

POLICY NOTE

THE GREENHOUSE GAS EMISSIONS TRADING SCHEME (AMENDMENT) ORDER 2023

SI 2023/850

The above instrument is to be made in exercise of the powers conferred by sections 44, 54 and 90(3), schedule 2 and paragraph 9 of schedule 3 of the Climate Change Act 2008. The instrument is subject to negative procedure.

Summary Box

This instrument amends the UK-wide Emissions Trading Scheme (“UK ETS”) established by the Greenhouse Gas Emissions Trading Scheme Order 2020 (“the 2020 Order”) ¹. In particular, provision is made to address possible negative impacts to the 2021 free allocation calculation due to COVID-19; put benchmark values in UK law; require Hospitals and Small Emitters to provide further information to regulators; and other minor operational changes. For further information on the UK ETS, see the Policy Note accompanying the 2020 Order ².

Policy Objectives

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. The UK ETS is operated by the UK ETS Authority, comprising the UK Government, Scottish Government, Welsh Government and the Department of Agriculture, Environment and Rural Affairs for Northern Ireland. The scheme is regulated by the Environment Agency, the Scottish Environment Protection Agency, Natural Resources Wales, the Northern Ireland Environment Agency, and the Offshore Petroleum Regulator for Environment and Decommissioning. This scheme replaced the UK’s participation 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.

Under the UK ETS, participants are required to monitor and report on, and surrender allowances in respect of, their greenhouse gas emissions. The UK ETS provides free allocation of emission allowances to eligible installation operators in order to reduce the risk of carbon leakage. Free allocation for installations is calculated using industry benchmarks and the carbon leakage list, which are the same as those for Phase IV of the EU ETS.

Installations that receive free allocation are required to monitor and report activity levels each year. Regulators are required to recalculate the free allocation of allowances due to activity level changes in line with the ALCR. The UK ETS Registry records the movement of allowances between accounts and details of verified emissions and allowances surrendered by operators.

¹ [The Greenhouse Gas Emissions Trading Scheme Order 2020 \(legislation.gov.uk\)](#)

² [Draft Greenhouse Gas Emissions Trading Scheme Order \(legislation.gov.uk\)](#)

This instrument will make changes to several operational procedures in the UK ETS. The main changes made by this instrument are in relation to:

Hospital or Small Emitters (HSEs) and Ultra-Small Emitters (USEs) going into the main scheme (UK ETS): There are opt out schemes for hospitals and eligible small/ultra-small emitters, as they either provide services to hospitals or are installations emitting less than 25,000/2,500 tonnes respectively of carbon dioxide equivalent (CO₂eq) per year. Eligible installations do not have to surrender allowances in respect of their emissions. Over the course of forthcoming ETS allocation periods, HSEs and USEs may cease to be eligible for the relevant opt-out scheme and join the main UK ETS scheme. In this case, they may claim a free allocation of allowances if a successful application for free allocation was previously made. The legislation does not currently require operators to provide all the activity information required for regulators to be able calculate the free allocation of these installations. This instrument rectifies this omission, by requiring information to be provided to enable regulators to determine the “historical activity levels” of sub-installations that started operating late in, or after, the “baseline period” (by reference to which historical activity levels of other sub-installations were determined).

Putting current benchmark values in UK law: The UK ETS currently uses EU ETS benchmarks that are adopted under EU law and made applicable in UK law. This instrument brings current benchmark values, as they currently stand, into UK law by direct inclusion in the Free Allocation Regulation.

Temporary amendments to benchmarks and carbon leakage list: This instrument effects a temporary change to the lime benchmark and the carbon leakage classification of malt extract production for both existing and new installations. The sector made representations that the existing lime benchmark was unattainable due to distortions by data from EU operators with access to biomass. Therefore, the UK ETS Authority has decided to temporarily increase the benchmark value by 10%. For malt extract production, the sector made representations that the trade intensity data for malt production should be used, resulting in the activity meeting the carbon leakage indicator threshold. Consequently, the UK ETS Authority has decided to temporarily set the activity to carbon leakage exposed. This would only apply to increase free allocation for the 2024 and 2025 scheme years and does not pre-empt broader changes to free allocation methodology which will be implemented for the next allocation period (2026-2030)

COVID 2021 Activity Level Changes (ALCs): An amendment to the ALCR will enable operators whose free allocation was reduced by the 2021 activity level change process to apply for the 2021 and subsequent annual change processes to be re-run, with changes to free allocation being based on activity levels calculated with the omission of the 2020 year, if they can demonstrate a discrepancy of at least 15% between reductions in output and emissions caused by the COVID-19 pandemic when comparing the 2019 and 2020 years. The purpose is to enable the activity level change process to take account of the effect of the COVID-19 pandemic. (A previous amendment to the ALCR related to the 2022 activity level change process only.)

Article 6 ALCR amendment: Article 6 of the ALCR provides for when adjustments to free allocation as part of the activity level change process may be rejected on energy efficiency grounds. An amendment to Article 6(3) provides that where there is no PRODCOM code available to attach to a product, the codes in Section B or C of Annex 1 of NACE rev. 2 (a statistical classification of economic activities in the EU) are to be used. The amendment

clarifies that the provisions apply to all products within scope of sections B and C. The amendment refers to NACE rather than the UK Standard Industrial Classification of Economic Activities for consistency with other references to NACE in UK ETS legislation. This may be updated in future along with all other references once other policy aspects are in place e.g., a UK ETS carbon leakage list.

New permission for the UK ETS Registry account authorised representatives: A new provision permits operators to appoint authorised representatives for their accounts in the UK ETS Registry with the permission only to surrender, or return overallocated, allowances. The administrative burden on operators of appointing such an authorised representative would be less onerous than that of appointing an authorised representative currently with a broader range of permissions, as the former would be permitted to perform fewer operations. Creating this route for appointing authorised representatives will help some operators who have historically not always achieved compliance to do so.

Monitoring and Reporting Regulation 2018 – Commission Implementing Regulation (EU) 2018/2066 (the “Monitoring and Reporting Regulation 2018”) has effect for the purpose of the UK ETS with modifications set out in Schedule 4 to the 2020 Order. This instrument makes a further minor (non-operative) modification to assist the reader of the legislation.

Additional legislation to implement the policy decisions in the Main UK ETS Authority Response to the Developing the UK ETS Consultation will be forthcoming later this year. This includes an affirmative-procedure instrument under the Climate Change Act 2008 and amendments to the Greenhouse Gas Emissions Trading Scheme Auctioning Regulations 2021.

Consultation

Amendments to the 2020 Order to be made by this instrument were jointly consulted on by the four administrations between 25th March and 17th June 2022. Alongside the consultation, the four nations jointly sought the advice of the Committee on Climate Change (CCC) on the public consultation. The CCC reviewed the policy content of these proposals and only had clarification questions and no further comments.

The final Government Response to the consultation can be found at:

<https://www.gov.uk/government/consultations/uk-emissions-trading-scheme-proposed-amendments>. An early Government Response to the consultation, covering some minor and technical changes to the ETS can be found on the same link.

Guidance

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.

Impact Assessments

The Government Response to the consultation has a UK-wide impact assessment on the decisions made by the Authority outlined in the Government Response document. The Scottish

Government will publish a Business and Regulatory Impact Assessment and an Island Communities Impact Assessment in the coming months.

Scottish Government
Directorate for Energy and Climate Change

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