

Net Zero, Energy and Transport Committee

4th Meeting, 2022 (session 6), Tuesday, 01
February 2022

Subordinate Legislation - the Greenhouse Gas
Emissions Trading Scheme (Amendment) Order
2022 [draft]

Evidence session with Michael Matheson, Cabinet
Secretary for Net Zero, Energy and Transport

Note by the Clerk

Overview of instrument

1. The following Statutory Instrument (SI), subject to affirmative procedure, is being considered at today's meeting:

[Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2022](#)

2. This is a joint instrument between the four administrations (Scottish, UK, and Welsh Governments, and the Northern Ireland Executive). It amends the UK-wide Emissions Trading Scheme ("UK ETS") established by the Greenhouse Gas Emissions Trading Scheme Order 2020.
3. The UK ETS was established as a policy replacement for the UK's participation in the EU ETS by the four administrations in 2021. 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.
4. The instrument is to be made in exercise of the powers conferred on all the four administrations by sections 44, 54 and 90(3), schedule 2 and paragraph 9 of schedule 3 of the Climate Change Act 2008.
2. The Cabinet Secretary for Net Zero, Energy and Transport has lodged motion S6M-02605 (as set out in the agenda) that the Committee should recommend the approval of these regulations.

3. The instrument was laid before the Scottish Parliament on 16 December 2021 and, if approved, will come into force the day after it is made if passed by the Scottish Parliament.

Purpose of the instrument

4. This instrument makes various technical and operational amendments to the UK ETS. These amendments are intended to ensure consistent and effective enforcement of scheme rules through the strengthening and clarification of provisions relating to scheme penalties and notices to enforce scheme rules, and of powers of entry and inspection for the scheme regulators.
5. Under the UK ETS, 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 receive an allocation of allowances free of charge. 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, who are not required to surrender allowances.
6. This instrument will introduce amendments to enable the scheme regulators to:
 - impose civil penalties on operators that fail to return allowances to which they are not entitled; to enable the registry administrator to exercise certain powers of enforcement (for example, to give enforcement notices);
 - make it an offence to intentionally obstruct a regulator or an authorised person as they gain entry to premises for the purposes of inspection; and
 - provide for operators of installations whose greenhouse gas emissions permits are surrendered or revoked to be treated, in relation to the surrender of any deficit of allowances, in the same way as operators of installations who remain in the UK ETS.
7. The Policy Note provides further detail on the instrument and is available at the **Annexe**.

Delegated Powers and Law Reform Committee consideration

8. The Delegated Powers and Law Reform Committee considered this instrument at [its meeting on 18 January 2022](#) and determined that it did not need to draw the attention of Parliament to the instrument on any grounds within its remit. [Read the official report for the meeting on 18 January 2022.](#)

Procedure

9. The affirmative procedure means that an instrument cannot be made and come into force unless the Parliament has voted to approve it (rule 10.6.1 of standing orders).

10. Affirmative instruments are first looked at by the DPLR Committee before being considered by the lead committee (i.e. the Committee within whose remit the subject matter of the instrument falls).
11. It is usual practice for the lead committee to take evidence from the relevant Scottish Minister in advance of the motion for approval being formally moved. The committee can use this evidence session to ask the minister and their officials questions about the instrument.
12. Once the motion is moved, the Committee may debate the instrument. Only Committee Members and the relevant Minister may take part in the debate and, if there is a vote, only Committee Members may vote on the motion. The debate is on whether the lead committee recommend that the draft instrument be approved.
13. The lead committee must report its recommendation to Parliament within 40 days of the instrument being laid. If the committee agrees the instrument should be approved, the whole of the Parliament then gets a chance to vote on it in the Chamber. If the lead committee decides the instrument should not be approved, the Parliamentary Bureau decides whether MSPs should vote on it in the Chamber.

For decision

14. The Committee must decide whether to agree the motion, and then must report to Parliament accordingly by 8 February 2022.

ANNEXE

POLICY NOTE

THE GREENHOUSE GAS EMISSIONS TRADING SCHEME (AMENDMENT) ORDER 2022

SI 2022/XXXX

The above instrument is to be made in exercise of the powers conferred on all the four administrations (Scottish, UK, Welsh and Northern Ireland governments) by sections 44 and 90(3), schedule 2 and paragraph 9 of schedule 3 of the Climate Change Act 2008. The Order in Council is subject to affirmative procedure.

Summary

This is a joint instrument between the four administrations (Scottish, UK, and Welsh Governments, and the Northern Ireland Executive). It amends the UK-wide Emissions Trading Scheme (“UK ETS”) established by the [Greenhouse Gas Emissions Trading Scheme Order 2020 \(“the 2020 Order”\)](#).

This instrument makes various technical and operational amendments to the UK ETS. In broad terms these amendments are intended to ensure consistent and effective enforcement of scheme rules through the strengthening and clarification of provisions relating to scheme penalties and notices to enforce scheme rules, and of powers of entry and inspection for the scheme regulators. 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).

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. 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. The 2020 Order was subsequently amended by the Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020 to include provisions for the free allocation of emissions allowances and the UK ETS Registry. Regulations under the Finance Act 2020 established the rules for auctioning allowances and mechanisms to support market stability. [They are available here.](#)

Under the UK ETS, 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 receive an allocation of allowances free of charge. 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, who are not required to surrender allowances.

This instrument will introduce amendments to enable the scheme regulators to impose civil penalties on operators that fail to return allowances to which they are not entitled; to enable the registry administrator to exercise certain powers of enforcement (for example, to give enforcement notices); to make it an offence to intentionally obstruct a regulator or an authorised person as they gain entry to a premises for the purposes of inspection; and to provide for operators of installations whose greenhouse gas emissions permits are surrendered or revoked to be treated, in relation to the surrender of any deficit of allowances, in the same way as operators of installations who remain in the UK ETS. The proposed amendments are required to improve operational issues and impose penalties in respect of a failure to comply with scheme rules.

Further amendments are made by the Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021 (which is subject to the negative procedure and comes into force on 7th February 2022).

This instrument is made according the same Order in Council process as the 2020 Order, but according to the affirmative procedure. It will be laid in draft in all four legislatures in December.

Consultation

Amendments to the 2020 Order to be made by this instrument were jointly consulted by the four administrations between 28th July and 7th September 2021. 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 UK Emissions Trading Scheme: proposed amendments consultation of 28th July and had no comments on the content.

The Government Response to the consultation is expected to be published on the 14th December 2021, and [full details of the consultation and response can be found here](#).

Guidance

[UK ETS guidance has been published and is available here](#). Guidance will be updated regularly, and updates will take account of relevant changes to legislation.

Impact Assessments

The Cabinet Secretary for Net-Zero, Energy and Transport confirms that no BRIA is necessary as no impact upon business, charities or voluntary bodies is foreseen.

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

The instrument amends specific operational features of UK ETS established in the original instruments. Therefore it is covered by [the original Impact Assessment undertaken on a UK-wide basis for the overall UK ETS published on 1 June.](#)

Scottish Government
Directorate for Energy and Climate Change

December 2021