

# European Union Emissions Trading System (EU ETS)

## Regulatory guidance for installations (including excluded installations)

The Greenhouse Gas Emissions Trading Scheme Regulations 2012

March 2017



# Summary

## About this guidance

We have produced this guidance to provide help for those operating or regulating activities that are covered by the [Greenhouse Gas Emissions Trading Scheme Regulations 2012 SI 2012 No. 3038](#) (the Regulations).

The guidance:

- Describes the main provisions of the Regulations and sets out the regulators' understanding of the Department for Business, Energy and Industrial Strategy's (BEIS) views on how the Regulations should be applied and how particular provisions should be interpreted;
- Incorporates the contents of 'Guidance Note 3 – Government Guidance for Operators on Inclusion Criteria for Phase III (2013-2020)', which was previously available through the regulators' websites.
- Sets out the regulators' understanding of BEIS's views on how particular provisions in relevant European Commission legislation should be interpreted; namely Commission Decision 2011/278/EU (the Free Allocation Decision), Commission Regulation (EU) No 389/2013 (the Registries Regulation 2013), Commission Regulation (EU) No 601/2012 (the Monitoring and Reporting Regulation) and Commission Regulation (EU) No 600/2012 (the Verification and Accreditation Regulation).

This guidance applies to Phase III of the EU ETS (which commenced on 1 January 2013) for installations only and excludes aviation, for which there is separate guidance.

We will update this guidance from time to time to make sure it's current.

This guidance is supported by another guidance document published by the regulators, to help operators comply with the EU ETS. The guidance is called '[How to comply with the EU ETS and Small Emitter and Hospital Opt-Out Scheme](#)' (the Compliance Manual).

The European Commission (the Commission) has also produced a number of guidance documents, referred to in the relevant sections of this guidance.

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# Introduction

## 1. What is the EU ETS?

1.1. The EU Emissions Trading System (EU ETS) is the largest multi-country, multi-sector greenhouse gas emissions trading system in the world and is central to the EU meeting its 20% emissions reduction target by 2020. In the UK, it is a key part of ensuring that we comply with the legally binding five year carbon budgets by reducing our emissions below 1990 levels to at least 35% in 2020 and by 80% in 2050, as set out in the Climate Change Act 2008. It is a Europe-wide cap and trade scheme, which started in 2005.

1.2. Phase III of the EU ETS began on 1 January 2013. It builds on the previous two phases and has been significantly revised to make a greater contribution to tackling climate change.

1.3. The EU ETS uses a market-based mechanism to incentivise the reduction of greenhouse gas emissions in a cost-effective and economically efficient way. The system operates by allocating and trading greenhouse gas emissions allowances throughout the EU – one allowance equals one tonne of carbon dioxide equivalent. In Phase III, a centralised EU-wide cap is set on the total number of allowances issued to installations in the system and this will reduce each year. A proportion of the total number of allowances is issued free of charge to installations and the remainder is auctioned. At the end of each year, installations have to make sure they have enough allowances to account for their actual emissions. They have the flexibility to buy additional allowances (on top of their allocation) or to sell any surplus allowances generated from reducing their emissions below their allocation. The buying and selling of allowances takes place on an EU-wide market. The system provides a flexible compliance system for operators, while making sure that emissions are reduced in the EU to the level of the EU cap.

1.4. The EU ETS covers electricity generation and the main energy-intensive industries – power stations, refineries, iron and steel, cement and lime, paper, food and drink, glass, ceramics, engineering and the manufacture of vehicles. No person may carry out one of the regulated activities except to the extent authorised by a permit held by the operator of an installation. The operator must monitor and report its emissions and surrender sufficient emissions trading allowances to cover those emissions.

1.5. Certain installations with low emissions and hospitals are permitted to opt out of the EU ETS, provided that equivalent measures are put in place to limit their emissions. These installations are known as 'excluded installations'.

## 2. The legal framework

2.1. The EU ETS is based on [Directive 2003/87EC](#) establishing a scheme for greenhouse gas emission allowance trading within the Community (the EU ETS Directive). The Directive is implemented in the UK by the Regulations. The Regulations came into force on 1 January 2013 and, subject to various saving provisions, consolidate and replace previous sets of regulations and their amending instruments. Since 2013, the Regulations have been amended and relevant provisions have been reflected in this guidance.

2.2. The Regulations also contain provisions implementing the Small Emitter and Hospital Opt-out Scheme and, where necessary, a number of instruments made under the Directive by the European Commission. These Commission instruments are the Registries Regulation 2013 (Commission Regulation (EU) No 389/2013 of 2 May 2013) the [Monitoring and Reporting Regulation](#) (Commission Regulation (EU) No 601/2012 of 21 June 2012), the [Verification and Accreditation Regulation](#) (Commission Regulation (EU) No 600/2012 of 21 June 2012) and the [Free Allocation Decision](#) (Commission Decision 2011/278/EU of 27 April 2011).

2.3. The Regulations extend to the whole of the UK.

2.4. This guidance explains the concepts used in the Regulations and gives guidance on what is covered by the system and how it will work in practice. The following is a summary of some of the key provisions of the Regulations.

2.5. The Regulations set out the following:

<b>Regulation</b>	<b>Description</b>
8	Designates the appropriate authorities to carry out functions under a number of Commission Regulations
9	Sets out requirement that a permit must be held by the operator of an installation before a regulated activity is carried out at an installation. A permit may be either a greenhouse gas emissions permit or an excluded installation emissions permit
10, Schedule 4 and Schedule 5	Application for and grant of permits
11	Variation of permits
12 and Schedule 4	Transfer of permits (including partial transfer)
13 and Schedule 4	Surrender of permits where installation has ceased operation
14 and Schedule 4	Revocation of permits
15, Schedule 5 and Schedule 6A	Provisions specific to excluded installations
16 and Schedule 6	Provision for the free allocation of allowances and relating to changes to allocations (including applications to the New Entrant Reserve)
41	Requirement to surrender allowances equal to annual reportable emissions in accordance with permit
43	Power for the Regulator to serve enforcement notices
44	Power for the Regulator to determine emissions
45	Information notices
48 to 71	Civil penalties
72 to 78	Appeals to First Tier Tribunal and other appeal bodies

79 to 81	Registry provisions (Union Registry and UK Registry)
82	Recovery by the Regulator of unpaid fees by seizing and selling allowances
Schedule 3	General provisions regarding applications

### 3. Who does what?

#### Responsibilities

3.1. There are various bodies with responsibilities and duties under the EU ETS. The following summarises each body's role:

- European Commission – responsible for the strategic development of the system, sets the cap, approves or otherwise each Member State's National Implementation Measures, establishes and maintains the Union Registry, approves or otherwise the preliminary allocation of allowances following New Entrant Reserve applications or proposed reductions in allocations, actions requests to allocate allowances and updates the allocation tables in the Registry in certain circumstances.
- Department for Business, Energy and Industrial Strategy (BEIS) – the lead government department for setting the UK's policy in relation to EU ETS. It is responsible for the development of UK Regulations, issuing direction and guidance to the regulators and the registry administrator, development of the UK National Implementation Measures (NIMs), complying with the UK's duties under the Kyoto Protocol and Effort Sharing Decision, conducting auctions in the UK and liaising with the devolved administrations, other government departments and the regulators.
- Devolved administrations – as climate change policy is a devolved matter, they are responsible for working with the UK Government to develop and implement the EU ETS.
- Regulators – implementing policies, grant and maintain permits (including monitoring plans), assess verified emissions reports, assess applications to the New Entrant Reserve (NER), determine reductions in allocations as a result of changes in capacity or cessation of activities, exchange of information with UKAS on verifier activities and enforcement of the Regulations.
- National administrator (known as the registry administrator in the Regulations) – responsible for managing the accounts under the jurisdiction of the UK within the Union Registry. The national administrator for the UK is the Environment Agency.
- KP registry administrator – responsible for operating the UK Registry (which handles Kyoto Protocol units) on behalf of the UK. The KP registry administrator for the UK is the Environment Agency.
- Verifiers – responsible for verifying data where the Regulations require it.
- UK Accreditation Service (UKAS) – responsible for accrediting and supervising verifiers.
- Operators – responsible for complying with the scheme, monitoring and reporting emissions and surrendering sufficient allowances to cover their emissions.

3.2. The devolved administrators are:

- The Scottish Ministers
- The Welsh Ministers
- The Department of Agriculture, Environment and Rural Affairs, Northern Ireland



### 3.3. The regulators are:

- The Environment Agency – in relation to installations (other than offshore installations) in England
- Natural Resources Wales – in relation to installations (other than offshore installations) in Wales
- The Scottish Environment Protection Agency (SEPA) – in relation to installations (other than offshore installations) in Scotland
- The chief inspector – in relation to installations (other than offshore installations) in Northern Ireland
- The Secretary of State (BEIS) – in relation to offshore installations

## What activities are included?

### 4. Regulated activities

4.1. The Regulations define a ‘regulated activity’ as an activity (other than an aviation activity) that is (a) listed in Annex I to the Directive and (b) results in specified emissions. ‘Specified emissions’ means the emissions specified in the second column of the table in Annex I to the Directive in relation to each activity.

4.2. Annex I to the Directive is reproduced in Annex A to this guidance for ease of reference.

4.3. The Commission has published [Guidance on Interpretation of Annex I of the EU ETS Directive](#) (excl. aviation). The following guidance in sections 5 to 12 supplements and clarifies the Commission guidance.

4.4. Regulated activities include energy activities (including combustion installations, coke ovens and mineral oil refineries); production and processing of ferrous and non-ferrous metals, mineral industries (including cement, lime, glass, ceramics and gypsum related activities); production of pulp and paper; production of chemicals and carbon capture, transport and geological storage. In addition to carbon dioxide (CO<sub>2</sub>), emissions of perfluorocarbons (PFCs) from the primary aluminium sector and nitrous oxide (N<sub>2</sub>O) from the production of nitric, adipic, glyoxal and glyoxylic acid are also covered by the EU ETS.

4.5. Where any regulated activity is carried out on a site, all units in which fuels are combusted on the same site are considered to fall within the scope of the activity itself. However, this excludes units for the incineration of hazardous or municipal waste (see section 7). So, all releases of greenhouse gases listed against the regulated activity (that is CO<sub>2</sub>, N<sub>2</sub>O or PFCs) and all releases from the relevant combustion units must be monitored and reported.

### 5. What does ‘same site’ mean?

5.1. For the purposes of the EU ETS, the following will be considered when determining whether units or activities are on the same site:

- i. the area chosen or used for a recognised purpose;
- ii. the geographical location of the units or activities;
- iii. the presence of a continuous boundary geographically defined by markers such as a fence or a wall;

- iv. the presence of common management responsible for the care of the site, such as maintenance, security, development etc.;
- v. whether the same legal entity owns or leases the land and controls all units or activities; and
- vi. the proximity of the units or activities to each other.

## 6. What is 'combustion'?

6.1. Combustion of fuels in installations with a total rated thermal input exceeding 20MW (except in installations for the incineration of hazardous or municipal waste) is subject to the EU ETS.

6.2. 'Combustion' means any oxidation of fuels, regardless of the way in which the heat, electrical or mechanical energy produced by this process is used, and any other directly associated activities, including waste gas scrubbing.

6.3. Combustion, therefore, includes all types of boilers, burners, turbines, heaters, furnaces, incinerators, calciners, kilns, ovens, fryers, dryers, engines, fuel cells, chemical looping combustion units, flares, and thermal or catalytic post-combustion units.

6.4. Combustion of a fuel for any purpose above the threshold, subject to the 'de minimis rule' (see section 9 below) is included in the EU ETS.

## 7. What is captured under the hazardous or municipal waste exclusions?

7.1. 'Installations for the incineration of hazardous or municipal waste' are specifically excluded from the EU ETS. In the case of combustion activities, this means that, if the primary purpose of an installation is the incineration of hazardous or municipal waste, then it is excluded. An installation's primary purpose is considered to be the incineration of hazardous or municipal waste where this waste is combusted, with or without heat recovery and where the installation will shut down in the event that the supply of waste is interrupted for any period of time. Using support fuels such as natural gas on auxiliary burners during the combustion of the hazardous or municipal waste does not in itself bring that activity into the scope of the EU ETS.

7.2. Individual units within an installation are also excluded if their primary purpose is to incinerate hazardous or municipal waste and they do not exclusively serve the regulated activities carried out at the installation. This exclusion is set out in Annex 1, clause 5 of the EU ETS Directive. Flares are not considered to be units for the incineration of hazardous waste under this clause and are therefore captured by the EU ETS.

### Example 1

A solid fuel combustion unit and boiler that produces process steam. The plant is fuelled by refuse (municipal waste) derived fuel (RDF), with a fossil fuel back-up in the event the RDF supply is interrupted. The primary purpose of the installation is to generate energy so it is not exempt from the EU ETS.

The Directive states that where a regulated activity is being carried out, all units in which fuels are combusted, other than units for the incineration of hazardous or municipal waste, shall be included in the greenhouse gas emissions permit. Where there is an incineration unit on a site, the first question is whether or not it is part of the process of one of the regulated activities. If the unit's only purpose is to serve a regulated activity, it is considered to form part of the process and so is included in the EU ETS. However, if it incinerates waste from other sources as well as serving the regulated activity, then it is considered not to form part of the process.

If the unit is not part of the process of a regulated activity, the second question is whether or not the primary purpose of the unit is to incinerate hazardous or municipal waste. If the answer is yes, then the unit is specifically excluded from the EU ETS.

#### Example 2

A gas burning oxidiser is an integral part of an acrylonitrile production plant and receives vent gases containing VOCs and hazardous liquid waste from the acrylonitrile plant. Acrylonitrile production is listed under Annex I to the Directive as 'Production of bulk organic chemicals by cracking, reforming, partial or full oxidation or by similar processes, with a production capacity exceeding 100 tonnes per day'. As the thermal oxidiser is part of the acrylonitrile process, it is caught as part of that process and is therefore subject to the EU ETS.

## 8. How is the rated thermal input of a combustion installation calculated?

8.1. Thermal input in the context of the EU ETS means all input in the form of fuels. Therefore, if a furnace can use both electrical heating or heating by combustion of fuels, only the fuel related input is used for the calculation. In cases where various proportions of heat input can be used, the maximum of fuel related input is assumed.

8.2. The maximum rated thermal input is normally specified by the manufacturer and is displayed on the technical device with the consent of an inspection body. Where different fuels or fuel mixes can be used, leading to different maximum thermal inputs, the highest possible thermal input should be used.

8.3. When no information from the manufacturer is available, the operator of the installation must make an estimate based on the best available information (for example maximum fuel throughput achieved in 24 hours during the last calendar year).

8.4. Since, in most cases, the exhaust gas has a temperature above 100°C, and in line with monitoring requirements, net calorific values (NCV) are considered most appropriate for determining the thermal input.

8.5. In some cases, gross calorific values (GCV) are used for specifying nameplate capacity. Therefore, for practical and simplicity reasons only, it is acceptable to use GCV in these cases.

8.6. Where fuels are used as reducing agents in the production or processing of non-ferrous metals, the heat input of these fuels should also be taken into account when calculating the rated thermal input.

## 9. When should capacities be added together to determine whether or not a regulated activity is being carried out?

9.1. In relation to the thresholds in Annex I of the Directive referring to production capacities or outputs, where several activities falling within the same description are carried out in the same installation, the capacities of the activities must be added together.

9.2. In relation to the thresholds in Annex I referring to total rated thermal input, the rated thermal capacities of all units in which fuels are combusted within the installation must be added together. However, combustion units with a rated thermal input under 3MW and units using exclusively biomass are excluded from this calculation. This allows very small units to be excluded from the calculation and reduces the number of small emitters falling within the scope of the EU ETS.

9.3. A combustion unit may be defined as equipment in which combustion is carried out for a particular purpose (for example a boiler, turbine, oven, furnace, kiln etc.). Where there are a number of burners within a unit, the capacity should be taken as the whole unit, not the individual capacity of each burner. Each individual combustion unit must therefore exceed 3MW thermal capacity.

9.4. In this context, 'installation' is taken to mean 'site'. This is because the scope of the installation depends on the scope of the regulated activity and, therefore, cannot be established until it is determined whether or not a regulated activity is being carried out.

#### **Example 1**

A university has 3 x 2MW boilers and 4 x 4MW generators. The total capacity of the site is 22MW. However, the 2MW boilers may be excluded from the calculation, reducing the eligible capacity to 16MW. Therefore the site is not covered by the EU ETS.

#### **Example 2**

A paint-shop oven has five burners, each less than 0.5MW, the off-gases from which pass through a 2MW gas-fired thermal oxidiser which exhausts through a heat exchanger and the burners. The total number of combustion units in this arrangement is two, and each unit is below 3MW. The oven and the thermal oxidiser will, therefore, be excluded from the calculation.

9.5. If the threshold of 20MW for combustion is exceeded, then all combustion units including those below 3MW, will be caught as part of the activity.

## **10. Should stand-by generation or boiler capacity on site be included in the calculation?**

10.1. Yes, the thresholds described in Annex I to the Directive refer to the capacity of an installation or, in the case of combustion installations, to the rated thermal input. Therefore, stand-by generation or boiler capacity should be included in the aggregation for a combustion installation calculation provided that it is technically feasible for the stand-by generators or boilers to be run at the same time as the main generators or boilers on site.

10.2. If all the capacity cannot physically be operated at the same time because of a robust limitation that cannot be easily removed, then the thermal input of the combustion installation should be calculated by adding together the rated thermal input of all generators/boilers on site that can be run at the same time.

10.3. If there are several combinations, the combination that results in the greatest rated thermal input will be used to determine whether the activity falls within the scope of the EU ETS. If an activity originally falls below the threshold but subsequently the physical restriction is changed and the operable thermal capacity is increased, then the operator will need to apply for a permit if the change brings the installation above 20MW rated thermal input.

## **11. Do any activity thresholds take precedence over other thresholds when deciding whether or not to include them?**

11.1. Some activities listed in Annex I of the Directive have the capacity threshold, expressed as 'production capacity', 'melting capacity' or just 'capacity'. The Directive states that, 'If a unit serves an activity for which the threshold is not expressed as total rated thermal input, the threshold of this activity shall take precedence for the decision about the inclusion' in the EU ETS.

11.2. These capacity thresholds, only take precedence and do not exclude the application of another threshold expressed as total rated thermal input.

11.3. In some cases, a unit can be assigned to two different categories of activity. For example a furnace used for production of glass can be considered as a combustion unit (the threshold for which is expressed as total rated thermal input), or as a unit dedicated to the 'manufacture of glass' (the threshold for which is expressed as daily tonnage). In these cases:

- i. If both thresholds are exceeded for the activity, then the threshold not expressed as total rated thermal input takes precedence over the other. The installation is included in the EU ETS as performing the activity corresponding to that threshold (for example, 'manufacture of glass' in the case mentioned above).
- ii. If only one of the thresholds is exceeded (for example the 20MW total rated thermal input threshold), the installation is included in the EU ETS as performing the related activity (for example, 'combustion of fuels').
- iii. If none of the thresholds are exceeded, then the installation is not included in the EU ETS.

#### **Example**

An installation producing ceramic products operates three units - two ceramics kilns and one Combined Heat and Power (CHP) plant. All three units serve the ceramics activity. The kilns exclusively serve the ceramics activity but the CHP plant also produces electricity for another activity on a different site.

If the ceramics installation exceeds 75 tonnes per day, the installation is included in the EU ETS. In the permit, the regulated activity 'Manufacture of ceramic products' must be listed. Regardless of the total rated thermal input of the CHP plant, the CHP unit must also be included as part of the ceramics activity as it serves the ceramics activity. In any event, it would be captured by the principle set out in section 4 of this guidance that, where a regulated activity is being carried out on a site, all units in which fuels are combusted (except units for the incineration of hazardous or municipal waste) are considered to fall within the scope of the activity itself.

If the ceramics installation does not exceed 75 tonnes per day, the assessment must continue to establish whether or not the activity 'combustion of fuels' is carried out at that installation. If it exceeds 20MW, this installation is included in the EU ETS. The activity listed in the permit is then 'combustion of fuels'.

11.4. There are other activities where the capacity threshold is expressed as 'where combustion units with a total rated thermal input exceeding 20MW are operated'. In these cases, process emissions as well as combustion emissions are captured. The following example relates to a situation where more than one of these activities is carried out on a site.

#### **Example**

A foundry produces cast iron products (using combustion units with a rated thermal input of 15MW) and from aluminium (again using combustion units with a rated thermal input of 15MW). Two activities are carried out – 'production or processing of ferrous metals' and 'production or processing of non-ferrous metals'. Each activity is below its individual capacity threshold. However, both activities have capacity thresholds expressed as total rated thermal input and the statement in the Directive that 'If a unit serves an activity for which the threshold is not expressed as total rated thermal input, the threshold of this activity shall take precedence' does not, therefore apply. As such, all the combustion units in the foundry must be added together to determine if the activity 'combustion of fuels' is being carried out. The total rated thermal input exceeds the threshold of 20MW and therefore the foundry is subject to EU ETS under 'combustion of fuels'.

## 12. What is the position if only biomass is used?

12.1. Installations that exclusively use biomass as the fuel in their combustion activities or any other process are specifically excluded from the EU ETS. This is the case even if fossil fuel is used for start-up and shut-down purposes.

12.2. In addition, units exclusively using biomass (including those that use fossil fuels only for start-up and shut-down purposes) are excluded from the aggregation rule (see section 9 above). This exclusion is only relevant when deciding whether or not the activity is covered by the EU ETS. If the threshold of 20MW for combustion is exceeded as a result of adding together the other units on the site, then the units that use only biomass are also included.

12.3. To determine whether or not a unit exclusively uses biomass, consideration should be given to start-up burners. Start-up burners are separate ignition/pilot burners used during the start-up of a combustion unit. These are necessary to avoid unstable combustion situations by ensuring re-ignition of the fuel and for controlled shut-down of the combustion unit. Usually this should be clearly stated by the manufacturer of that unit.

12.4. If no detailed information is available on the fossil fuel use, it can be assumed that they are only used for start-up if the share of energy input derived from fossil fuels of the units does not exceed 1% of the total annual energy input.

12.5. Further guidance on this subject can be found in the [Compliance Manual](#) and the Commission's Guidance Note 3, available on the [Commission's monitoring, reporting and verification webpage](#).

# Operator

## 13. Who is an 'operator'?

13.1. An 'operator' is the person who has control over the operation of an installation. The operator must have the authority and ability to make sure that it complies with its permit.

13.2. To assess whether an operator has that authority or ability, the following questions are relevant:

- i. Who manages site operations by controlling the day-to-day operation of plant, including the way in which and the rate at which it operates?
- ii. Who makes sure that the permit conditions will be effectively complied with?
- iii. Who hires and fires key staff?
- iv. Who makes investment decisions?; and
- v. Who makes sure that operations are shut down in an emergency?

13.3. Where more than one operator operates different parts of the regulated activities carried out at the installation, the permit application for each part must demonstrate that the appropriate person has been identified for that part and that the different operators will liaise, as necessary. The operators must be able to operate the installation together to comply with their permits.

13.4. Therefore, if a company runs a paper mill and owns a CHP unit (with a rated thermal input exceeding 20MW) that is operated by an energy utilities company, then it will be a question of fact whether the paper mill or the energy utilities company is the operator of the CHP unit.

13.5. In deciding who the operator is, consideration may be given to who is designated as the operator for other relevant environmental permits or agreements for that installation.



# Installations

## 14. What is an 'installation'?

14.1. An 'installation' is a stationary technical unit where one or more regulated activities are carried out and any other directly associated activities which have a technical connection with the activities carried out on that site and which could have an effect on emissions and pollution.

14.2. Where a regulated activity is carried out on a site, all units in which fuels are combusted on that site (except units for the incineration of hazardous or municipal waste) are considered to fall within the scope of the activity itself. Therefore, the stationary technical unit (STU) will comprise all units considered to fall within the scope of the activity.

14.3. Any directly associated activities (DAAs) must also be considered. DAAs must have a technical connection with the regulated activities carried out in the stationary technical unit and could have an effect on emissions and pollution.

14.4. A technical connection does not necessarily mean a fixed physical connection, such as pipework, wiring or conveyors, although where there is such a connection, this is a strong indication that a DAA is technically connected. 'Technical' means that there is a link between the intended process operation and materials flow. For instance, two activities are technically connected if they are operated as part of a single overall operation, even if the nature of the connection is by means other than a permanent physical link.

14.5. STUs and DAAs must be described in the permit. However, it is only emissions that arise from the regulated activities carried out at the installation (and therefore only from the STU) that must be monitored and reported.

## 15. What is 'stationary'?

15.1. As set out in section 14 above, the STU will comprise all units considered to fall within the scope of the activity but this only includes 'stationary' units. Every unit that has to be stationary during operation is considered part of the STU.

15.2. Emergency and backup electricity generators may be installed in movable containers but cannot be removed from the installation for safety reasons. These units are considered 'stationary' and part of the installation.

15.3. Mobile machinery which is mobile at the moment of performing its task (for example trucks and bulldozers) is excluded from the EU ETS.

# Operator requirements and powers

## 16. Summary

16.1. Sections 17 to 25 apply to operators of all installations except excluded installations. A summary of the duties and powers relevant to excluded installations is set out in sections 26 to 36.

16.2. Details of the duties and powers of an operator are set out in the Regulations or included as conditions in a permit.

16.3. The following is a summary of an operator's requirements and powers under the Regulations. The Compliance Manual contains guidance on applications for permits and the New Entrant Reserve, permit variations, permit transfers, the surrender and revocation of permits, compliance with permit conditions and the surrender of allowances.

## 17. Requirement for a permit

17.1. No person may carry out a regulated activity at an installation except to the extent authorised by a permit held by the operator of the installation. The operator of the installation must apply to the Regulator for a permit and this application must include a proposed monitoring plan in accordance with the Monitoring and Reporting Regulation.

17.2. The Regulator must grant the permit if it is 'duly made' and if it is satisfied that, at the time the permit is granted, the applicant will be capable of monitoring and reporting emissions from the installation in accordance with the relevant requirements of the permit. An application is 'duly made' when it contains all information required by the Regulations, it is submitted on the correct form and the correct fee has been received by the Regulator.

17.3. The permit must contain the conditions specified in the Regulations, which include the requirements to monitor and report emissions, surrender allowances and notify changes at the installation, as explained in sections 18 to 20 below. The Regulator may also include any further conditions that it considers necessary to 'give proper effect' to the Monitoring and Reporting Regulation. Giving 'proper effect' to this Regulation includes setting out a procedure around an obligation, making the obligations clear and making sure that the obligations are enforceable. Therefore, although the Monitoring and Reporting Regulation has 'direct effect', the permit will set out the obligations again, so that a breach of an obligation in the Regulation becomes a breach of a permit condition, for which there is a civil penalty under the Regulations.

## 18. Requirement to monitor the annual reportable emissions of the installation

18.1. Annual reportable emissions must be monitored in accordance with the Monitoring and Reporting Regulation and the monitoring plan (including any written procedures supplementing that plan) that forms part of the permit. 'Annual reportable emissions' means the reportable emissions arising during a calendar year. 'Reportable emissions', in relation to an installation, means the total specified emissions (expressed in tonnes of carbon dioxide equivalent) which arise from the regulated activities carried out at the installation.



## 19. Requirement to submit a verified report of emissions

19.1. A verified report of annual reportable emissions must be submitted to the regulator by 31 March each year, relating to emissions arising during the previous calendar year. The verified report must be in accordance with the Monitoring and Reporting Regulation.

19.2. All reports must be verified in accordance with the Verification Regulation.

19.3. If an emission factor of zero is reported in the verified report in respect of the use of bioliquids, the operator must satisfy the Regulator that the sustainability criteria in Article 17(2) of the Renewable Energy Directive (RED) have been fulfilled in accordance with Article 18(1) of that Directive. This provision appears expressly in the Regulations due to a gap in the Monitoring and Reporting Regulation. That Regulation requires aircraft operators that use biofuels to fulfil the sustainability criteria in the RED but the position in relation to installations is less clear. Therefore, the specific provision in the Regulations in relation to the use of bioliquids by operators ensures that the RED is correctly implemented in the UK.

19.4. The Commission has published a number of guidance documents relating to monitoring, reporting, verification and the accreditation of verifiers. The documents are not legally binding but have been prepared to help Member States implement the Regulations in a harmonised way. The documents can be found on the [Commission's monitoring, reporting and verification webpage](#).

## 20. Requirement to surrender allowances

20.1. An operator must surrender allowances by 30 April each year equal to the annual reportable emissions of the installation made in the previous year. The requirement applies to the actual emissions of an installation, not the emissions as verified by a verifier. It is, therefore, essential to make sure that emissions are reported correctly and that allowances are surrendered to cover these emissions on time.

20.2. Allowances must be surrendered via the operator's Registry account.

20.3. Where not enough allowances are surrendered in any year, the deficit is deemed to be added to the total that has to be surrendered in the following year (or, where this is due to an error in the verified emissions report, the year in which the error is discovered).

20.4. In discharging its obligation to surrender allowances, operators may use certain Kyoto Units, subject to limits on the type and quantity of the units. In order to use eligible Kyoto units for compliance, these may be exchanged for allowances in the Union Registry.

## 21. Requirements to notify changes affecting the allocation of allowances

21.1. An operator must notify the Regulator when various changes occur at an installation, so that the allocation of allowances to that installation may be adjusted in accordance with the Free Allocation Decision. However, these requirements do not apply to installations that are not eligible for a free allocation.

21.2. The relevant concepts are explained further in section 41 below but the following summarises the notification requirements.

- i. Significant capacity reduction – an operator must notify the Regulator of the reduced capacity and installed capacity of the sub-installation (after taking into account the capacity reduction) by the later of the end of the period of seven months following the date of the change of capacity or 31 December in the year in which the change occurred (the relevant

date'). For example, if the change occurred on 1 October 2016, the notification must be made by 30 April 2017. The capacities must be verified by a verifier. 'Verified' is defined for the purposes of this obligation as verified as satisfactory in accordance with Article 8 of the Free Allocation Decision (except that the reference to Decision 2007/589/EC in that Decision is to be read as a reference to the Verification Regulation).

- ii. Partial cessation – the operator must notify the Regulator of a qualifying reduction (and subsequent increase) in activity level of a sub-installation by 31 December in the year in which the reduction occurred or, if later, within one month after the date on which it occurred.

## 22. Requirement to notify other changes

22.1. The Directive, the Free Allocation Decision and the Monitoring and Reporting Regulation all include requirements for an operator to notify various changes to their installation. The permits must therefore also contain a condition requiring operators to notify the Regulator of any planned or effective changes to the capacity, activity level and operation of an installation by 31 December of the year in which the change occurred, unless these requirements are already covered by other permit conditions.

## 23. Requirement to vary a permit

23.1. In order to 'give proper effect' to the Monitoring and Reporting Regulation, the permit must contain conditions to make sure that operators apply to vary their permits whenever there is a change that needs approval (changes not requiring approval need only be notified to the Regulator in accordance with the permit conditions).

23.2. The Regulator has the power to vary permits at any time and in particular, in the following circumstances:

- i. in response to a variation application by the operator
- ii. where an operator has failed to apply for a variation contrary to its permit conditions
- iii. to bring the permit in line with the Phase III requirements
- iv. to meet the requirements for excluded installations
- v. in response to an improvement report submitted by the operator (and in particular, where the Regulator does not agree with the proposals for improvement in that report)
- vi. in response to a notification of change

23.3. In addition, the Regulator may vary a permit following its review of that permit. Reviews must happen every five years but may occur sooner. A permit may need to be varied for a number of reasons. This may include, for example, where the Regulator discovers that the requirements on operators are not working effectively, where the Monitoring and Reporting Regulation or Free Allocation Decision have been amended or in response to Commission or Secretary of State guidance.

## 24. Power to transfer a permit

24.1. The holder of a permit (the current operator) and another person (the new operator) may jointly apply to the Regulator to transfer a permit. This may be a full or partial transfer of the permit for that installation.

24.2. An application for a transfer may not be made in respect of an installation which has ceased carrying out regulated activities.

24.3. A partial transfer means that the transfer relates to only part of the installation or to only one (or more) of a number of installations covered by the permit. The units transferring to the new operator are referred to as the 'transferred units'. In any case involving the split of the original installation, the current operator and the new operator must submit with the application:

- i. the proposed number of allowances to be transferred to the transferred units. The split of allowances must reflect the historical activity levels of the transferred units, calculated in accordance with Article 9 of the Free Allocation Decision; and
- ii. the initial installed capacity of all sub-installations that make up the transferred units.

24.4. The Regulator must approve the data before granting the application. This is because the data must set an accurate baseline on which to base future assessments of partial cessations and significant capacity reductions in relation to the original installation and transferred units.

24.5. When the number of allowances to be allocated to the transferred units has been approved, the Regulator must notify the registry administrator, who will make the corresponding change to the allocation table in the Registry. The change in the allocation table will only affect allowances that have not yet been issued to Operator Holding Accounts. The two operators must decide whether or not to make any commercial arrangement in respect of the allowances already issued. For an explanation of allocation tables, please see section 39 below.

## 25. Requirement to surrender permit

### Timescales

25.1. If an installation has ceased operation, the operator must apply to surrender its permit in the time scales set out below (unless a longer period is agreed with the Regulator):

- i. in the case of a cessation of operation which falls within paragraph 25.4 (i) and (ii) below, the last day of the one month period beginning with the date on which the installation ceased operation; or
- ii. in the case of a cessation of operation which falls within paragraph 25.4 (iii) below, the last day of the one month period following the end of the relevant period (either six or eighteen months as explained below).

25.2. If the operator does not comply with this obligation, the Regulator must revoke the permit.

### Excluded installations and installations not eligible for an allocation

25.3. Excluded installations or installations that are not entitled to an allocation of free allowances only have to surrender a permit if they cease operation for the reasons described in paragraph 25.4 (i) and (ii) below. If they temporarily suspend operation, they may apply to surrender their permit but are not obliged to. This recognises the fact that operators of installations that do not receive free allowances need not concern themselves with the temporary suspension provisions set out in paragraph 25.4 (iii) below because these provisions of the Free Allocation Decision do not apply to their installations.

## Definition of ceases operation

25.4. An installation 'ceases operation' where:

- i. the operation of regulated activities at the installation is technically impossible;
- ii. the installation was, but is no longer, carrying out regulated activities and it is technically impossible for it to resume doing so; or
- iii. subject to the provisions explained in paragraph 25.7 below, the operator has suspended the carrying out of regulated activities at the installation and the carrying out of regulated activities has not recommenced within the period of 6 months following the date of the suspension.

Where an installation 'ceases operation' by virtue of meeting the condition in paragraph (iii) above, the date of permanent cessation is deemed to be the date on which the operator suspends the carrying out of the regulated activities at the installation.

## Permanent cessation versus temporary suspension

25.5. The definition in paragraph 25.4 above covers all circumstances where an operator permanently ceases its regulated activities and also temporarily suspends regulated activities for more than six months (unless that period is extended to eighteen months – see paragraph 25.7). In all these circumstances, the permit must be surrendered.

25.6. If an operator temporarily suspends regulated activities at its installation and that suspension does not last longer than six months (subject to below), it will not be required to surrender its permit (and will not lose its allocation of allowances – see section 41 below).

25.7. If the operator makes an application under the Regulations, the Regulator may extend the period of six months in paragraph 25.4 (iii) above to a period not exceeding eighteen months if the Regulator is satisfied that the carrying out of regulated activities cannot be recommenced within six months of the date of suspension 'due to exceptional and unforeseeable circumstances that could not have been avoided even if all due care had been exercised, and were beyond the control of the operator'.

25.8. The period may only be extended to eighteen months where the circumstances are truly exceptional and unforeseeable and outside the operator's control. This would not include a temporary suspension due to market conditions or following a change of ownership of an installation, as such situations are generally not exceptional or unforeseeable.

25.9. The period of six months or an agreed extension to eighteen months is described in this section as the 'relevant period'.

25.10. Article 22 of the Free Allocation Decision gives examples of exceptional and unforeseeable circumstances. These are natural disasters, war, threats of war, terrorist acts, revolution riot, sabotage or acts of vandalism.

25.11. Where a suspension occurs, the Regulator is likely to withhold the allocation of allowances whilst it investigates whether or not the suspension is a permanent cessation under the Regulations (see section 41 below). This investigation will generally last until the regulated activities have re-commenced as the Regulator will only know for certain at this point whether the suspension is to be treated as permanent. The re-commencement of activities within the relevant period will demonstrate that the suspension is not to be treated as permanent. If, during this time, an operator wishes its suspension to be treated as temporary only, it must apply to the Regulator within one month of the date of suspension and provide evidence that the carrying out of regulated activities will recommence within the relevant period. If the Regulator grants the application, allowances may be issued to the installation even though the relevant period has not expired. However, if regulated activities recommence after the relevant period has expired, the operator will

have to return the allowances to which it is not entitled (see section 42 below for further details). The Regulator has discretion over whether or not to grant the application and should not do so where there is significant uncertainty around the date that regulated activities will recommence.

## Reserve or standby

25.12. The provisions of paragraph 25.4 (iii) above also do not apply to an installation if it is kept in reserve or standby or is operated on a seasonal basis, provided that (a) the operator holds a greenhouse gas emissions permit and an environmental permit (relating to the installation); (b) it is technically possible to commence the carrying out of regulated activities without making physical changes to the installation; and (c) regular maintenance of the installation is carried out.

25.13. An installation is considered to be kept in reserve or standby when its normal operating state or pattern is to be kept in reserve or standby. There must be a genuine operational need for the installation to operate in this way.

## Notice of surrender

25.14. As part of the notice of surrender issued by the Regulator following a surrender application, the operator must submit a report of its reportable emissions (the surrender report) from the beginning of the calendar year in which the notice takes effect until the date on which the notice takes effect. For operators in the EU ETS and operators of excluded installations that opt to use a verifier, the report must be verified. Otherwise an excluded installation may self-verify the report (see section 31 below). In relation to operators in the EU ETS, the operator must also surrender allowances to cover the emissions reported in the surrender report, together with any outstanding allowances that do not already have to be surrendered under the permit conditions.

# Excluded installations

## 26. What is an excluded installation?

26.1. An excluded installation is an installation participating in the UK's 'Small Emitter and Hospital Opt-out Scheme' whose application to opt out of the EU ETS has been approved by the Commission.

26.2. The main aim of the scheme is to reduce the administrative burden on small emitters and hospitals. This acknowledges that the administrative costs faced by smaller emitters under the EU ETS are disproportionately higher per tonne of carbon dioxide compared with the costs for installations with higher emissions.

## 27. Key obligations

27.1. Excluded installations are subject to the Regulations just as other installations are, with the following key differences. An excluded installation:

- i. is not entitled to apply for a partial transfer of its permit;
- ii. is not required to open an account in the Registry (and any installation with an existing account will have its account set to excluded status) or enter emissions data in the Registry;

- iii. will not receive a free allocation of allowances and, therefore, does not have to notify any changes at the installation that, for other installations, may affect the allocation;
- iv. does not have to surrender allowances to cover its emissions; and
- v. is subject to simplified monitoring, reporting and verification

27.2. If an excluded installation already holds an Operator Holding Account in the Registry, the registry administrator has to set the account to excluded status for the duration of the exclusion.

## 28. Requirement for a permit

28.1. The Regulations state that 'no person may carry out a regulated activity at an installation except to the extent authorised by a permit held by the operator of the installation'.

28.2. If an operator of an excluded installation already holds a greenhouse gas emissions permit, the Regulator must vary the permit to an excluded installation emissions permit. If the operator is new to the scheme in Phase III, it must apply to the Regulator for an excluded installation emissions permit. A monitoring plan must form part of the permit application.

28.3. The Regulator must grant the permit if it is 'duly made' and if it satisfied that, at the time the permit is granted, the applicant will be capable of monitoring and reporting emissions from the installation in accordance with the relevant conditions of the permit. An application is 'duly made' when it contains all information required by the Regulations, it is submitted on the correct form and the correct fee has been received by the Regulator.

28.4. The permit must contain the emissions target for the installation and the conditions specified in the Regulations, which include the requirements to monitor and report emissions, as explained in sections 30 and 31 below. The Regulator must also include any further conditions that it considers necessary to make sure that the operator complies with the relevant provisions of the Monitoring and Reporting Regulation. The Monitoring and Reporting Regulation does not directly apply to excluded installations but, as part of the scheme approved by the Commission, excluded installations must comply with certain provisions of the Regulation. The Secretary of State and the devolved administrations have given a Direction to the Regulators to set out the 'relevant provisions' of the Monitoring and Reporting Regulation that apply to excluded installations. These requirements must be reflected in the permit.

## 29. Emissions targets

29.1. Permits must contain emissions targets for each scheme year before 2021. The Secretary of State and devolved administrations have given a Direction to the Regulators about calculating these targets. Operators must comply with these targets.

## 30. Requirement to monitor the annual reportable emissions of the installation

30.1. Annual reportable emissions must be monitored in accordance with the relevant provisions of the Monitoring and Reporting Regulation and the monitoring plan (including the written procedures supplementing that plan) forming part of the permit. In the same way as for installations in the EU ETS, 'annual reportable emissions' means the reportable emissions arising during a calendar year. 'Reportable emissions', in relation to an installation, means the total specified emissions (expressed in tonnes of carbon dioxide equivalent) which arise from the regulated activities carried out at the installation.



## 31. Requirement to submit a verified or self-verified report of emissions

31.1. A report of annual reportable emissions must be submitted to the regulator by 31 March each year, relating to emissions arising during the previous calendar year. The report must be in accordance with the relevant provisions of the Monitoring and Reporting Regulation.

31.2. In addition, the report must either be verified in accordance with the Verification Regulation or accompanied by a notice, declaring that (a) in preparing the report, the operator has complied with the relevant provisions of the Monitoring and Reporting Regulation, (b) the operator has complied with the monitoring plan for the installation and (c) the report is free from material misstatement. So, the operator can choose whether or not to appoint a verifier and be subject to all the requirements of the Verification Regulation or to self-verify the report.

31.3. If an emission factor of zero is reported in the report in respect of the use of bioliquids, the operator must satisfy the regulator that the sustainability criteria in Article 17(2) of the Renewable Energy Directive have been fulfilled in accordance with Article 18(1) of that Directive. This provision appears expressly in the Regulations due to a gap in the Monitoring and Reporting Regulation. That Regulation requires aircraft operators that use biofuels to fulfil the sustainability criteria in the RED but the position in relation to installations is less clear. Therefore, the specific provision in the Regulations in relation to the use of bioliquids by operators ensures that the RED is correctly implemented in the UK.

31.4. The Commission has published a number of guidance documents relating to monitoring and reporting. The documents are not legally binding but have been produced to help Member States implement the Regulations in a harmonised way. [The documents can be found on the Commission's monitoring, reporting and verification webpage.](#)

## 32. Notification of end of excluded status

32.1. Where an installation has been excluded on the basis that it is a 'small emitter' (and therefore 'does not primarily provide services to a hospital'), the operator must notify the Regulator if the annual reportable emissions from the installation in any year exceed the maximum amount, by 31 March in the following year.

32.2. 'Maximum amount' means reportable emissions of 24,999 tonnes of carbon dioxide equivalent in any year.

32.3. Where the installation has been excluded on the basis that it is a 'hospital' (and therefore 'primarily provides services to a hospital'), the operator must notify the Regulator if the installation ceases to primarily provide services to a hospital in any year, by 31 March in the following year.

32.4. The definition of 'hospital' is contained in Schedule 5, paragraph 1 of the Regulations. An installation primarily provides services to a hospital in a particular year (a) where no more than 15% of heat produced by the installation is exported to an establishment other than a hospital in that year; or (b) if the installation is not owned by a hospital, not less than 85% of heat produced by the installation is supplied to one or more hospitals in that year.

## 33. Other requirements

33.1. Sections 23 (variations) and 24 (transfers) apply to excluded installations, apart from the provisions relating to partial transfer.

33.2. Section 25 (surrender of permits) sets out the provisions that apply to excluded installations.

## 34. Application for increase in emissions target

34.1. Where a capacity increase has occurred at an excluded installation after 30 June 2011, the operator may apply to the Regulator for an increase in its emissions target.

34.2. 'Capacity increase' means an increase in a sub-installation's installed capacity where one or more identifiable physical changes relating to its technical configuration and functioning other than a replacement of an existing production line takes place.

34.3. 'Installed capacity' means the sub-installation's installed capacity on 30 June 2011 or, in the case of an installation which has had a capacity increase since 30 June 2011, the installed capacity of the sub-installation following the last capacity increase.

34.4. 'Sub-installation' has the meaning given in Article 3(b), (c) and (d) and Article 6 of the Free Allocation Decision.

34.5. An application must be made by 31 December in the year during which the increase occurred or within three months of the date of the capacity increase, whichever is later. The Compliance Manual provides further guidance about applications. The determination must take into account the factors contained in a Direction provided by the Secretary of State and devolved administrations to the Regulators. Broadly, these factors are:

- i. the maximum output capacity of net increase in capacity;
- ii. the benchmark relevant to the extension of capacity;
- iii. the capacity utilisation factor; and
- iv. the annual reduction factor.

These Directions are published on the [Government website](#).

34.6. The Regulator must not reduce the emissions target of an excluded installation following a decrease in capacity at the installation.

## 35. Banking an overachieved emissions target

35.1. 'Bankable amount' means the difference between the emissions target for a particular year and the amount of reportable emissions stated in the emissions report for that year, or as determined by the Regulator.

35.2. However, if activities at an excluded installation have been suspended, in circumstances where the cessation would be deemed to have permanently ceased operation as set out in paragraph 25.4 (i) to (iii) above, the bankable amount is zero in relation to any year in which the period of cessation (or any part of that period) falls. In order to determine whether or not a cessation would be treated as permanent, an operator of an excluded installation may make an application for the cessation to be treated as temporary, as explained in paragraph 25.11 above.

35.3. Where, in any year, the bankable amount is greater than zero, the Regulator may increase the emissions target for the installation for the following year by the bankable amount and must vary the permit to reflect this change. The Regulator should carefully consider whether or not to increase the target where there is doubt over the accuracy of the emissions report on which the bankable amount is based.

35.4. Except in relation to excluded installations that primarily provide services to a hospital, the emissions target for any year must not exceed 24,999 tonnes of carbon dioxide equivalent.



## 36. Termination provisions

36.1. If an operator of an excluded installation no longer meets the criteria for exclusion in one year, it must notify the Regulator of this fact by 31 March in the following year.

36.2. The Regulator must then issue a 'change of status notice', notifying the operator that, from the beginning of the following year, it will no longer be treated as an excluded installation and must comply with the provisions of a greenhouse gas emissions permit. The permit must then be varied at the appropriate time. So, if an operator no longer meets the criteria in 2016, it must notify the Regulator by 31 March 2017. The Regulator will then notify the operator that, from 1 January 2018, it will no longer be treated as an excluded installation.

36.3. Where the Regulator is satisfied that the operator of an excluded installation has committed a significantly serious breach of the conditions of its permit or has not paid any additional penalty imposed for failure to pay the original penalty for exceeding its emissions target within one month (of imposition of the additional penalty), the Regulator has two options. It may either revoke the permit or notify the operator that, from the beginning of the following year, the installation will no longer be treated as an excluded installation and must comply with the provisions of a greenhouse gas emissions permit.

36.4. Where an excluded installation returns to the EU ETS and holds an Operator Holding Account in the Registry with excluded status, the account must be set to open status from the date of re-entry into the EU ETS.

36.5. Where an operator has been issued with a 'change of status notice', Schedule 6A to the Regulations sets out the notification requirements and procedures, so that the correct number of allowances may be allocated to the operator when it re-enters the EU ETS.

# Allocation of allowances

## 37. National Implementation Measures

37.1. For Phase III, Member States must develop their National Implementation Measures (NIMs) and submit these to the Commission for approval. The NIMs document sets out the levels of free allocation to installations in Phase III, in accordance with Article 11 of the Directive.

37.2. The allowances have been calculated on the basis of EU-harmonised rules (the Free Allocation Decision), using data provided by operators in 2010/11. The UK's NIMs document was submitted to the Commission and it was approved in December 2013.

37.3. The provisions relating to free allocation do not apply to excluded installations or to installations that are not entitled to receive such an allocation.

## 38. Commission guidance

38.1. The Commission has produced guidance documents relating to the free allocation of allowances (GD1 to GD9). The following guidance in sections 39 to 41 does not attempt to repeat that guidance but instead provides an overview of the provisions in the Regulations that deal with free allocation and supplements and clarifies the Commission guidance (and in particular GD7 relating to new entrants and closures), where necessary. Where the Commission guidance and the provisions in the Regulations conflict, particularly regarding the timing of notifications, the Regulations take precedence.

## 39. Issue of allowances

39.1. An electronic version of the NIMs, known as the national allocation table, was uploaded into the Registry and records the number of allowances allocated to an installation for each year of the phase.

39.2. The allowances to which an installation is entitled will be issued to each corresponding open or blocked Operator Holding Account in the Registry during February each year. Allowances will not be issued to accounts held by excluded installations.

## 40. New entrants

40.1. The Free Allocation Decision states that 'new entrants' may apply to receive free allowances, according to various criteria. [Commission Guidance document GD7](#) covers new entrants.

### Full new entrants

40.2. An operator of an installation may apply to the New Entrant Reserve where (a) the permit was granted on or after 30 June 2011, or (b) the permit was granted before 30 June 2011, but the start of normal operation was on or after that date.

40.3. An operator is also eligible to apply where it re-starts regulated activities after a period of closure; at which time it will also be required to apply for a new permit.

40.4. The definition of 'start of normal operation' is contained in Article 3(n) of the Free Allocation Decision and is explained in the Commission guidance GD7.

40.5. An application cannot be made where the start of normal operation was before 30 June 2011 or the installation has already been included in the NIMs.

40.6. Applications must be made within one year of the start of normal operation or, if that period expired before 1 February 2013, by that date.

40.7. The Compliance Manual provides further information on how to submit an application. All data submitted with the application must be verified as satisfactory in accordance with Article 8 of the Free Allocation Decision (except that reference to the Monitoring and Reporting Decision in Article 8(3) is to be read as a reference to the Verification Regulation).

40.8. Paragraphs 40.14 to 40.17 below explain the process if the Regulator approves the calculations submitted as part of the application.

### Significant capacity extensions

40.9. An operator of an installation may apply to the New Entrant Reserve if the installation had a significant capacity extension after 30 June 2011, or on or before that date, but where the added capacity was capable of determination only after 30 September 2011.

40.10. An application must be made within one year of the start of changed operation (or the date of determination of the added capacity) or, if that period expired before 1 February 2013, by that date.

40.11. The definitions of 'significant capacity extension' and 'start of changed operation' are contained in Articles 3(i) and 3(o) respectively of the Free Allocation Decision and are explained in the Commission guidance GD7.

40.12. The Compliance Manual provides further information on how to submit an application. All data submitted with the application must be verified as satisfactory in accordance with Article 8 of the Free Allocation Decision (except that reference to the Monitoring and Reporting Decision in Article 8(3) is to be read as a reference to the Verification Regulation).

40.13. Paragraphs 40.14 to 40.17 below explain the process if the Regulator approves the calculations submitted as part of the application.

## Procedure for amending the allocation

40.14. If the Regulator approves the calculations submitted with the new entrant application, it must determine the relevant activity levels of the installation (or sub-installations), the preliminary annual number of allowances to be allocated for each sub-installation and the preliminary total annual amount of allowances to be allocated to the installation. The Regulator must make these calculations in accordance with the relevant provisions of the Free Allocation Decision. Commission guidance document GD7 explains the process.

40.15. Within 28 days of determining the application, the Regulator must notify the relevant devolved administration, the Secretary of State and the Commission of the preliminary total annual amount of allowances. According to the Free Allocation Decision, the Commission will allocate allowances on a first come first served basis. The Commission may reject this preliminary number and, if it does so, the Regulator must tell the operator why the figure has been rejected.

40.16. Following approval by the Commission, the Regulator must calculate the final total annual amount of allowances allocated to the installation concerned in accordance with the Regulations. The Regulator must then notify the operator, the relevant devolved administration and the Secretary of State of the final amount. Notifying the Secretary of State will ensure that the paper version of the NIMs is updated accordingly.

40.17. To comply with Article 50(2) of the Registries Regulation, the Regulator must also notify the registry administrator, who must then notify the Commission of the final amount, so that the Commission can instruct the central administrator to make the necessary changes to the national allocation table in the Registry.

## 41. Reduction of allocations

41.1. The Free Allocation Decision sets out a number of situations where the allocation of allowances to installations must be reduced. Again, Commission Guidance document GD7 covers capacity changes and cessation of activities.

### Significant capacity reduction

41.2. The definition of 'significant capacity reduction' is contained in Article 3(j) of the Free Allocation Decision and is explained in the Commission guidance GD7.

41.3. If an installation had a significant capacity reduction (a) after 30 June 2011 or (b) on or before that date, but the extent of the reduction could not be determined before 30 September 2011, the operator must notify the Regulator. This must be done by the later of (a) the end of the period of 7 months following the change of capacity; (b) 31 December in the year in which that change occurred or (c) 1 February 2013.

41.4. The notification must include the installed and 'reduced capacity' of the installation and these data must be verified as satisfactory in accordance with Article 8 of the Free Allocation Decision (except that reference to the Monitoring and Reporting Decision in Article 8(3) is to be read as a

reference to the Verification Regulation). 'Reduced capacity' is defined in Article 3(m) of the Free Allocation Decision and is explained in the Commission guidance.

41.5. The deadline for notification acknowledges the fact that the operator cannot determine the reduced capacity until six months after the start of changed operation. A further month is then given for a verifier to verify the data.

41.6. The Regulator must then calculate the activity levels for the reduced capacity of the sub-installation to which the reduction relates, determine the preliminary annual number of allowances allocated to the sub-installation related to the reduced capacity and determine the preliminary total annual allocation to the installation. The Regulator must make these calculations in accordance with the relevant provisions of the Free Allocation Decision. Commission guidance document GD7 explains the process.

41.7. The reduction in allocation will apply from the year after that in which the significant capacity reduction took place.

41.8. Allowances for each year will normally be issued to Operator Holding Accounts during February each year. In order to prevent, as far as possible, any allowances being issued to an operator's account to which that operator is not entitled, the Regulator must instruct the registry administrator to withhold the allowances in the following circumstances:

- i. the Regulator is investigating whether or not there has been a significant capacity reduction in relation to the installation
- ii. the notification received from the operator is insufficient or not in accordance with the notification requirements
- iii. the operator has submitted the notification but has not yet submitted the verification statement (in the circumstances explained above where the documents may be submitted separately)
- iv. the Regulator is in the process of undertaking the steps necessary to determine the preliminary total annual allocation of the installation
- v. a notification of the preliminary total annual allocation has been submitted to the Commission but not yet approved
- vi. the Regulator has requested the registry administrator to trigger the process of making the relevant changes to the national allocation table in the Registry but the change has not yet been made

41.9. Where the Regulator decides to instruct the registry administrator to withhold allowances, it must notify the operator that it has done this.

41.10. The allowances may be withheld until the steps set out above have been completed or are no longer relevant. Where an operator is not entitled to receive the allowances following discharge of the steps set out above, the allowances will in effect be permanently withheld, since the allocation table in the Registry will have been amended to remove those allowances (see paragraphs 41.32 to 41.35 below). Where it transpires that an operator is entitled to receive the allowances (or a proportion of them), the Regulator must notify the operator and advise the registry administrator that they may issue the allowances.

41.11. Where it was not possible to withhold allowances, the timescales around notification mean that allowances to which an operator is not entitled may be issued to its Operator Holding Account in the Registry before it notifies the Regulator of a significant capacity reduction. In this case, allowances must be returned, as explained in section 42 below.

## Ceasing regulated activities

41.12. An installation permanently ceases the carrying out of regulated activities when any of the conditions set out in paragraph 25.4 above are met and, also, where the permit or an environmental permit relating to the installation has been surrendered or revoked or otherwise ceased to have effect.

41.13. The installation is not entitled to an allocation of allowances for any year following the year of cessation.

41.14. If an installation is deemed to have only temporarily suspended activities as explained in section 25 above, it will retain its allowances. Section 25 above also contains details about the application for a suspension to be treated as temporary.

41.15. Allowances for each year will normally be issued to Operator Holding Accounts during February each year. In order to prevent, as far as possible, any allowances being issued to an operator's Registry account to which that operator is not entitled, the Regulator must request the registry administrator to withhold all of the allowances in the following circumstances:

- i. the Regulator is investigating whether or not the installation has permanently ceased the carrying out of regulated activities
- ii. an application for the suspension to be treated as temporary has been made but not yet determined (or has been refused and the 'relevant period' has not yet expired)
- iii. an application to surrender a permit is being determined
- iv. a surrender notice or revocation notice has been given but has not yet taken effect;
- v. an appeal has been made against a surrender notice or revocation notice
- vi. the Regulator has requested the registry administrator to trigger the process of making the relevant changes to the national allocation table in the Registry but the change has not yet been made

41.16. Where the Regulator decides to instruct the registry administrator to withhold allowances, it must notify the operator that it has done this.

41.17. The allowances may be withheld until the steps set out above are completed or no longer relevant. Where an operator is not entitled to receive the allowances following discharge of the steps set out above, the allowances will in effect be permanently withheld, since the allocation table in the Registry will have been amended to remove those allowances (see paragraphs 41.32 to 41.35 below). Where it transpires that an operator is entitled to receive the allowances, the Regulator must notify the operator and advise the registry administrator that they may issue the allowances.

41.18. Where allowances to which an operator is not entitled are issued to the Operator Holding Account in the Registry because the operator did not surrender its permit on time, the allowances must be surrendered under the surrender notice (see section 25 above). If any allowances to which an operator is not entitled have been issued in error, these allowances must be returned, as explained in section 42 below.

## Partial cessation of regulated activities

41.19. An installation partially ceases regulated activities where one sub-installation of the installation that contributes to (a) at least 30% of the final annual amount of allowances allocated to the installation or (b) the allocation of more than 50,000 allowances, reduces its activity level in a given year by at least 50% compared to the activity level originally used for calculating the sub-installation's allocation ('initial activity level'). Commission guidance document GD7 clarifies the definitions of 'partial cessation' and 'activity level'.

41.20. If an installation has partially ceased activities, the operator must notify the Regulator. This must be done by (a) by 31 December in the year in which the reduction occurred, or (b) within one month after the date on which it occurred, if later.

41.21. Where there was a relevant reduction in activity level during 2012, the operator must notify the Regulator by 31 January 2013.

41.22. The deadline for notification acknowledges the fact that, if a partial cessation occurs during December in any year, it would be unfair to expect the operator to notify the Regulator by the end of that month. It is reasonable to give all operators at least one month in which to submit the information to the Regulator.

41.23. The Regulator must then adjust the allocation, determine the preliminary annual number of allowances allocated to each sub-installation and determine the preliminary total annual amount of allowances to be allocated. The Regulator must make these calculations in accordance with the relevant provisions of the Regulations. Commission guidance document GD7 explains the process.

41.24. Where the activity level of a sub-installation is reduced by:

- i. 50% or more but less than 75% compared to the initial activity level, the operator is entitled to receive a quantity of allowances representing half of the initially allocated allowances in respect of that sub-installation
- ii. 75% or more but less than 90% compared to the initial activity level, the operator is entitled to receive a quantity of allowances representing 25% of the initially allocated allowances in respect of that sub-installation
- iii. 90% or more, the operator is not entitled to any allowances in respect of that sub-installation

41.25. The reduction in allocation will apply from the year after that in which the partial cessation took place.

41.26. Following a partial cessation, if an installation subsequently increases its activity levels again, to certain percentages set out in the Regulations, the operator must notify the Regulator. The Regulator must then carry out the calculations as set out in paragraphs 41.23 above. The operator is entitled to receive a corresponding increase in its allocation from the year after which the change took place.

41.27. Where, following a reduction, the activity level of a sub-installation subsequently reaches more than:

- i. 50% compared to the initial activity level, the operator is entitled to receive a quantity of allowances equal to the full quantity initially allocated in respect of that sub-installation
- ii. 25% compared to the initial activity level, the operator is entitled to receive a quantity of allowances equal to half of the allowances initially allocated in respect of that sub-installation

41.28. Allowances for each year will normally be issued to Operator Holding Accounts during February each year. In order to prevent, as far as possible, any allowances being issued to an operator's Registry account to which that operator is not entitled, the Regulator must instruct the registry administrator to withhold the allowances in the following circumstances:

- i. the Regulator is investigating whether or not the installation has partially ceased regulated activities
- ii. the notification received from the operator is insufficient or not in accordance with the notification requirements
- iii. the Regulator is in the process of undertaking the steps necessary to determine the preliminary total annual amount of allowances

- iv. a notification of the preliminary allocation has been submitted to the Commission but not yet approved
- v. the Regulator has requested the registry administrator to trigger the process of making the relevant changes to the national allocation table in the Registry but the change has not yet been made

41.29. The allowances may be withheld until the steps set out above have been completed or are no longer relevant. Where an operator is not entitled to receive the allowances following discharge of the steps set out above, the allowances will in effect be permanently withheld because the allocation table in the Registry will have been amended to remove those allowances for the relevant year (see paragraphs 41.32 to 41.35 below). Where it transpires that an operator is entitled to receive the allowances (or a proportion of them), the Regulator must notify the operator and advise the registry administrator that they may issue the allowances.

41.30. Where it has not been possible to withhold allowances, allowances to which an installation is not entitled may be issued to the Operator Holding Account in the Registry before the operator notifies the Regulator of a partial cessation. In this case, allowances must be returned, as explained in section 42 below.

## Application of rules following a partial transfer of the permit

41.31. Following a partial transfer (as set out in section 24 above):

- i. operators must calculate (and Regulators must approve) the number of allowances to be transferred to the transferred units. When assessing whether or not a partial cessation has taken place following a partial transfer, the approved amount of allowances transferred to the transferred units is treated as the 'final annual amount of allowances allocated to the installation' and the activity level used to calculate the amount of allowances to be transferred is treated as the 'initial activity level'
- ii. operators must provide the initial installed capacity of all sub-installations making up the transferred units. This is to help determine subsequent significant capacity reductions at the transferred units following the partial transfer
- iii. when considering any subsequent application of the Free Allocation Decision rules, the terms 'installation' and 'sub-installation' must be taken to mean the installations as existing after the partial transfer

## Procedure for amending the allocation

41.32. Where an installation has ceased operation, the Regulator must notify the registry administrator to amend the allocation to that installation in the national allocation table to zero from the year after that in which the cessation took place. The registry administrator has the power to do this under Article 50(1) of the Registries Regulation.

41.33. In relation to significant capacity reductions or partial cessations, the Regulator must, within 28 days of making the necessary calculations, notify the operator, the relevant devolved administration, the Secretary of State and the Commission of the preliminary total annual amount of allowances for that installation. According to the Free Allocation Decision, the Commission may reject this preliminary number and, if it does, the regulator must tell the operator why the figure has been rejected.

41.34. Following approval by the Commission, the Regulator must calculate the final annual amount of allowances allocated to the installation concerned in accordance with the Regulations. The Regulator must then notify the operator, the relevant devolved administration and the Secretary of State of the final amount. Notifying the Secretary of State will ensure that the paper copy of the NIMs is updated accordingly.



41.35. In order to comply with Article 50(2) of the Registries Regulation, the Regulator must also notify the registry administrator, who must then notify the Commission of the final amount, so that the Commission may instruct the central administrator to make the necessary changes to the national allocation table. In relation to a significant capacity reduction, the central administrator should reduce the allocation for that installation from the year after the year in which the capacity reduction took place. For partial cessations, we expect the central administrator to only reduce the allocation for the year following the year in which the partial cessation took place. Unless circumstances change, the reduction in allocation will continue for the whole Phase. However, if the installation concerned subsequently increases its activity levels again, the central administrator will be able to change the table back, so that the correct proportion of allowances can be issued.

## 42. Recovery of allowances

42.1. If an operator has been issued allowances to which it is not entitled because:

- i. it did not comply with the notification requirements
- ii. the installation's allocation was not adjusted in sufficient time
- iii. the installation has permanently ceased the carrying out of regulated activities despite allowances having already been issued
- iv. the Regulator or registry administrator made an error

the Regulator must notify the operator that it has to return the over-allocation. The notice must specify the number of allowances to which the operator is not entitled, why the operator is not entitled to the allowances and how and when those allowances must be returned. The allowances must be transferred to an account in the Registry and the Regulator must give full details of this account in the notice.

# Auctioning

## 43. Overview

43.1. In Phase III of the EU ETS, around 50% of general allowances (EUAs) and 15% of aviation allowances (EUAAAs) will be auctioned, compared to a maximum of 10% during Phase II. A Commission Auctioning Regulation governs the auctioning of allowances in Phase III. Further information about Phase III auctions (including how to participate, the auction schedule and past auction results) is on the [Government Website](#).



# Information notices and disclosure of information

## 44. Powers to request and disclose information

44.1. The Regulations contain broad powers for the Regulator, registry administrator, KP registry administrator, the Secretary of State and the devolved administrations ('the relevant bodies') to require a person to provide information to them. These powers apply so that the relevant bodies may obtain the information they need to carry out their functions under the Regulations and Commission legislation.

44.2. The relevant bodies must not disclose or publish information provided to them under the Regulations except where:

- i. disclosure or publication is:
  1. required in these Regulations or otherwise by law
  2. necessary for the performance of the relevant body's functions
  3. made with the consent of the person by or on behalf of whom the information was provided; or
- ii. disclosure is between one relevant body and another.

44.3. 'Otherwise required by law' includes requests for information made under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004.

## Registry

### 45. Purpose

45.1. The Regulations refer to the Union Registry (for the purposes of Member States meeting their obligations under Article 19 of the EU ETS Directive and to ensure the accurate accounting of allowances) and the UK Registry (for the purposes of meeting the obligations as a party to the Kyoto Protocol and under Article 6 of Decision No 280/2004/EC).

45.2. The Union Registry covers all compliance functions in relation to EU ETS and is also used to monitor national compliance and performance against international emissions reduction obligations. It is an online database that operates in a similar way to an internet bank account, by recording allowance allocations (if eligible), annual verified emissions, the transaction history of unit transfers and the surrenders of allowances. It covers all EU Member States as well as Norway, Iceland and Liechtenstein. Each Member State has its own national administrator and national registry section within the Union Registry. The UK Registry just concerns Kyoto units (CERs, ERUs, AAUs, RMUs, tCERs and ICERs) and an account in that registry is only needed if a person wishes to receive units directly from the Clean Development Mechanism (CDM) Registry or, from mid-2013, if it wishes to trade in units that cannot be held in or used for compliance within the EU ETS.

45.3. Legally, the two registries are separate entities and have different functions but, for practical purposes, are part of one single registry. This guidance therefore refers to both registries as 'the Registry'.

45.4. The Registries Regulation applies directly to operators and the obligations within that Regulation must be followed. In addition, the Regulations contain additional provisions about the Registry and are explained in section 46 below.

45.5. Further guidance about the registries and the powers and duties of the registry administrator is provided as an annex to the [Compliance Manual](#) and on [gov.uk](#).

## 46. Provisions of the Regulations

46.1. Operators must apply to open an account in the Registry (an Operator Holding Account) within 20 working days of the entry into force of a greenhouse gas emissions permit. The requirements of these applications are explained on [gov.uk](#). As well as the requirements set out in the Registries Regulation, the Regulations state that, when applying to open an account, the operator must provide whatever evidence of identity and address is required by the registry administrator.

46.2. The Registries Regulation sets out the reasons why an account may be refused. As well as those reasons, the registry or KP registry administrator may refuse to open an account or approve an authorised representative in relation to such an account where it is satisfied that the proposed account holder or representative is not a fit and proper person.

46.3. In certain Articles of the Registries Regulation, there is a choice as to who must comply with the relevant obligations. The Regulations, therefore, confirm who is responsible as follows:

- i. the account holder must comply with the requirement to enter emissions data in the Registry for the previous year by 31 March in the following year. If no regulated activity was carried out in a year to which the data would relate, an amount of zero must be entered; and
- ii. if the emissions data is greater than zero, the figure must be approved and marked as verified by a verifier within the Registry.

46.4. If the operator does not enter a verified figure by 31 March, the Operator Holding Account will be blocked. This means that allowances cannot be transferred out of the account.

46.5. The Registries Regulation sets out the circumstances that would lead to an account being blocked. The Regulations supplement these powers by providing that accounts may also be blocked where an operator does not:

- i. surrender sufficient allowances to cover its emissions by the relevant deadline
- ii. meet the requirement to submit a verified surrender or revocation report under the terms of a surrender or revocation notice
- iii. comply with a notice to return allowances to which it is not entitled

46.6. Where the registry administrator sets an account to blocked status, it must notify the account holder.

46.7. The Regulations state that the registry administrator and KP registry administrator may require users of the registries to comply with reasonable terms and conditions. These are available on the [Registry website](#).

# Penalties and enforcement

## 47. Civil penalties

47.1. The EU ETS Directive requires Member States to put in place a system of penalties which is effective, proportionate and dissuasive but the nature of the penalties is largely left to Member State discretion (with the exception of the penalty for failure to surrender sufficient allowances in certain circumstances). BEIS have put in place a scheme based entirely on civil penalties.

47.2. The Regulations set out the civil penalties to which a person is liable if they do not comply. They also give the Regulators discretion so that they may (a) refrain from imposing a penalty, (b) reduce the amount of a penalty, (c) extend the time for payment of the penalty, (d) withdraw a penalty or (e) modify a civil penalty notice by substituting a lower penalty. This discretion does not apply to the mandatory penalty for failure to surrender sufficient allowances in certain circumstances.

47.3. The Environment Agency has published its enforcement policy and guidance on [gov.uk](https://www.gov.uk). Information about the enforcement policy of the other Regulators is available on their respective websites.

## 48. Power to determine emissions

48.1. The Monitoring and Reporting Regulation requires Regulators to make a conservative estimate of the emissions of an installation where an operator fails to submit a verified report of emissions by 31 March each year. This duty also applies (by virtue of the Regulations) where:

- i. an operator fails to submit a verified surrender or revocation report under the terms of a surrender or revocation notice
- ii. an operator fails to satisfy the Regulator, if an emission factor of zero has been reported in respect of the use of bioliquids, that the sustainability criteria in the Renewable Energy Directive have been fulfilled
- iii. an operator makes a request following the under-report of emissions
- iv. the Regulator considers this necessary to be able to calculate a penalty

48.2. In cases falling under paragraph 48.1 (ii) above, in estimating the emissions, the Regulator may substitute an emissions factor of greater than zero for the factor reported in respect of the bioliquids concerned.

48.3. In the case of excluded installations, the Regulator may determine emissions where an operator has not submitted a verified or self-verified report of emissions, or where there is reason to believe that the report submitted is incorrect.

48.4. The Regulator must notify the operator of its determination of emissions. This is treated as determining all of the reportable emissions from the installation for the period to which the determination relates. The Regulator must also notify the registry administrator, who must amend the emissions data in the Registry to reflect the determination.

48.5. Where a Regulator discovers an error in its determination, usually as a result of new information coming to light, it will withdraw the original determination and replace it with a new one.

48.6. The Regulator may recover the cost of carrying out a determination from the operator concerned.

## 49. Recovery of fees

49.1. The Regulator may recover any fee payable under the Regulators' charging schemes as a civil debt or by seizing and selling of a number of allowances held by the relevant operator. Sufficient allowances to cover the unpaid fee (and Regulator expenses) may be transferred from the Operator Holding Account to a Regulator account and sold.

# Appeals

## 50. Appealable provisions

50.1. Certain decisions made and notices given by the Regulator may be appealed. These are listed in regulation 73 of the Regulations.

50.2. Certain decisions of the registry or KP registry administrator may also be appealed, in order to exercise the right to object as set out in the Registries Regulation.

## 51. Appeal bodies

51.1. The appeal bodies are as follows, in relation to decisions of:

- i. the Environment Agency (including in its role as registry and KP registry administrator) and NRW, the First Tier Tribunal;
- ii. SEPA, the Scottish Ministers; and
- iii. the chief inspector (Northern Ireland), the Planning Appeals Commission.

## 52. Procedure

52.1. The procedure for appeals in Scotland and Northern Ireland is set out in the Regulations (regulation 78 and Schedules 11 and 12). The First Tier Tribunal has its own rules and guidance which can be found at <http://www.justice.gov.uk/tribunals>. This guidance will be updated when specific information about EU ETS appeals is available.

# Annex A

Extract from Annex I of the Directive

Categories of activities to which this Directive applies (installations only)

Activities	Greenhouse gases
Combustion of fuels in installations with a total rated thermal input exceeding 20 MW (except in installations for the incineration of hazardous or municipal waste) Refining of mineral oil Production of coke	Carbon dioxide  Carbon dioxide Carbon dioxide
Metal ore (including sulphide ore) roasting or sintering, including pelletisation Production of pig iron or steel (primary or secondary fusion) including continuous casting, with a capacity exceeding 2,5 tonnes per hour Production or processing of ferrous metals (including ferro-alloys) where combustion units with a total rated thermal input exceeding 20 MW are operated. Processing includes, inter alia, rolling mills, re-heaters, annealing furnaces, smitheries, foundries, coating and pickling Production of primary aluminium Production of secondary aluminium where combustion units with a total rated thermal input exceeding 20 MW are operated Production or processing of non-ferrous metals, including production of alloys, refining, foundry casting, etc., where combustion units with a total rated thermal input (including fuels used as reducing agents) exceeding 20 MW are operated	Carbon dioxide  Carbon dioxide  Carbon dioxide  Carbon dioxide and perfluorocarbons  Carbon dioxide  Carbon dioxide

Production of cement clinker in rotary kilns with a production capacity exceeding 500 tonnes per day or in other furnaces with a production capacity exceeding 50 tonnes per day	Carbon dioxide
Production of lime or calcination of dolomite or magnesite in rotary kilns or in other furnaces with a production capacity exceeding 50 tonnes per day	Carbon dioxide
Manufacture of glass including glass fibre with a melting capacity exceeding 20 tonnes per day	Carbon dioxide
Manufacture of ceramic products by firing, in particular roofing tiles, bricks, refractory bricks, tiles, stoneware or porcelain, with a production capacity exceeding 75 tonnes per day	Carbon dioxide
Manufacture of mineral wool insulation material using glass, rock or slag with a melting capacity exceeding 20 tonnes per day	Carbon dioxide
Drying or calcination of gypsum or production of plaster boards and other gypsum products, where combustion units with a total rated thermal input exceeding 20 MW are operated	Carbon dioxide
Production of pulp from timber or other fibrous materials	Carbon dioxide
Production of paper or cardboard with a production capacity exceeding 20 tonnes per day	Carbon dioxide
Production of carbon black involving the carbonisation of organic substances such as oils, tars, cracker and distillation residues, where combustion units with a total rated thermal input exceeding 20 MW are operated	Carbon dioxide
Production of nitric acid	Carbon dioxide and nitrous oxide
Production of adipic acid	Carbon dioxide and nitrous oxide
Production of glyoxal and glyoxylic acid	Carbon dioxide and nitrous oxide
Production of ammonia	Carbon dioxide
Production of bulk organic chemicals by cracking, reforming, partial or full oxidation or by similar processes, with a production capacity exceeding 100 tonnes per day	Carbon dioxide
Production of hydrogen (H <sub>2</sub> ) and synthesis gas by reforming or partial oxidation with a production capacity exceeding 25 tonnes per day	Carbon dioxide
Production of soda ash (Na <sub>2</sub> CO <sub>3</sub> ) and sodium bicarbonate (NaHCO <sub>3</sub> )	Carbon dioxide
Capture of greenhouse gases from installations covered by this Directive for the purpose of transport and geological storage in a storage site permitted under Directive 2009/.../EC	Carbon dioxide

Transport of greenhouse gases by pipelines for geological storage in a storage site permitted under Directive 2009/31/EC	Carbon dioxide
Geological storage of greenhouse gases in a storage site permitted under Directive 2009/31/EC	Carbon dioxide

This document is produced in accordance with the [Regulators' Code](#) produced by the [Department for Business, Energy & Industrial Strategy](#), and will be reviewed by 31 December 2019.

We welcome any questions or comments about this guidance, or suggestions about how we could improve it. Please email us at [ethelp@environment-agency.gov.uk](mailto:ethelp@environment-agency.gov.uk), phone us on 03708 506 506 or write to us at:

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