

*This Statutory Instrument has been made in consequence of a defect in [S.I. 2021/1455](#) and is being issued free of charge to all known recipients of that Statutory Instrument.*

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STATUTORY INSTRUMENTS

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**2023 No. 850**

**CLIMATE CHANGE**

**The Greenhouse Gas Emissions Trading  
Scheme (Amendment) Order 2023**

|                                                      |         |                         |
|------------------------------------------------------|---------|-------------------------|
| <i>Made</i>                                          | - - - - | <i>19th July 2023</i>   |
| <i>Laid before Parliament</i>                        |         | <i>21st July 2023</i>   |
| <i>Laid before the Northern<br/>Ireland Assembly</i> | - -     | <i>21st July 2023</i>   |
| <i>Laid before the Scottish<br/>Parliament</i>       | - - - - | <i>21st July 2023</i>   |
| <i>Laid before Senedd Cymru</i>                      |         | <i>21st July 2023</i>   |
| <i>Coming into force</i>                             | - -     | <i>1st January 2024</i> |

At the Court at Buckingham Palace, the 19th day of July 2023

Present,

The King's Most Excellent Majesty in Council

This Order is made in exercise of the powers conferred by sections 44, 54 and 90(3) of, and Schedule 2 and paragraph 9 of Schedule 3 to, the Climate Change Act 2008<sup>(1)</sup>.

In accordance with paragraph 10 of Schedule 3 to that Act, before the recommendation to His Majesty in Council to make this Order was made—

- (a) the advice of the Committee on Climate Change was obtained and taken into account; and
- (b) such persons likely to be affected by the Order as the Secretary of State, the Department of Agriculture, Environment and Rural Affairs, the Scottish Ministers and the Welsh Ministers considered appropriate were consulted.

Accordingly, His Majesty, by and with the advice of His Privy Council, makes the following Order:

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(1) [2008 c. 27](#). The amendment made to paragraph 30 of Schedule 2 of that Act by [S.I. 2022/500](#) is not relevant to this Order.

## PART 1

### Preliminary

#### Citation

1. This Order may be cited as the Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2023.

#### Commencement

2. This Order comes into force on 1st January 2024.

#### Extent

3. This Order extends to the whole of the United Kingdom.

## PART 2

### Greenhouse Gas Emissions Trading Scheme Order 2020 amended

#### Greenhouse Gas Emissions Trading Scheme Order 2020 amended

4. The Greenhouse Gas Emissions Trading Scheme Order 2020(2) is amended in accordance with this Part.

#### Article 34B amended (allocation tables: supplementary)

5.—(1) Article 34B is amended as follows.

(2) After paragraph (3) insert—

“(3A) Where the final annual number of allowances to be allocated in respect of an installation is approved under article 20(5) of the Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2023 (free allocation for 2024 and 2025 scheme years: lime and malt extract), any increase in the number previously approved must be added to the amount included in column A or, if the installation is a new entrant (as defined in point (22) of Article 2(1) of the Free Allocation Regulation(3)), to the amount included in column B.”.

#### Article 34C amended (allocation tables: updates)

6.—(1) Article 34C is amended as follows.

(2) After paragraph (1)(g) insert—

“(h) Article 5c(7) of the Activity Level Changes Regulation(4) (activity level changes: average activity level omitting 2020 data);

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(2) [S.I. 2020/1265](#), amended by [S.I. 2020/1557](#), [2021/1455](#), [2022/454](#), [2022/1173](#) and [2022/1336](#).

(3) [EUR 2019/331](#), amended by [S.I. 2020/1557](#), [2021/1455](#), [2022/1173](#) and this Order. Article 4(1) of [S.I. 2020/1265](#) defines “Free Allocation Regulation” as [Commission Delegated Regulation \(EU\) 2019/331](#) of 19 December 2018, as it forms part of domestic law.

(4) [EUR 2019/1842](#), amended by [S.I. 2020/1557](#), [2022/1173](#) 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 5c is inserted by article 18 of this Order.

- (i) article 20(5) of the Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2023 (free allocation for 2024 and 2025 scheme years: lime and malt extract)."

**Article 34G amended (new entrants' reserve)**

- 7.—(1) Article 34G is amended as follows.
- (2) In paragraph (4)(b) after "determined under" insert "paragraph 4(2) of Schedule 8A,".

**Schedule 4 amended (Monitoring and Reporting Regulation 2018)**

- 8.—(1) Schedule 4 is amended as follows.

*Paragraph 23 amended (Article 49)*

- (2) After paragraph 23(b) insert—
  - “(c) in paragraph 3 in the first subparagraph after “expressed as the quantity of CO<sub>2</sub> transferred.” there were inserted “(But see subsection B.2 of section 21 of Annex 4, which provides for the use of a calculation-based methodology instead of a measurement-based methodology.)”.

**Schedule 5A amended (registry)**

- 9.—(1) Schedule 5A is amended as follows.

*Paragraph 16 amended (appointment of authorised representatives)*

- (2) In paragraph 16—
  - (a) after sub-paragraph (4)(d) insert—
    - “(e) in the case of an operator holding account or an aircraft operator holding account, permission to perform the following actions only (including permission to propose the actions for approval, and approve them if proposed, by another operational authorised representative)—
      - (i) to transfer allowances from the account to the surrender account;
      - (ii) where allowances to which a person is not entitled (as set out in article 34S(3) or 34T(3)) have been transferred to the account under Part 4A, to transfer an equal number of allowances from the account to a central account designated by the UK ETS authority for the return of allowances (whether or not a notice under article 34V is given).”;
  - (b) in sub-paragraph (11) for “or (c)” substitute “, (c) or (e)”.

**Schedule 8A amended (free allocation for former hospital or small emitters and ultra-small emitters)**

- 10.—(1) Schedule 8A is amended as follows.

*Paragraph 1 amended (interpretation)*

- (2) In paragraph 1—
  - (a) before the definition of “eligible scheme year” insert—
    - ““baseline period” has the meaning given in point (14) of Article 2(1) of the Free Allocation Regulation;”;
  - (b) after the definition of “relevant notice” insert—

““start of normal operation” has the meaning given in point (12) of Article 2(1) of the Free Allocation Regulation;”.

*Paragraph 3 amended (monitoring methodology plan to be submitted for approval)*

(3) In paragraph 3—

- (a) in the heading after “approval” insert “, etc.”;
- (b) for sub-paragraph (1) substitute—

“(1) If the operator of the installation wants free allocation in respect of the installation for eligible scheme years, the operator must submit to the regulator—

- (a) within 2 months after the date on which the relevant notice is given, the monitoring methodology plan previously submitted under the Free Allocation Regulation together with either—

- (i) any modifications necessary to ensure that the plan complies with Article 8 of, and Annex 6 to, that Regulation; or

- (ii) a statement that no such modifications are necessary;

- (b) where relevant, within 6 months after the date on which the relevant notice is given, a report on any sub-installation at the installation that did not operate for a full calendar year after the start of normal operation during the baseline period but has operated for a full calendar year after the start of normal operation at the date on which the relevant notice is given containing—

- (i) the information referred to in Article 3(2) of the Activity Level Changes Regulation for the first full calendar year of operation that is verified as satisfactory in accordance with the Verification Regulation 2018(5) as if the report were an activity level report submitted under Article 3(3) of the Activity Level Changes Regulation; and

- (ii) the verifier’s confirmation that the monitoring methodology plan, so far as it is used as a basis for the report, is compliant with the Free Allocation Regulation.”;

- (c) after paragraph (2) insert—

“(3) Article 3(4) to (8) of the Activity Level Changes Regulation apply to a report under sub-paragraph (1)(b) as they apply to an activity level report required by that Article, with the following modifications—

- (a) references to the time limit for submitting the activity level report are to be read as references to the period of 6 months referred to in sub-paragraph (1)(b);

- (b) Article 3(8)(a) is to be read as if the reference to Article 3a were a reference to paragraph 4(2)(za) of this Schedule.”.

*Paragraph 4 amended (calculation and approval of final allocation)*

(4) In paragraph 4—

- (a) in sub-paragraph (1)—

- (i) in paragraph (a)(ii) omit the final “and”;

- (ii) in paragraph (b) after “Regulation” insert “, and”;

- (iii) after paragraph (b) insert—

- “(c) the operator submits to the regulator either—

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(5) “Verification Regulation 2018” is defined in article 4(1) of [S.I. 2020/1265](#).

- (i) a report on every sub-installation referred to in paragraph 3(1)(b) in accordance with that paragraph; or
  - (ii) a statement that no such report is required.”;
- (b) in sub-paragraph (2)—
  - (i) before paragraph (a) insert—

“(za) where relevant, determine the historical activity level of every sub-installation referred to in paragraph 3(1)(b) in accordance with Article 17(1) of the Free Allocation Regulation;”;
  - (ii) in paragraph (b) after “send the” insert “determination (if any) and”;
- (c) for sub-paragraph (3) substitute—

“(3) The final annual number of allowances to be allocated in respect of a sub-installation for an eligible scheme year is the preliminary annual number of allowances to be allocated for the scheme year multiplied by the reduction factor for the scheme year (as defined in Article 18a(11) of the Free Allocation Regulation), where—

  - (a) for sub-installations referred to in paragraph 3(1)(b), the preliminary annual number of allowances must be calculated in accordance with Article 18(1) of the Free Allocation Regulation;
  - (b) for all other sub-installations, the preliminary annual number of allowances is the number previously calculated under Article 16 of the Free Allocation Regulation (including any corrections required under Article 16(11)).”;
- (d) in sub-paragraph (6)—
  - (i) in the opening words after “On receipt of the” insert “determination (if any) and”;
  - (ii) in paragraph (a) after “the calculation” insert “(including, in the case of a sub-installation referred to in paragraph 3(1)(b), to the historical activity level and preliminary annual number of allowances)”.

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

12.—(1) Article 16 is amended as follows.

(2) In paragraph 2 in each of points (a) to (d) for “, adopted in accordance with Article 10a(2) of [Directive 2003/87/EC](#),” in each place substitute “set out in Annex 8”.

(3) In paragraph 5 for “, adopted in accordance with Article 10a(2) of [Directive 2003/87/EC](#)” substitute “set out in Annex 8”.

(4) In paragraph 10 for “the benchmarks for the relevant allocation period referred to in paragraphs 2 and 5 have been adopted” substitute “benchmarks for the 2026-2030 allocation period are set out in Annex 8 but, if no such benchmarks are set out in Annex 8 on or before 1 December 2025, as soon as reasonably practicable thereafter (using the benchmarks for the 2021-2025 allocation period set out in Annex 8 for the calculation)”.

(5) In paragraph 12—

- (a) in the opening words for “adopted in accordance with Article 10a(2) of [Directive 2003/87/EC](#)” substitute “set out in Annex 8”;
- (b) in point (a) for “the allocation period in the EU ETS beginning on 1 January 2021” substitute “the 2021-2025 allocation period”;
- (c) in point (b) for “the allocation period in the EU ETS beginning on 1 January 2026” substitute “the 2026-2030 allocation period”.

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

13.—(1) Article 18 is amended as follows.

(2) In paragraph 1(a) for “adopted in accordance with Article 10a(2) of [Directive 2003/87/EC](#)” substitute “set out in Annex 8”.

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

14.—(1) Annex 7 is amended as follows.

*Section 4 amended (selection of determination methodologies and data sources representing highest achievable accuracy)*

(2) In section 4.2 (unreasonable costs) in the third paragraph in point (f) for “has not yet been determined in accordance with Article 10a(2) of [Directive 2003/87/EC](#), the respective benchmark specified in Annex I to this Regulation” substitute “for the 2026-2030 allocation period is not set out in Annex 8, the benchmark for the 2021-2025 allocation period”.

**Annex 8 inserted**

15. After Annex 7 insert—

“Annex 8

Benchmarks

**Table A**

**Product benchmarks without consideration of exchangeability of fuel and electricity for 2021-2025 allocation period**

| <i>Product benchmark</i> | <i>Benchmark value (allowances/t) for 2021-2025 allocation period</i> |
|--------------------------|-----------------------------------------------------------------------|
| Coke                     | 0.217                                                                 |
| Sintered ore             | 0.157                                                                 |
| Hot metal                | 1.288                                                                 |
| Pre-bake anode           | 0.312                                                                 |
| Aluminium                | 1.464                                                                 |
| Grey cement clinker      | 0.693                                                                 |
| White cement clinker     | 0.957                                                                 |

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| <i>Product benchmark</i>                             | <i>Benchmark value (allowances/t) for 2021-2025 allocation period</i> |
|------------------------------------------------------|-----------------------------------------------------------------------|
| Lime (6)                                             | 0.725                                                                 |
| Dolime                                               | 0.815                                                                 |
| Sintered dolime                                      | 1.406                                                                 |
| Float glass                                          | 0.399                                                                 |
| Bottles and jars of colourless glass                 | 0.290                                                                 |
| Bottles and jars of coloured glass                   | 0.237                                                                 |
| Continuous filament glass fibre products             | 0.309                                                                 |
| Facing bricks                                        | 0.106                                                                 |
| Pavers                                               | 0.146                                                                 |
| Roof tiles                                           | 0.120                                                                 |
| Spray-dried powder                                   | 0.058                                                                 |
| Plaster                                              | 0.047                                                                 |
| Dried secondary gypsum                               | 0.013                                                                 |
| Short fibre kraft pulp                               | 0.091                                                                 |
| Long fibre kraft pulp                                | 0.046                                                                 |
| Sulphite pulp, thermo-mechanical and mechanical pulp | 0.015                                                                 |
| Recovered paper pulp                                 | 0.030                                                                 |
| Newsprint                                            | 0.226                                                                 |
| Uncoated fine paper                                  | 0.242                                                                 |
| Coated fine paper                                    | 0.242                                                                 |
| Tissue                                               | 0.254                                                                 |
| Testliner and fluting                                | 0.188                                                                 |
| Uncoated carton board                                | 0.180                                                                 |
| Coated carton board                                  | 0.207                                                                 |
| Nitric acid                                          | 0.230                                                                 |
| Adipic acid                                          | 2.12                                                                  |
| Vinyl chloride monomer (VCM)                         | 0.155                                                                 |
| Phenol/acetone                                       | 0.230                                                                 |
| S-PVC                                                | 0.066                                                                 |
| E-PVC                                                | 0.181                                                                 |
| Soda ash                                             | 0.753                                                                 |

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(6) See article 20 of this Order in relation to the 2024 and 2025 scheme years.

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**Table B**

**Product benchmarks with consideration of exchangeability  
of fuel and electricity for 2021-2025 allocation period**

| <i>Product benchmark</i>        | <i>Benchmark value (allowances/t) for 2021-2025 allocation period</i> |
|---------------------------------|-----------------------------------------------------------------------|
| Refinery products               | 0.0228                                                                |
| EAF carbon steel                | 0.215                                                                 |
| EAF high alloy steel            | 0.268                                                                 |
| Iron casting                    | 0.282                                                                 |
| Mineral wool                    | 0.536                                                                 |
| Plasterboard                    | 0.110                                                                 |
| Carbon black                    | 1.485                                                                 |
| Ammonia                         | 1.570                                                                 |
| Steam cracking                  | 0.681                                                                 |
| Aromatics                       | 0.0228                                                                |
| Styrene                         | 0.401                                                                 |
| Hydrogen                        | 6.84                                                                  |
| Synthesis gas (syngas)          | 0.187                                                                 |
| Ethylene oxide/ethylene glycols | 0.389                                                                 |

**Table C**

**Heat and fuel benchmarks for 2021-2025 allocation period**

| <i>Benchmark</i> | <i>Benchmark value (allowances/TJ) for 2021-2025 allocation period</i> |
|------------------|------------------------------------------------------------------------|
| Heat benchmark   | 47.3                                                                   |
| Fuel benchmark   | 42.6                                                                   |

Where no benchmarks are set out in this Annex for the 2026-2030 allocation period, the benchmarks for the 2021-2025 allocation period are to be used.”.

## 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 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<sup>(7)</sup> 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;
- (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."

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(7) 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.

## **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<sup>(8)</sup> as it has effect in EU law”.

## **PART 5**

### **Other**

#### **Free allocation for 2024 and 2025 scheme years: lime and malt extract**

**20.**—(1) For the purpose of calculating the preliminary annual number of allowances for the 2024 and 2025 scheme years under Article 18 of the Free Allocation Regulation or Article 3a of the Activity Level Changes Regulation, the Free Allocation Regulation applies as if—

- (a) the product benchmark for lime were 0.798 (and not 0.725<sup>(9)</sup>);
- (b) the manufacture of malt extract<sup>(10)</sup> were included in the list of sectors and subsectors set out in the Annex to [Commission Delegated Decision \(EU\) 2019/708](#)<sup>(11)</sup>.

(2) This paragraph applies to an installation that is an FA installation for the 2021-2025 allocation period on 1st January 2024 if it appears from the most recent activity level report submitted under Article 3(3) of the Activity Level Changes Regulation that lime or malt extract is produced at the installation.

(3) As soon as reasonably practicable after this article comes into force and the operator complies with any request under paragraph (4), the regulator must send to the UK ETS authority a recalculation of the preliminary and final annual number of allowances to be allocated in respect of each installation to which paragraph (2) applies, and of each sub-installation (within the meaning of the Free Allocation Regulation) of the installation, for the 2024 and 2025 scheme years, calculated as if the Free Allocation Regulation had applied as set out in paragraph (1)(a) and (b).

(4) The regulator may request the operator to provide any information that the regulator requires to carry out the regulator’s functions under paragraph (3); and the information must be verified as satisfactory in accordance with the Verification Regulation 2018 as if it were contained in an activity level report submitted under Article 3(3) of the Activity Level Changes Regulation.

(5) On receipt of the recalculation, the UK ETS authority must as soon as reasonably practicable—

- (a) approve the final annual number of allowances to be allocated in respect of the installation, making any corrections to the calculation that the UK ETS authority considers appropriate;
- (b) inform the regulator accordingly.

(6) The regulator must give notice to the operator of the final annual number of allowances approved under paragraph (5).

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<sup>(8)</sup> 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.

<sup>(9)</sup> The product benchmark for lime is set out in Annex 8 to the Free Allocation Regulation, inserted by article 15 of this Order.

<sup>(10)</sup> PRODCOM code 10.89.19.25.

<sup>(11)</sup> [Commission Delegated Decision \(EU\) 2019/708](#) of 15 February 2019 supplementing [Directive 2003/87/EC](#) of the European Parliament and of the Council concerning the determination of sectors and subsectors deemed at risk of carbon leakage for the period 2021 to 2030, O.J. L 120, 8.5.2019, p. 20. For sectors and subsectors deemed at risk of carbon leakage set out in the Annex to the Decision, free allocation is not reduced by the factors set out in Annex 5 to the Free Allocation Regulation.

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(7) 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 Free Allocation Regulation had applied as set out in paragraph (1)(a) and (b).

(8) For the purposes of the Greenhouse Gas Emissions Trading Scheme Order 2020—

- (a) the reference in article 34H(2)(a) of that Order to an error in an application for free allocation must be read as including a reference to an error in any information provided under paragraph (4) of this article;
- (b) a reference in that Order to functions under that Order must be read as including a reference to functions under this article.

(9) This article must be interpreted as if it were part of the Greenhouse Gas Emissions Trading Scheme Order 2020.

*Ceri King*  
Deputy Clerk of the Privy Council

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

The United Kingdom Emissions Trading Scheme (the “UK ETS”) was established by the Greenhouse Gas Emissions Trading Scheme Order 2020 (the “UK ETS Order”). The UK ETS runs for ten “scheme years” beginning with 2021, split into two five-year “allocation periods”. Operators of certain industrial installations and certain aircraft operators are required to monitor, submit verified reports on, and surrender “allowances” equivalent to, their greenhouse gas emissions in each scheme year. Allowances (which are tradable) are held in accounts in the UK ETS registry, and there is a cap on the number of allowances that may be created. Allowances are sold at auction, but some operators of installations and aircraft operators receive an allocation of allowances free of charge. Free allocation for installations may change from year to year depending on the installation’s activity level. For installations that meet the eligibility criteria, there are two schemes in addition to the main scheme, one for “hospital or small emitters”, the other for “ultra-small emitters”.

This Order amends the UK ETS Order, [Commission Delegated Regulation \(EU\) 2019/331](#) (the “Free Allocation Regulation”) and [Commission Implementing Regulation \(EU\) 2019/1842](#) (the “Activity Level Changes Regulation”).

### **Free allocation for installations**

For the purpose of calculating free allocation in the 2024 and 2025 scheme years, the product benchmark for lime is increased and the production of malt extract is included as a sector at risk of carbon leakage: see article 20 of this Order and amendments to articles 34B and 34C of the UK ETS Order. Installations that currently benefit from free allocation will have their allocation recalculated.

The benchmarks used for calculating free allocation for scheme years in the 2021-2025 allocation period (which are currently in EU legislation) are set out in a new Annex 8 to the Free Allocation Regulation. (See also amendments to Articles 16 and 18 of, and to section 4 of Annex 7 to, that Regulation.) These benchmarks (rather than those used for the EU Emissions Trading System) will also be used for calculating free allocation in the 2026-2030 allocation period (unless the legislation is amended).

Operators of installations whose allocations were reduced by the 2021 activity level changes process may apply for activity level changes to be recalculated, using data from other years instead of 2020 to calculate average activity levels: see amendment to article 34C of the UK ETS Order and amendment to Article 5b, and new Article 5c, of the Activity Level Changes Regulation.

An amendment to Article 6 of the Activity Level Changes Regulation (which relates to when adjustments (upwards or downwards) to free allocation as part of the activity level change process may be rejected on energy efficiency grounds) provides for the codes in Sections B and C of NACE rev.2 to be used where there is no PRODCOM code.

The information that the operator of a hospital or small emitter or an ultra-small emitter that returns to the main scheme and wishes to benefit from free allocation must provide now includes an additional requirement to provide information to enable the “historical activity level” of sub-installations to be determined where not previously determined as part of the original application: see amendments to article 34G of, and Schedule 8A to, the UK ETS Order.

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

## Miscellaneous

Holders of operator and aircraft operator holding accounts may apply for a new type of permission for account authorised representatives, limited to enabling representatives to surrender, and return overallocated, allowances: see amendments to paragraph 16 of Schedule 5A to the UK ETS Order.

Article 24 of the UK ETS Order provides that [Commission Implementing Regulation \(EU\) 2018/2066](#) (the “Monitoring and Reporting Regulation 2018”) has effect for the purposes of the UK ETS, with modifications. A further signposting modification is made to Article 49 of the Monitoring and Reporting Regulation 2018: see the amendment to Schedule 4 to the UK ETS Order.

An impact assessment is available from the Industrial Decarbonisation and Emissions Trading Directorate, Department for Energy Security and Net Zero, 1 Victoria Street, London SW1H 0ET and is available alongside this Order on [www.legislation.gov.uk](http://www.legislation.gov.uk). The assessment covers the policy given effect to by article 20 of this Order.