
STATUTORY INSTRUMENTS

2022 No. 1173

The Greenhouse Gas Emissions Trading
Scheme (Amendment) (No. 2) Order 2022

PART 4

Activity Level Changes Regulation amended

Activity Level Changes Regulation amended

25. Commission Implementing Regulation (EU) 2019/1842⁽¹⁾ is amended in accordance with this Part.

Articles 5a and 5b inserted

26. After Article 5 insert—

“Article 5a

2022 activity level changes: average activity level based on 2019 and 2021 years

1. The operator of an installation may apply for a determination by the UK ETS authority that a sub-installation of the installation meets the Covid condition referred to in Article 5b if, on submission of the 2022 activity level report under Article 3, Article 5(1), (2) or (3) requires (apart from this Article) an adjustment to decrease free allocation of allowances in respect of the sub-installation for the 2022 and subsequent scheme years.

2. But an application may not be made if the regulator made an estimate of the value of a parameter under Article 3(4)(a) because the operator did not submit the 2021 activity level report or the 2022 activity level report on or before the date referred to in Article 3(3).

3. An application must be made to the regulator on or before 31 January 2023 or such later date as the regulator may specify if, in a case where the operator requests an extension of time on or before 31 January 2023, the regulator considers that the reason for the request is reasonable.

4. An application must be accompanied by:

(a) either:

(i) a report identifying the quantity of emissions attributable to the sub-installation in 2019 and in 2020, determined in accordance with the methodology in the monitoring methodology plan and verified as

- satisfactory in accordance with the Verification Regulation 2018(2) as if the data in the report formed part of a baseline data report; or
- (ii) where the data referred to in subpoint (i) are included in the 2021 activity level report, a statement by the verifier that the verification of the report included the verification of those data; and
- (b) evidence that the sub-installation meets point (c) of the Covid condition set out in Article 5b(2), including an explanation why, when comparing 2020 to 2019 levels, the emissions attributable to the sub-installation did not fall by at least the same proportion as its activity level.
5. After receiving an application, the regulator must, as soon as reasonably practicable:
- (a) assess whether or not the sub-installation meets the Covid condition; and
- (b) send the assessment and the reasons for it to the UK ETS authority.
6. After receiving the assessment, the UK ETS authority must determine whether or not the sub-installation meets the Covid condition.
7. If the UK ETS authority determines that the sub-installation meets the Covid condition:
- (a) this Regulation applies as if the regulator were required to determine the 2022 average activity level (that is to say, the average activity level of the sub-installation to be determined under Article 4 on submission of the 2022 activity level report) based on the activity levels of the sub-installation in 2019 and 2021 (and not on those in 2020 and 2021); or
- (b) if, before the UK ETS authority determines that the sub-installation meets the Covid condition, the 2022 average activity level based on the activity levels of the sub-installation in 2020 and 2021 is determined by the regulator under Article 4, and an adjustment to free allocation in respect of the sub-installation is approved by the UK ETS authority based on the 2022 average activity level so determined:
- (i) the regulator must re-determine the 2022 average activity level based on the activity levels of the sub-installation in 2019 and 2021; and
- (ii) this Regulation applies on the basis of that re-determination (ignoring the first determination of the 2022 average activity level and subsequent approval).
8. If the UK ETS authority determines that the sub-installation does not meet the Covid condition:
- (a) the UK ETS authority must inform the regulator; and
- (b) the regulator must inform the operator.
9. In this Article:
- (a) “2021 activity level report” means the activity level report (on activity levels in 2019 and 2020) due on or before 30 June 2021;
- (b) “2022 activity level report” means the activity level report (on activity levels in 2021) due on or before 31 March 2022.

(2) “Verification Regulation 2018” is defined in article 4(1) of [S.I. 2020/1265](#). Article 2(1) of the Activity Level Changes Regulation provides that expressions used in that Regulation that are defined for the purposes of [S.I. 2020/1265](#) have the meaning given in that Order.

Article 5b

2022 activity level changes: Covid condition

1. This Article has effect for the purposes of Article 5a.
2. A sub-installation of an installation meets the Covid condition if:
 - (a) AL 2020 is less than AL 2019;
 - (b) $(AL\ 2019 - AL\ 2020) / AL\ 2019 - (E\ 2019 - E\ 2020) / E\ 2019$ is greater than or equal to 0.15; and
 - (c) the reason for the matters referred to in points (a) and (b) is wholly or mainly due to the effects of the coronavirus Covid-19 pandemic.
3. In paragraph 2:
 - (a) AL 2019 is the activity level of the sub-installation in 2019;
 - (b) AL 2020 is the activity level of the sub-installation in 2020;
 - (c) E 2019 is the emissions attributable to the sub-installation in 2019;
 - (d) E 2020 is the emissions attributable to the sub-installation in 2020.”.

Article 6a amended (approval of changes by UK ETS authority)

- 27.—(1) Article 6a is amended as follows.
- (2) In paragraph 1—
 - (a) in point (a) omit the final “or”;
 - (b) in point (b) for “Article 5 or 6” substitute “Article 5 or 6; or”;
 - (c) after point (b) insert—

“(c) does not calculate an adjustment to free allocation in respect of a heat or fuel benchmark sub-installation for a scheme year by virtue of paragraph 1 or 2 of Article 6.”.
 - (3) In paragraph 2—
 - (a) in point (a) after “paragraph 1” insert “(if any)”;
 - (b) in point (b) after “paragraph 1” insert “(if any)”;
 - (c) after point (b) insert—

“(c) where, in the case of a heat or fuel benchmark sub-installation, after consideration of the matters referred to in paragraph 1 or 2 of Article 6, the regulator either calculates an adjustment to free allocation in respect of the sub-installation or does not calculate an adjustment, the regulator’s assessment of those matters for consideration by the UK ETS authority under paragraph 3.”.
 - (4) In paragraph 3(a) after “preliminary annual number of allowances and final annual number of allowances” insert “, and any calculations in respect of a sub-installation referred to in paragraph 1(c),”.