

Net Zero, Energy and Transport Committee

26th Meeting, 2023 (Session 6)

Tuesday, 19 September 2023

Cover note: The Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2023 (SI 2023/850)

Title of Instrument:	The Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2023 (SI 2023/850)
Type of Instrument:	Negative
Laid Date:	21/07/2023
Circulated to Members:	28/07/2023
Meeting Date:	19/09/2023
Minister to attend meeting:	No
Motion for annulment lodged:	No
Drawn to the Parliament's attention by the Delegated Powers and Law Reform Committee?	No
Reporting deadline:	29/10/2023

Recommendation

1. The Committee is invited to consider any issues which it wishes to raise on the instrument.

Background

2. The instrument is laid in the UK Parliament, Northern Ireland Assembly, Scottish Parliament and Senedd Cymru. Provided no motion to annul is agreed to, the Order would come into force on 1 January 2024.

3. An electronic copy of the Order is available at:
<https://www.legislation.gov.uk/uksi/2023/850/contents/made>

4. A copy of the explanatory and policy notes are included in the **Annexe**.

Purpose

5. This instrument amends the UK-wide Emissions Trading Scheme (“UK ETS”) established by the Greenhouse Gas Emissions Trading Scheme Order 2020 (“the 2020 Order”). 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.

Delegated Powers and Law Reform Committee consideration

6. At its meeting on 5 September 2023, the Committee considered the instrument and determined that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit. [Read the Official Report - 23rd Meeting, 2023](#)

Procedure for Negative Instruments

7. Negative instruments are instruments that are “subject to annulment” by resolution of the Parliament for a period of 40 days after they are laid. All negative instruments are considered by the Delegated Powers and Law Reform Committee (on various technical grounds) and by the relevant lead committee (on policy grounds).

8. Under Rule 10.4, any member (whether or not a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument. If the motion is agreed to, the Parliamentary Bureau must then lodge a motion to annul the instrument for consideration by the Parliament. If that is also agreed to, Scottish Ministers must revoke the instrument. At present no motion to annul has been laid for this instrument.

9. Each negative instrument appears on a committee agenda at the first opportunity after the Delegated Powers and Law Reform Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually be continued to a later meeting to allow correspondence to be entered into or a Minister or officials invited to give evidence. In other cases, the Committee may be content simply to note the instrument.

10. If no motion to annul has been laid then, at the conclusion of consideration of the instrument, the Committee will be invited that agree to make no recommendation in relation to the instrument.

Clerks
Net Zero, Energy and Transport Committee

Annexe

Explanatory note – UK Government

EXPLANATORY NOTE

(This note is not part of the Order)

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

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

Free allocation for installations

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

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

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

An amendment to Article 6 of the Activity Level Changes Regulation (which relates to when adjustments (upwards or downwards) to free allocation as part of the activity

level change process may be rejected on energy efficiency grounds) provides for the codes in Sections B and C of NACE rev.2 to be used where there is no PRODCOM code.

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

Miscellaneous

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

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

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

Policy note – Scottish Government

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 Order².

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

¹The Greenhouse Gas Emissions Trading Scheme Order 2020 (legislation.gov.uk)

²Draft Greenhouse Gas Emissions Trading Scheme Order (legislation.gov.uk)

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.

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

July 2023

Other documents

- [Business and Regulatory Impact Assessment \(BRIA\) \(legislation.gov.uk\)](#)