

EXPLANATORY MEMORANDUM TO
THE GREENHOUSE GAS EMISSIONS TRADING SCHEME (AMENDMENT)
ORDER 2021

2021 No. 1455

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy (the “Department”) and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument makes various technical and operational amendments to a number of aspects of the UK Emissions Trading Scheme (the “UK ETS”). In particular, provision is made for installations in the hospital and small emitter opt-out scheme to apply to increase their emissions targets; for installations that exceed the thresholds for that opt-out scheme and the ultra-small emitter opt-out scheme to benefit from free allocation when returning to the main scheme; to correct the methodology for calculating the entitlement to free allocation of certain aircraft operators; and to clarify the rules for the use and reporting of aviation biofuels.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument makes a number of corrections to the Greenhouse Gas Emissions Trading Scheme Order 2020 (the “2020 Order”), including to amendments to the 2020 Order made by the Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020 (such as to correct the methodology for calculating the entitlement to free allocation of allowances of certain aircraft operators). The Department has therefore decided to apply the free issue procedure. In accordance with paragraph 4.7.6 of *Statutory Instrument Practice*, the Department has consulted the SI Registrar.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the whole of the United Kingdom.
- 4.2 The territorial application of this instrument is the whole of the United Kingdom

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 The UK ETS was established under the Climate Change Act 2008 by the 2020 Order as a UK-wide greenhouse gas emissions trading scheme to encourage cost-effective emissions reductions which will contribute to the UK’s emissions reduction targets

and net zero goal. This scheme replaced the UK's participating in the EU Emissions Trading System (EU ETS), and the 2020 Order applied EU ETS rules on the monitoring, reporting and verification of emissions with modifications to ensure that they work for the UK ETS.

- 6.2 The 2020 Order was subsequently amended by the Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020 to include provisions for the free allocation of allowances and the UK ETS Registry. Regulations¹ made under the Finance Act 2020 established the rules for auctioning allowances and mechanisms to support market stability.
- 6.3 A further instrument subject to the affirmative resolution procedure will make further technical amendments to the 2020 Order relating to civil penalties, offences and enforcement powers. Subject to the approval of Parliament, this is due to be in force in March/April 2022.

7. Policy background

What is being done and why?

- 7.1 The UK ETS runs for ten scheme years beginning in 2021. Operators of certain industrial installations and certain aircraft operators are required to monitor, report on, and surrender allowances equivalent to, their greenhouse gas emissions in each scheme year. Some operators and aircraft operators receive an allocation of allowances free of charge, details of which are published in allocation tables. Allowances are held in accounts in the UK ETS registry, and there is a cap on the number of allowances that may be created. For installations that meet the eligibility criteria, there are two opt-out schemes, one for hospital or small emitters, the other for ultra-small emitters. Such installations are not required to surrender allowances.
- 7.2 The main changes made by this instrument are as follows:
- 7.3 *Installations:* A number of technical amendments are made to align more closely the monitoring and reporting rules for process emissions from all forms of carbon, reducing the administrative burden for operators in reporting process emissions. The amendments reflect the current position under the EU ETS, on whose rules for monitoring and reporting emissions the rules of the UK ETS are based. Whilst the Department is not aware of any operators with monitoring plans that provide for monitoring and reporting of such emissions in accordance with the existing provisions of the legislation (before the amendments made by this instrument), any operators that have such plans will be required to amend them; and some operators may in any event be required to amend their monitoring plans dating from Phase III of the EU ETS to take account of the changes. Article 28 of this instrument provides that reports of emissions for the 2021 and 2022 scheme years (which are due by 31 March 2022 and 31 March 2023 respectively) may be made as if the amendments were in force throughout the scheme year in question, which is intended to simplify reporting for operators.
- 7.4 In addition, amendments are made to the process for regulator approval of installations' monitoring plans and monitoring methodology plans to ensure that plans are adequate in all cases.

¹ [The Greenhouse Gas Emissions Trading Scheme Auctioning Regulations 2021](#)

- 7.5 *Hospital or small emitters and ultra-small emitters:* Installations in the hospital and small emitter opt-out scheme have annual emissions targets. In order to address the disincentivisation of business growth by static and invariable emissions targets, hospitals or small emitters may apply to increase their emissions targets if the capacity of an installation is increased.
- 7.6 Hospitals or small emitters and ultra-small emitters that exceed the emissions threshold, or otherwise cease to be eligible, for the relevant opt-out scheme may be required to join the main scheme. Provision is made for such installations to claim a free allocation of allowances if a successful application for free allocation was previously made. This puts such installations in the same position as other installations in the main scheme.
- 7.7 *Aviation biofuels:* The effect of the amendments made by this instrument is that biofuels meeting the sustainability criteria in the Renewable Transport Fuel Obligations Order 2007 are considered as having zero emissions. This will allow aircraft operators to claim for biofuels under the UK ETS in a manner consistent with wider Government policy on the use of aviation biofuels; and address the treatment of mixed fuels to provide clarity on how the biomass fraction is determined, including the use of purchase records as a way to determine the biofuel quantity of the fuel.
- 7.8 *Aviation free allocation:* This instrument amends an error in the methodology for calculating the entitlement for the free allocation of “fast growers”, i.e., EU ETS special reserve applicants whose full-scope TKM (tonne kilometres) data increased by an average of more than 18% annually between 2010 and 2014. This will impact two aviation operators. Provision is made for the recalculation of fast growers’ entitlement to free allocation and for the amendment of the aviation allocation table as to reflect the recalculation of their entitlement to free allocation.
- 7.9 *UK ETS Registry:* An express exemption from liability in damages is provided to those exercising registry functions. The Department considers that it is desirable for the legal position to be made clear. Claims within scope of the exclusion include those, for example, for loss arising from the inability to trade allowances when an account, or the UK ETS Registry, is suspended. The exclusion does not apply to claims in respect of acts in “bad faith”, which is intended to cover acts that are fraudulent or malicious, or claims under the Human Rights Act 1998.
- 7.10 In addition, reportable emissions of installations and aviation emissions of aircraft operators will be recorded in the registry. Errors made when allocating allowances free of charge may be reversed. Account holders may apply for an account to be suspended.

Explanations

What did any law do before the changes to be made by this instrument?

- 7.11 The UK ETS did not include provision made by this instrument. For example, there was no provision for installations in the hospital and small emitter scheme to apply to increase their emissions targets or for installations that return from the opt-out scheme to the main scheme to benefit from the free allocation of allowances.

Why is it being changed?

- 7.12 UK ETS delivery partners (including the Scottish Government, Welsh Government, Northern Ireland Executive, and the national scheme regulators²) identified with the Department a list of residual amendments needed to support effective operation and reduce administrative burden on operators. This led to a package of outstanding technical and operational issues which needed to be addressed in this negative procedure instrument and the affirmative procedure instrument.

What will it now do?

- 7.13 The instrument will make changes to a broad range of operational procedures and will amend penalties which exist within the scheme (refer to sections 7.3-7.10 for an explanation of the main changes).

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument is not made under the European Union (Withdrawal) Act 2018 but relates to the withdrawal of the United Kingdom from the European Union because it relates to the UK ETS, which is a policy replacement for the UK's participation in the EU ETS.

9. Consolidation

- 9.1 There are no plans to consolidate the legislation amended by this instrument.

10. Consultation outcome

- 10.1 Between 28th July and 7th September 2021, the UK Government and Devolved Administrations ran a public consultation³ seeking views on proposed amendments to the 2020 Order to be made by this instrument and by the further instrument subject to the affirmative resolution procedure referred to above.
- 10.2 Alongside the consultation, the UK Government and Devolved Administrations jointly sought the advice of the Committee on Climate Change (CCC) on the public consultation. The CCC reviewed the UK Emissions Trading Scheme: proposed amendments consultation of 28th July and had no comments on the content.
- 10.3 The public consultation received 7 responses, from a range of stakeholders. Responses were largely considered clarification based, none of which impacted the proposed policy changes.
- 10.4 The amendments referred to in section 7.7 and 7.8 above were not included in the consultation mentioned above, the need for them having been identified as the result of feedback from the scheme regulators after the consultation document had been published. Accordingly, an alternative consultation mechanism (a targeted roundtable discussion with aircraft operators likely to be affected by the proposals) was utilised, with the consultation exercise completed on 5th October 2021. The advice of the CCC was also sought on the additional provisions. Neither exercise raised substantive concerns or observations that had a material impact on the policy proposals.

² Regulators are delivery partners of the scheme (The Environment Agency, the Natural Resources Body for Wales, the Scottish Environment Protection Agency, Chief Inspector (DAERA), Offshore Petroleum Regulator for Environment and Decommissioning (OPRED))

³ Consultation on proposed amendments to the Greenhouse Gas Emissions Trading Scheme Order 2021. Found here: <https://www.gov.uk/government/consultations/uk-emissions-trading-scheme-proposed-amendments>

10.5 The Government Response to the consultation is expected to be published on the 14th December 2021.

10.6 Full details of the consultation and response can be found at:
<https://www.gov.uk/government/consultations/uk-emissions-trading-scheme-proposed-amendments>.

11. Guidance

11.1 UK ETS guidance has been published and is available at:
<https://www.gov.uk/government/publications/participating-in-the-uk-ets/participating-in-the-uk-ets>. Guidance will be updated regularly, and updates will take account of relevant changes to legislation.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument as it is not a regulatory provision.

12.4 The overall level of climate ambition in the UK ETS is unchanged by the proposals. There is no overall impact on the monetised costs and benefits to businesses. There is no change to the supply of allowances or the expected emissions from emitters. There is also no expected change to the general administrative burden for emitters.

12.5 A regulatory impact assessment of the effect of the UK ETS on the costs of business, the voluntary sector and the public sector is available from the Industrial Energy Directorate, Department for Business, Energy and Industrial Strategy, 1 Victoria Street, London SW1H 0ET and is available alongside the 2020 Order on www.legislation.gov.uk.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 To minimise the impact of the requirements on small businesses operators and aircraft operators with relatively low levels of emissions are either not caught by the scheme or can take advantage of opt-outs. This is provided for in the 2020 Order.

14. Monitoring & review

14.1 The 2020 Order commits the UK ETS authority (the UK Government and Devolved Administrations) to reviewing the operation of the UK ETS (including the measures introduced by this instrument) in 2023 and in 2028. The UK ETS authority must subsequently publish a report setting out the conclusions of the review.

15. Contact

15.1 Gabriella Conlon at the Department for Business, Energy and Industrial Strategy (telephone: 0300 068 2846 or email: gabriella.conlon@beis.gov.uk) can be contacted with any queries regarding the instrument.

- 15.2 Charlie Lewis, Deputy Director for Emissions Trading, at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Rt Hon Greg Hands MP at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.