
STATUTORY INSTRUMENTS

2023 No. 850

The Greenhouse Gas Emissions Trading
Scheme (Amendment) Order 2023

PART 4

Activity Level Changes Regulation amended

Activity Level Changes Regulation amended

16. [Commission Implementing Regulation \(EU\) 2019/1842](#) is amended in accordance with this Part.

Article 5b amended (2022 activity level changes: Covid condition)

17.—(1) Article 5b is amended as follows.

(2) In the heading for “2022” substitute “2021 and 2022”.

(3) In paragraph 1 for “Article 5a” substitute “Articles 5a and 5c”.

Article 5c inserted

18. After Article 5b insert—

“Article 5c

Activity level changes: average activity level omitting 2020 data

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 2021 activity level report under Article 3, Article 5(1) required an adjustment to decrease free allocation of allowances in respect of the sub-installation for the 2021 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 2024 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 2024, 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

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- methodology in the monitoring methodology plan and verified as satisfactory in accordance with the Verification Regulation 2018 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) the regulator must calculate the final annual number of allowances to be allocated in respect of the sub-installation for each scheme year in the 2021-2025 allocation period that would have been set out in the allocation table on compliance by the regulator and the UK ETS authority with the requirements of this Regulation and the UK ETS Order following submission of the 2021, 2022 and 2023 activity level reports if:
- (i) the average activity level of the sub-installation required to be determined under Article 4 on submission of the 2021 activity level report had been based on the activity levels of the sub-installation in 2018⁽¹⁾ and 2019 (and not on those in 2019 and 2020); and
- (ii) the average activity level of the sub-installation required to be determined under Article 4 on submission of the 2022 activity level report had been based on the activity levels of the sub-installation in 2019 and 2021 (and not on those in 2020 and 2021);
- (b) the regulator must send to the UK ETS authority:
- (i) the calculation referred to in point (a); and
- (ii) the regulator's recalculation of the final annual number of allowances to be allocated in respect of the installation for each scheme year in the 2021-2025 allocation period, taking account of the calculation referred to in point (a);
- (c) the UK ETS authority must:
- (i) approve the final annual number of allowances to be allocated in respect of the installation for each scheme year in the 2021-2025 allocation period, making any corrections to the final annual number of allowances that the UK ETS authority considers appropriate; and
- (ii) inform the regulator accordingly;

(1) Information about an installation's 2018 activity levels was included in an application for free allocation of emission allowances under the EU Emissions Trading System, which was treated as a "deemed application for free allocation in the 2021-2025 allocation period" for the purposes of the UK ETS under Article 3a of the Free Allocation Regulation. The information is available to the regulators.

(d) the regulator must inform the operator of the installation of the final annual number of allowances approved.

8. For the purposes of Article 5, the reference in paragraph 2 of that Article to an adjustment approved under Article 6a must be read as including a reference to an adjustment approved under paragraph 7(c) of this Article.

9. 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.

10. 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;
- (c) “2023 activity level report” means the activity level report (on activity levels in 2022) due on or before 31 March 2023.”.

Article 6 amended (other changes in the operation of the installation)

19.—(1) Article 6 is amended as follows.

(2) In paragraph 3 in the first subparagraph after “Article 2(2) of [Council Regulation \(EEC\) No 3924/91](#)” insert “or, where there is no PRODCOM code, by the code referred to in Section B or C of Annex 1 (NACE rev. 2) to Regulation [\(EC\) No. 1893/2006](#) of the European Parliament and of the Council of 20 December 2006⁽²⁾ as it has effect in EU law”.

(2) O.J. L 393, 30.12.2006, p. 1. Annex 1 is substituted by the Annex to [Commission Delegated Regulation \(EU\) 2023/137](#), O.J. L 19, 20.1.2023, p. 5.