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STATUTORY INSTRUMENTS

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**2023 No. 1387**

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

PART 3

Free Allocation Regulation amended

**Free Allocation Regulation amended**

11. Commission Delegated [Regulation \(EU\) 2019/331](#) is amended in accordance with this Part.

**Article 2 amended (definitions)**

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

(2) In paragraph 1—

(a) for point (20) substitute—

“(20) “electricity generator” must be construed in accordance with Article 2c;”;

(b) after point (23) insert—

“(24) “relevant CHP electricity” has the meaning given in Article 2c(6).”.

**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<sup>(1)</sup> (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
- (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.”.

#### **Articles 2b and 2c inserted**

14. After Article 2a insert—

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(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.

*“Article 2b*

*Free allocation in 2026-2030 allocation period: applications by incumbent installations that will not produce electricity for sale for consumption outside the installation*

1. Despite Article 2a(1)(b), an application under Article 4 for free allocation in the 2026-2030 allocation period may be made in respect of an installation that is an electricity generator as if the restriction referred to in Article 2a(1)(b) did not apply, provided that the application is accompanied by a statement by the operator of the installation that the condition in paragraph 2 will be met.

2. The condition is that the installation will not produce any electricity (other than relevant CHP electricity) for sale for consumption outside the installation in the period beginning with the date of the application and ending with 31 December 2030 (the “relevant period”).

3. Where such an application is accompanied by the statement referred to in paragraph 1:

- (a) the regulator must assess the statement and any evidence provided and include the statement, evidence and regulator’s assessment in the information sent to the UK ETS authority under Article 15a(3) for assessment by the UK ETS authority under Article 15a(4);
- (b) if the UK ETS authority considers that the condition in paragraph 2 will be met, for the purposes of determining the application, the application must be treated as made in respect of an installation that is not an electricity generator (and to which the restriction in Article 2a(1)(b) does not apply);
- (c) if the UK ETS authority does not consider that the condition in paragraph 2 will be met, the UK ETS authority must inform the regulator, and the regulator must inform the operator of the installation.

4. Paragraphs 5 to 8 apply where:

- (a) an application under Article 4 for free allocation in the 2026-2030 allocation period in respect of an electricity generator is treated as made in respect of an installation that is not an electricity generator in accordance with paragraph 3(b) and is assessed as valid under Article 15a(4); and
- (b) the regulator considers at any time (including on receipt of a report under Article 3 of the Activity Level Changes Regulation) that the installation has produced electricity (other than relevant CHP electricity) for sale for consumption outside the installation in the relevant period.

5. The regulator must:

- (a) determine the historical activity level (if any) of each sub-installation of the installation that the regulator considers would have been determined under this Regulation or the Activity Level Changes Regulation if the application had been treated as made in respect of an electricity generator (and to which the restriction in Article 2a(1)(b) applies);
- (b) calculate the preliminary and final annual number of allowances (if any) to be allocated in respect of the installation, and of each sub-installation of the installation, for each scheme year in the 2026-2030 allocation period beginning with the relevant scheme year, that the regulator considers would have been calculated under this Regulation and the Activity Level Changes Regulation if the application had been treated as made in respect of an electricity generator (and to which the restriction in Article 2a(1)(b) applies);

- (c) send evidence of the matters referred to in paragraph 4(b) and the determination and calculation referred to in points (a) and (b) of this paragraph to the UK ETS authority.
6. If the UK ETS authority considers that the installation has produced electricity (other than relevant CHP electricity) for sale for consumption outside the installation in the relevant period, the UK ETS authority must:
- (a) approve the final annual number of allowances to be allocated in respect of the installation, for each scheme year in the 2026-2030 allocation period beginning with the relevant scheme year, making any corrections to the historical activity levels or preliminary or final annual number of allowances that the UK ETS authority considers appropriate;
  - (b) inform the regulator accordingly.
7. The regulator must give notice to the operator of the installation of the final annual number of allowances approved.
8. For the purposes of Article 5 of the Activity Level Changes Regulation, the reference in paragraph 3 of that Article to the initial allocation must be read as including a reference to the initial allocation that would have been approved if the application had been treated as made in respect of an electricity generator (and to which the restriction in Article 2a(1) (b) applies).
9. Where paragraph 4(a) applies to an installation, unless the final annual number of allowances is recalculated and approved under paragraphs 5 and 6, despite the amendment made to Article 3(2) of the Activity Level Changes Regulation by article 22 of the Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2023, the activity level report required by Article 3 of the Activity Level Changes Regulation must contain the information referred to in section 1.4(e) of Annex 4 to this Regulation.
10. In this Article, “relevant scheme year”, in relation to an installation, means:
- (a) if the installation first produces electricity (other than relevant CHP electricity) for sale for consumption outside the installation in the period beginning with the date of the application and ending with 31 December 2026, the 2026 scheme year;
  - (b) if the installation first produces electricity (other than relevant CHP electricity) for sale for consumption outside the installation on or after 1 January 2027, the scheme year in which the installation first produces such electricity.

### *Article 2c*

#### *Meaning of “electricity generator” and “relevant CHP electricity”*

1. In this Regulation, “electricity generator” must be construed as follows.
2. In relation to 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, “electricity generator” means an installation:
  - (a) that on or after 1 January 2005 produced electricity for sale for consumption outside the installation; and
  - (b) at which 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) and no other regulated activity (apart from one referred to in Article 2a(8)) is carried out.
3. In relation to an application for free allocation in the 2026-2030 allocation period under Article 4 or 5, “electricity generator” means an installation:

- (a) that in the relevant period produced electricity for sale for consumption outside the installation; and
  - (b) at which 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) and no other regulated activity (apart from one referred to in Article 2a(8)) is carried out.
4. For the purposes of paragraph 3(a), electricity produced for sale for consumption outside the installation in the relevant period must be ignored if:
- (a) it is relevant CHP electricity; or
  - (b) it represents no more than 5% of the total electricity (not including relevant CHP electricity) produced at the installation in the relevant period.
5. In paragraphs 3 and 4, “relevant period” means:
- (a) in relation to an application for free allocation under Article 4, the baseline period;
  - (b) in relation to an application for free allocation under Article 5, the period beginning with the start of normal operation and ending with the last day of the year before the year in which the application is made.
6. In this Regulation, “relevant CHP electricity” means, in relation to an installation, electricity produced at the installation by cogeneration at a cogeneration unit 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 produces electricity for consumption at the installation (and may also produce electricity for sale for consumption outside the installation).”.

#### **Article 5 amended (application for free allocation by new entrants)**

- 15.—(1) Article 5 is amended as follows.
- (2) Omit paragraph 3a.

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

- 16.—(1) Article 10 is amended as follows.
- (2) In paragraph 5(b)—
    - (a) after “product benchmark sub-installation,” omit “or”;
    - (b) after “other EU ETS or UK ETS installations” insert “or any regulated activity non-eligible for free allocation (see Article 2a(8))”.

#### **Article 15a amended (assessment of applications for free allocation by operators of incumbent installations)**

- 17.—(1) Article 15a is amended as follows.
- (2) In paragraph 6—
    - (a) omit point (a);
    - (b) in point (b) omit “otherwise”.

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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 Energy Security and Net Zero, 3-8 Whitehall Place, London SW1A 2JP.

**Article 18a amended (assessment of applications and final allocation at installation level for new entrants)**

- 18.—(1) Article 18a is amended as follows.
- (2) In paragraph 12—
- (a) omit point (a);
  - (b) in point (b) omit “otherwise”.

**Article 25 amended (mergers and splits)**

- 19.—(1) Article 25 is amended as follows.
- (2) After paragraph 9 insert—
- “9a. Paragraph 9(b) does not apply to a new installation:
- (a) in the case of a split, if the installation before the split was an electricity generator;
  - (b) in the case of a merger, if any installation before the merger was an electricity generator.”.

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

- 20.—(1) Annex 4 is amended as follows.

*Section 1 amended (general installation data)*

- (2) In section 1.4 (eligibility for free allocation)—
- (a) in point (b)(i) for “other installations” substitute “a regulated activity”;
  - (b) after point (c) insert—
    - “(d) Where all the electricity (if any) reported under section 2.5(d) is sold, a statement to that effect or, in any other case, the total amount of electricity produced at the installation sold for consumption outside the installation;
    - (e) Where electricity was produced at the installation by cogeneration at a cogeneration unit certified under the standard applying from time to time for the purposes of the Combined Heat and Power Quality Assurance Programme:
      - (i) evidence of the certification;
      - (ii) the total amount of electricity produced by cogeneration at the unit;
      - (iii) if the unit produced electricity for consumption at the installation, evidence of this;
    - (f) Where the operator of an installation that is an electricity generator wants free allocation in relation to measurable heat produced by means of high-efficiency cogeneration within the meaning of Article 2a, evidence that measurable heat has been produced by such means in the relevant period or, as the case may be, the subsequent qualifying period referred to in that Article.”.

*Section 2 amended (detailed annual data for each year in the baseline period)*

- (3) In section 2.2 (annual emissions per sub-installation)—
- (a) in the heading after “sub-installation” insert “, etc.”;
  - (b) after “sub-installation” insert “and the quantity of emissions not attributable to any sub-installation”.

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

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

*Section 10 amended (rules for determining emissions at sub-installation level for the purpose of updating benchmark values)*

(2) In section 10.2 (attributed emissions to sub-installations) in the third paragraph for “and for flaring other than safety flaring” substitute “, for flaring other than safety flaring and for a regulated activity non-eligible for free allocation (see Article 2a(8))”.