved by the regulator) must contain the confirmation relating to the plan referred to in Article 27(3)(f) of the Verification Regulation 2018.”.

(5) After paragraph 2 insert—

“3. Where an application is made in respect of an installation referred to in paragraph 1(c), the application must be treated as never having been made unless the permit is issued on or before 30 June 2024.

4. An application may be made under this Article and under either of the following at the same time:

- (a) paragraph 5 of Schedule 7 to the UK ETS Order (obtaining hospital or small emitter status for 2026-2030 allocation period);
- (b) paragraph 3 of Schedule 8 to that Order (obtaining ultra-small emitter status for 2026-2030 allocation period).”.

## **Article 5 substituted**

### **9. For Article 5 substitute—**

#### *“Article 5*

#### *Application for free allocation by new entrants*

**1.** The operator of an installation at which a regulated activity is carried out and for which a greenhouse gas emissions permit (including a greenhouse gas emissions permit within the meaning of GGETSR 2012) issued for the first time is in force may apply to the regulator:

- (a) for free allocation in the 2021-2025 allocation period, if the permit is issued in the period beginning on 1 July 2019 and ending on 30 June 2024;
- (b) for free allocation in the 2026-2030 allocation period, if the permit is issued in the period beginning on 1 July 2024 and ending on 30 June 2029.

**2.** An application may be made at any time after the end of the year in which the start of normal operation occurs.

**3.** But where an installation has not been operating for a full calendar year after the start of normal operation, an application may not be made unless:

- (a) in the case of an application under paragraph 1(a), the start of normal operation is on or after 1 January 2021;
- (b) in the case of an application under paragraph 1(b), the start of normal operation is on or after 1 January 2026.

**4.** For the purposes of the application, the operator must divide the installation into sub-installations in accordance with Article 10.

**5.** The application must set out the start of normal operation and be accompanied by:

- (a) a new entrant data report, verified in accordance with the Verification Regulation 2018, containing each parameter set out in sections 1 and 2 of Annex 4 for each sub-installation separately from the start of normal operation until the end of the year before the year in which the application is made;
- (b) a monitoring methodology plan in accordance with Article 8 and Annex 6;
- (c) the verification report on the new entrant data report, which must contain the confirmation relating to the monitoring methodology plan referred to in Article 27(3)(f) of the Verification Regulation 2018.

**6.** The regulator:

- (a) must assess the new entrant data report and the verification report to ensure conformity with the requirements of this Regulation;
- (b) where appropriate, may request corrections by the operator of any non-conformity or error that impacts on the determination of activity levels;
- (c) must not determine historical activity levels under Article 17, activity levels for the purpose of Article 18(2) or calculate the preliminary or final annual number of allowances under Article 18 or 18a unless:
  - (i) the regulator considers that the date set out in the application as the start of normal operation, or such other date proposed by the operator, is accurate;
  - (ii) the data relating to the 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

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- unforeseeable circumstances that could not have been avoided even if all due care had been exercised; and
- (iii) any corrections requested under point (b) have been made.”.

**Article 6 amended (general obligation to monitor)**

- 10.—(1) Article 6 is amended as follows.
- (2) Omit “pursuant to Article 10a of [Directive 2003/87/EC](#)”.
- (3) For “by 31 December 2020” substitute “under Article 8”.

**Article 7 amended (monitoring principles)**

- 11.—(1) Article 7 is amended as follows.
- (2) In paragraph 3 after “application for free allocation” insert “(including a deemed application for free allocation in the 2021-2025 allocation period)”.

**Article 8 amended (content and submission of the monitoring methodology plan)**

- 12.—(1) Article 8 is amended as follows.
- (2) In paragraph 1 for “Articles 4(2)b and 5(2) shall draw up” substitute “Article 4 or 5 must, except where a monitoring methodology plan has already been approved in relation to the installation under this Article, draw up”.
- (3) In paragraph 3 omit “and for the purposes of Article 12(3) of Regulation (EU) No 601/2012,”.
- (4) Omit paragraphs 4 and 5.
- (5) After paragraph 3 insert—
- “6. Where the operator has submitted a monitoring methodology plan to the regulator, the regulator must, by notice to the operator:
- (a) if the plan is in accordance with this Regulation, approve it; or
- (b) reject it.
7. A notice under paragraph 6 must be given:
- (a) where the monitoring methodology plan is submitted with an application for free allocation in the 2026-2030 allocation period under Article 4, on or before 31 December 2025;
- (b) where the monitoring methodology plan is submitted with an application for free allocation under Article 5, as soon as reasonably practicable after the application is made.”

**Article 9 amended (changes to the monitoring methodology plan)**

- 13.—(1) Article 9 is amended as follows.
- (2) For paragraph 3 substitute—
- “3. The operator must notify the regulator of:
- (a) any significant modification (within the meaning of paragraph 5) of the monitoring methodology plan at least 14 days before making the modification or, where this is not possible, as soon as reasonably practicable; and
- (b) any other modification on or before 31 December in the year in which the modification is made.”.

#### **Article 10 amended (division into sub-installations)**

14.—(1) Article 10 is amended as follows.

(2) In paragraph 1—

- (a) after “data reporting and of monitoring” insert “under this Regulation and the Activity Level Changes Regulation”;
- (b) omit “eligible for the free allocation of emission allowances under Article 10a of [Directive 2003/87/EC](#)”.

(3) In paragraph 3—

- (a) in the first subparagraph for “deemed to be exposed to a significant risk of carbon leakage as determined in accordance with Article 10b(5) of [Directive 2003/87/EC](#)” in both places substitute “set out in the Annex to Commission Delegated Decision (EU) 2019/708”;
- (b) in the second subparagraph—
  - (i) for “deemed to be exposed to a significant risk of carbon leakage as determined in accordance with Article 10b(5) of [Directive 2003/87/EC](#)” substitute “set out in the Annex to Commission Delegated Decision (EU) 2019/708”;
  - (ii) for “not deemed to be exposed to a significant risk of carbon leakage” substitute “other than those set out in the Annex to Commission Delegated Decision (EU) 2019/708”.

(4) In paragraph 4 in the first subparagraph—

- (a) for “installation included in the EU ETS” substitute “installation”;
- (b) after “not included in the EU ETS” insert “or the UK ETS”;
- (c) for “deemed to be exposed to a significant risk of carbon leakage as determined in accordance with Article 10b(5) of [Directive 2003/87/EC](#)” in both places substitute “set out in the Annex to Commission Delegated Decision (EU) 2019/708”.

(5) In paragraph 5—

- (a) in point (b)—
  - (i) after “Regulation (EU) No 601/2012” insert “or the Monitoring and Reporting Regulation 2018”;
  - (ii) after “EU ETS” insert “or UK ETS”;
- (b) in point (d)—
  - (i) after “EU ETS” insert “or UK ETS”;
  - (ii) for “non-EU ETS” substitute “non-ETS”.

#### **Article 12 amended (data gaps)**

15.—(1) Article 12 is amended as follows.

(2) In paragraph 3 for “Article 5(2)” substitute “Article 5(5)(a)”.

#### **Articles 13 and 14 omitted**

16. Articles 13 and 14 are omitted.

#### **Article 15 amended (historical activity level for incumbent installations)**

17.—(1) Article 15 is amended as follows.

(2) In paragraph 1 for “Member States” substitute “The regulator”.

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- (3) In paragraph 2—
  - (a) for “Member States” in the first place where that expression occurs substitute “the regulator”;
  - (b) for the words “Member States may” to the end substitute—

“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.”.
- (4) In paragraph 4 after “EU ETS” in each place insert “or UK ETS”.
- (5) In paragraph 7 in the third subparagraph—
  - (a) for “calendar year” in both places substitute “full calendar year”;
  - (b) after “submitted” insert—

“(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.”.
- (6) In paragraph 8 for “Member States” substitute “the regulator”.

#### **Article 15a inserted**

18. After Article 15 insert—

##### *“Article 15a*

##### *Assessment of applications for free allocation by operators of incumbent installations*

1. This Article applies where:
  - (a) a deemed application for free allocation in the 2021-2025 allocation period has been made by the operator of an incumbent installation; or
  - (b) 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:
  - (a) where paragraph 1(a) applies, as soon as reasonably practicable after IP completion day;
  - (b) where paragraph 1(b) applies, on or before 30 September 2024.
3. The information is:
  - (a) details of the installation, including details of any permit in force;
  - (b) the information contained in the baseline data report submitted with the application;



- (c) 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:
  - (a) assess the application for free allocation and, where relevant, the regulator’s explanation under paragraph 3(c); and
  - (b) 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:
  - (a) the application is one that may be made under this Regulation (see Article 2a); and
  - (b) the application is otherwise in accordance with this Regulation.”.

**Article 16 amended (preliminary allocation at installation level for incumbent installations)**

- 19.—(1) Article 16 is amended as follows.
- (2) In the heading for “Allocation” substitute “Preliminary allocation”.
  - (3) For paragraph 1 substitute—
    - “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.”.
  - (4) In paragraph 2—
    - (a) in the first subparagraph—
      - (i) in the words before point (a) for “Member States” substitute “the regulator”;
      - (ii) in point (d) for “five-year” substitute “allocation”;
    - (b) omit the second subparagraph.
  - (5) In paragraph 3—
    - (a) for “For the purpose of Article 10b(4) of [Directive 2003/87/EC](#), the” substitute “The”;
    - (b) for “deemed not to be exposed to a significant risk of carbon leakage as determined in accordance with Article 10b(5) of [Directive 2003/87/EC](#)” substitute “other than those set out in the Annex to Commission Delegated Decision (EU) 2019/708”.
  - (6) In paragraph 4 for “as determined in accordance with Article 10b(5) of [Directive 2003/87/EC](#)” substitute “set out in the Annex to Commission Delegated Decision (EU) 2019/708”.
  - (7) In paragraph 5 for “From 2026” substitute “In the case of an application for free allocation in the 2026-2030 allocation period under Article 4”
  - (8) In paragraph 7 for “Member States and operators” substitute “the regulator”.

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(9) Omit paragraph 8.

(10) In paragraph 9—

(a) for “8” substitute “7”;

(b) after “integer” insert “, taking 0.5 as nearest to the previous integer”.

(11) After paragraph 9 insert—

“**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 the benchmarks for the relevant allocation period referred to in paragraphs 2 and 5 have been adopted.

**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 adopted in accordance with Article 10a(2) of [Directive 2003/87/EC](#):

(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), the allocation period in the EU ETS beginning on 1 January 2021;

(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), the allocation period in the EU ETS beginning on 1 January 2026.”.

#### **Articles 16a and 16b inserted**

**20.** After Article 16 insert—

##### *“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.

**Table A**

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Scheme year</i>	<i>Industry cap</i>	<i>Reduction factor</i>
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) 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

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- (b) 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)

#### *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):

- (a) calculate the final annual number of allowances to be allocated in respect of each installation and each sub-installation of each installation:
  - (i) 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;
  - (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.”.

#### **Article 17 amended (historical activity level for new entrants)**

21.—(1) Article 17 is amended as follows.

- (2) Renumber the existing text as paragraph 1.
- (3) In paragraph 1—
  - (a) in the words before point (a) for “Member States” substitute “Where an application for free allocation is made under Article 5, the regulator”;
  - (b) in point (a) omit “or pursuant to Article 24 of [Directive 2003/87/EC](#)”;
  - (c) in point (b) after “EU ETS” in both places insert “or UK ETS”;
  - (d) in point (c) after “EU ETS” insert “or UK ETS”;
- (4) After paragraph 1 insert—

“2. 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).”.

#### **Article 18 amended (preliminary allocation to new entrants)**

- 22.**—(1) Article 18 is amended as follows.
- (2) In the heading for “Allocation” substitute “Preliminary allocation”.
  - (3) Before paragraph 1 insert—

“**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

“**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.”.
    - (4) In paragraph 1—
      - (a) in the first subparagraph—
        - (i) in the words before point (a) for the words “For the purposes of the free allocation” to “each sub-installation separately,” substitute “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”;
        - (ii) in point (a) after “relevant historical activity level” insert “; and in this point “benchmark for the relevant period” means the benchmark for the relevant allocation period (as defined in Article 16(12)) adopted in accordance with Article 10a(2) of [Directive 2003/87/EC](#)”;
      - (b) in the second subparagraph for “to new entrants” substitute “in respect of new entrants under this paragraph and paragraph 2”.
    - (5) In paragraph 2—

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- (a) for “The preliminary” substitute “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”;
  - (b) for “calendar year where the start of normal operation occurs” substitute “scheme year”.
- (6) After paragraph 2 insert—
- “**2A.** Paragraph 2 applies whether or not the historical activity level of the sub-installation has been determined under Article 17.”.
- (7) Omit paragraphs 4 and 5.
- (8) In paragraph 6—
- (a) for “1 to 5” substitute “1 to 3”;
  - (b) after “integer” insert “, taking 0.5 as nearest to the previous integer”.
- (9) After paragraph 6 insert—
- “**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.”.

#### **Article 18a inserted**

- 23.** After Article 18 insert—

##### *“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;
  - (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.

**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:
- (a) the application is one which may be made under this Regulation (see Article 2a); and
  - (b) the application is otherwise in accordance with this Regulation.”.

**Article 19 amended (allocation in respect of steam cracking)**

- 24.**—(1) Article 19 is amended as follows.  
(2) For “Article 17(a)” in both places substitute “Article 17(1)(a)”.

**Article 20 amended (allocation in respect of vinyl chloride monomer)**

- 25.**—(1) Article 20 is amended as follows.  
(2) For “Article 17(a)” in both places substitute “Article 17(1)(a)”.

**Article 21 amended (heat flows between installations)**

- 26.**—(1) Article 21 is amended as follows.  
(2) After “EU ETS” in both places insert “or UK ETS”.

**Article 22 amended (exchangeability of fuel and electricity)**

- 27.**—(1) Article 22 is amended as follows.  
(2) For “Article 17(a)” in each place substitute “Article 17(1)(a)”.  
(3) In paragraph 2 after “EU ETS” insert “or UK ETS”.

**Article 23 omitted**

- 28.** Article 23 is omitted.

**Article 24 substituted**

- 29.** For Article 24 substitute—



*“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.”.

**Article 25 substituted**

**30.** For Article 25 substitute—

*“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 the activity level of each sub-installation of each new installation in the calendar year preceding the transfer date 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;
  - (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 scheme year after the year in which the transfer date occurs:
    - (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 scheme year after the year in which the transfer date occurs, 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 after the scheme year in which the transfer date occurs is zero, that the installation is not an FA installation for the relevant allocation period.
- 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.”.

## **Articles 26 substituted**

- 31. For Article 26 substitute—

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*“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.
2. No allowances may be allocated in respect of the installation for the scheme year after the year in which the installation ceased operation or, where paragraph 1(b) applies, the surrender or revocation of the permit takes effect and for all subsequent scheme years.
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.
5. The regulator must give notice to the operator of the installation of the UK ETS authority’s approval.”.

**Final text omitted**

**32.** Omit “This Regulation shall be binding in its entirety and directly applicable in all Member States.” (which follows Article 28).

**Annex 3 amended (historical activity level for specific benchmarks referred to in Articles 15(8) and 17(1)(f))**

- 33.**—(1) Annex 3 is amended as follows.
- (2) In the heading for “17(f)” substitute “17(1)(f)”.

**Annex 4 amended (parameters for baseline data collection)**

- 34.**—(1) Annex 4 is amended as follows.
- (2) In the first paragraph for “relevant baseline period” substitute “baseline period beginning on 1 January 2019”.
  - (3) In section 1—
    - (a) in section 1.1—
      - (i) in point (b) for “Union Registry” substitute “registry”;
      - (ii) omit point (c);
      - (iii) in point (d) omit “GHG”;
    - (b) in section 1.3—
      - (i) in point (a) for “activities pursuant to Annex I to [Directive 2003/87/EC](#)” substitute “regulated activities”;

- (ii) for point (c) substitute—
  - “(c) Whether the installation meets condition A, B or C referred to in paragraph 6 of Schedule 7 to the UK ETS Order or the relevant condition referred to in paragraph 3 of Schedule 8 to that Order.”;
- (c) in section 1.4—
  - (i) in point (a) omit “pursuant to Article 3(u) of [Directive 2003/87/EC](#)”;
  - (ii) for point (b) substitute—
    - “(b) Whether the installation is used for any of the following:
      - (i) the capture of greenhouse gases from other installations for the purpose of transport and geological storage in a storage site;
      - (ii) the transport of greenhouse gases by pipelines for geological storage in a storage site;
      - (iii) the geological storage of greenhouse gases in a storage site;”;
- (d) in section 1.6—
  - (i) in the heading after “EU ETS” insert “or UK ETS”;
  - (ii) in point (c)—
    - (aa) after “EU ETS” insert “or UK ETS”;
    - (bb) for “Registry” substitute “Union Registry or registry”.
- (4) In section 2—
  - (a) in section 2.1—
    - (i) in the first subparagraph—
      - (aa) in point (b) for “GHG” substitute “greenhouse gas”;
      - (bb) in point (c) for “Regulation (EU) No 601/2012” substitute “the Monitoring and Reporting Regulation 2018”;
    - (ii) in the second subparagraph for “Member States may choose to allow operators to report” substitute “The report may include”.
  - (b) in section 2.3—
    - (i) in point (c) after “EU ETS” insert “or UK ETS”;
    - (ii) in point (d) after “EU ETS” insert “or UK ETS”;
    - (iii) in point (i) after “EU ETS” insert “or UK ETS”;
    - (iv) in point (j) after “EU ETS” insert “or UK ETS”;
    - (v) in point (m) after “EU ETS” insert “or UK ETS”;
    - (vi) in point (n) after “EU ETS” insert “or UK ETS”;
    - (vii) in point (p)—
      - (aa) omit “carbon leakage and non-carbon leakage”;
      - (bb) after “district heating sub-installations” insert “that serve and do not serve sectors or subsectors set out in the Annex to Commission Delegated Decision (EU) 2019/708”;
  - (c) in section 2.6—
    - (i) in point (a) for “non-EU ETS” substitute “non-ETS”;
    - (ii) in point (b) for “delegated acts adopted pursuant to Article 10b(5) of [Directive 2003/87/EC](#)” substitute “Commission Delegated Decision (EU) 2019/708”;

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- (iii) in point (c)—
  - (aa) for “the carbon leakage heat benchmark sub-installation” substitute “a heat benchmark sub-installation that serves a sector or subsector set out in the Annex to Commission Delegated Decision (EU) 2019/708”;
  - (bb) after “EU ETS” insert “or UK ETS”;
- (d) in section 2.7 in point (b) for “delegated acts adopted pursuant to Article 10b(5) of [Directive 2003/87/EC](#)” substitute “Commission Delegated Decision (EU) 2019/708”.

#### **Annex 5 amended (factors applicable for reducing free allocation)**

**35.**—(1) Annex 5 is amended as follows.

- (2) In the heading omit “pursuant to Article 10b(4) of [Directive 2003/87/EC](#)”.

#### **Annex 6 amended (minimum content of the monitoring methodology plan)**

**36.**—(1) Annex 6 is amended as follows.

- (2) In section 1—
  - (a) in point (a) for “Union Registry” substitute “registry”;
  - (b) in point (e)—
    - (i) after “EU ETS” insert “or “UK ETS”;
    - (ii) after “Union Registry” insert “or the registry”.
- (3) In section 4 in the first subparagraph in point (a) for “Regulation (EU) No 601/2012” substitute “the Monitoring and Reporting Regulation 2018”.

#### **Annex 7 amended (data monitoring methods)**

**37.**—(1) Annex 7 is amended as follows.

- (2) In section 1—
  - (a) after “pursuant to Regulation (EU) No 601/2012” insert “or the Monitoring and Reporting Regulation 2018”;
  - (b) for “in accordance with Regulation (EU) No 601/2012” substitute “in accordance with either Regulation”.
- (3) In section 2—
  - (a) in the definition of “data set” in point (b) for “Regulation (EU) No 601/2012” substitute “the Monitoring and Reporting Regulation 2018”;
  - (b) in the final subparagraph for “Regulation (EU) No 601/2012” substitute “the Monitoring and Reporting Regulation 2018”.
- (4) In section 3.1 for “Article 6” substitute “Article 8”.
- (5) In section 4—
  - (a) in section 4.2—
    - (i) in the second subparagraph for “EUR 20” substitute “£20”;
    - (ii) in the fourth subparagraph—
      - (aa) for “EUR 2 000” substitute “£2,000”;
      - (bb) for “Regulation (EU) No 601/2012” substitute “the Monitoring and Reporting Regulation 2018”;

- (cc) for “EUR 500” substitute “£500”.
- (b) in section 4.4 in the first subparagraph—
  - (i) in point (a) after “Regulation (EU) No 601/2012” insert “or the Monitoring and Reporting Regulation 2018”;
  - (ii) in point (b) for “subject to national legal metrological control or measuring instruments compliant with the requirements of [Directive 2014/31/EU](#) of the European Parliament and of the Council or [Directive 2014/32/EU](#) of the European Parliament and of the Council” substitute “that comply with the Non-automatic Weighing Instruments Regulations 2016(3) or the Measuring Instruments Regulations 2016(4)”;
- (c) in section 4.5 in the first subparagraph in point (a) for “subject to national legal metrological control or measuring instruments compliant with the requirements of the [Directive 2014/31/EU](#) or [Directive 2014/32/EU](#)” substitute “that comply with the Non-automatic Weighing Instruments Regulations 2016 or the Measuring Instruments Regulations 2016”;
- (d) in section 4.6 in the first subparagraph—
  - (i) in point (a) after “Regulation (EU) No 601/2012” insert “or the Monitoring and Reporting Regulation 2018”;
  - (ii) in point (d) in the first indent for “Member State” substitute “United Kingdom”;
  - (iii) in point (e) in the first indent for “Regulation (EU) No 601/2012” substitute “the Monitoring and Reporting Regulation 2018”.
- (6) In section 6.1 for “Regulation (EU) No 601/2012” in both places substitute “the Monitoring and Reporting Regulation 2018”.
- (7) In section 7.3—
  - (a) in the heading after “EU ETS” insert “or UK ETS”;
  - (b) in the first subparagraph—
    - (i) after “EU ETS” insert “or UK ETS”;
    - (ii) for “non-EU ETS” substitute “non-ETS”;
  - (c) in the second subparagraph—
    - (i) after “EU ETS” insert “or UK ETS”;
    - (ii) for “non-EU ETS” substitute “non-ETS”.
- (8) In section 10.1—
  - (a) in section 10.1.1 in point 1 for “Regulation (EU) No 601/2012” substitute “the Monitoring and Reporting Regulation 2012 or, where relevant, the Monitoring and Reporting Regulation 2018”;
  - (b) in section 10.1.2 in point 4 after “EU ETS” in both places insert “or UK ETS”.

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(3) [S.I. 2016/1152](#).

(4) [S.I. 2016/1153](#).