

Net Zero, Energy and Transport Committee

11th Meeting, 2024 (Session 6)

Tuesday, 19 March 2024

Cover note: The Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2024

Title of Instrument: [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2024](#) (SI 2024/192)

Type of Instrument: Negative

Laid Date: 23/02/2024

Circulated to Members: 23/02/2024

Meeting Date: 19/03/2024

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: 15/04/2024

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 31 March 2024.

3. An electronic copy of the Order is available at: <https://www.legislation.gov.uk/uksi/2024/192/contents/made>

4. Copies 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 move back by a year the window for applying for the free allocation of allowances in the 2026-2030 allocation period of the UK Emissions Trading Scheme (“UK ETS”), for applying to be part of the Hospitals and Small Emitters (“HSE”) or Ultra Small Emitter (“USE”) schemes in that period, and for operators not applying for free allocations to provide information. The proposed new window will be 1 April 2025 – 30 June 2025. For further information on the UK ETS, see the Policy Note accompanying the 2020 Order ([available here from page 16](#)).

Delegated Powers and Law Reform Committee consideration

6. At its meeting on 5 March 2024, the DPLR Committee considered the instrument and determined that it did not need to draw the instrument to the attention of the Parliament on any grounds within its remit.

- [Read the Official Report – DPLR Committee, 5 March 2024 \(parliament.scot\)](#)
- [Read the Report – 16th Report, 2024 \(Session 6\) \(parliament.scot\)](#)

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 to agree to make no recommendation in relation to the instrument.

Clerks
Net Zero, Energy and Transport Committee

Accompanying documents

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 years, split into two five-year “allocation periods”. Operators of certain industrial installations are required to monitor, submit verified reports on, and surrender “allowances” equivalent to, their greenhouse gas emissions each year. Allowances are sold at auction, but some operators of installations and aircraft operators receive an allocation of allowances free of charge. For installations that meet the eligibility criteria, there are two schemes in addition to the main scheme, one for “hospitals or small emitters”, the other for “ultra-small emitters”.

This Order amends the UK ETS Order and Commission Delegated Regulation (EU) 2019/331 (the “Free Allocation Regulation”). The main changes are as follows—

- the window for operators of installations to apply for free allocation, or to be in the schemes for hospital or small emitters or for ultra-small emitters, in the 2026-2030 allocation period or, where no such application is made, to provide information for the purposes of the scheme is moved to 1 April-30 June 2025;
- the date by which the lists of hospital or small emitters and ultra-small emitters for the 2026-2030 allocation period must be published is moved to 17 October 2025;
- the date before which the allocation table for the 2026-2030 allocation period must be published is moved to 28 February 2026.

No impact assessment has been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

POLICY NOTE

THE GREENHOUSE GAS EMISSIONS TRADING SCHEME (AMENDMENT) ORDER 2024

SI 2024/192

The above instrument is to be made in exercise of the powers conferred by Sections 44, 54 and 90(3) of, and Schedule 2 and paragraph 9 of Schedule 3 to, the Climate Change Act 2008. 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 move back by a year the window for

¹ [The Greenhouse Gas Emissions Trading Scheme Order 2020 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

applying for the free allocation of allowances in the 2026-2030 allocation period of the UK Emissions Trading Scheme (“UK ETS”), for applying to be part of the Hospitals and Small Emitters (“HSE”) or Ultra Small Emitter (“USE”) schemes in that period, and for operators not applying for free allocations to provide information. The proposed new window will be 1 April 2025 – 30 June 2025. 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, with one allowance representing one tonne of CO₂e emitted. In the UK ETS, participating operators at risk of carbon leakage are given a proportion of their UK ETS allowances for free. This helps to manage their exposure to the carbon price and manages the risk that UK business’ decarbonisation efforts could be undermined by higher-carbon imports. Operators seeking free allocation for the second allocation period of the UK ETS (2026-2030) must apply in advance, so that the UK ETS Authority can determine their eligibility.

The next application window for free allocations is currently 1 April – 30 June 2024 (for free allocations for the period 2026 – 2030). The same window applies to applications for the Hospital Small Emitter (HSE) and Ultra Small Emitter (USE) schemes, which offer a reduced compliance burden on eligible participants. Operators not applying for free allocations must also provide information to the UK ETS Authority during this window.

The UK ETS Authority has [recently opened a consultation](#) on changes to free allocation policy. We will set out the final decision on future changes to free allocation policy in a response to this consultation by the end of 2024. Any outcomes from this consultation could impact how free allowances are allocated for the 2026-2030 period.

Therefore, this instrument will move back by a year, to 1 April 2025 – 30 June 2025, the window for applying for the free allocation of allowances in the 2026-2030 allocation period of the UK Emissions Trading Scheme, for applying to be part of the HSE or USE schemes in that period, and for operators not applying for free

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

allocations to provide information. This change will enable the UK ETS Authority to put forward final proposals on future free allocation rules, allowing operators to determine their eligibility, what free allocations they are applying for, which data to submit, and to decide whether they should apply under the HSE or USE schemes.

This change will provide certainty to UK ETS operators about what the free allocation rules will be during the second allocation period from 2026-2030 before they apply. If the application window were left unchanged, applications would have to be made and determined when policy for the 2026-2030 allocation period has not yet been finalised.

EU Alignment Consideration

The UK ETS was established under the Climate Change Act 2008 by the Greenhouse Gas Emissions Trading Scheme Order 2020 (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 replaces the UK membership of the EU ETS following the UK’s exit from the EU. Directive 2003/87/EC (as amended) established the EU emissions trading scheme, which created a European Union market in greenhouse gas emissions allowances. 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.

This instrument is a practical solution to provide certainty to the UK ETS operators given possible future changes to how free allocations are distributed. Therefore, this instrument has been assessed as not being relevant to the Scottish Government’s alignment policy.

Consultation

The UK ETS Authority consulted operators who are part of the scheme and received six responses. This was done via the four nations’ regulators.

A total of six relevant responses were submitted. Four of these agreed with the proposals and two neither agreed nor disagreed but raised points regarding other free allocation policy issues. The main reason given by respondents who agreed was a recognition that moving the application windows would avoid unnecessary reporting burden and having to make decisions before completion of the free allocation review. Respondents welcomed the opportunity to apply for free allocation with clarity on the rules of the scheme. The Committee on Climate Change’s views (CCC) on the policy proposals in this instrument were also sought, and they did not raise any concerns.

A response to the consultation will be shared with the scheme participants via the regulators before this SI comes into force.

Impact Assessments

The UK ETS Authority has delivered impact assessments on the bigger decisions made by the Authority last year: [Developing the UK ETS: impact assessment \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

The Scottish Government also published a Business and Regulatory Impact Assessment and an Island Communities Impact Assessment on all the changes the UK ETS Authority agreed on and which were published in the final Government Response to the “Developing the UK ETS” consultation.

Financial Effects

No financial effects are expected from the provisions in this SI.

Scottish Government
Energy and Climate Change Directorate

January 2024