

Net Zero, Energy and Transport Committee

4th Meeting, 2022 (session 6), Tuesday, 1
February 2022

Subordinate Legislation - The Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021 (SI 2021/1455)

Note by the Clerk

Overview of instrument

1. The following Statutory Instrument (SI), subject to negative procedure, is being considered at today's meeting:
 - [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2021 \(SI 2021/1455\)](#)
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.
5. The instrument was laid before the Parliament on 16 December 2021 and comes into force on 7 February 2022.

Purpose of the instrument

6. 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.

7. This instrument makes various technical and operational amendments to a number of aspects of 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.
8. The Policy Note provides further detail on the instrument and is attached at **Annexe A**.
9. A further instrument, subject to the affirmative procedure - [Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2022](#) – will make technical amendments to the 2020 Order relating to civil penalties, offences and enforcement powers. This instrument will also be considered by the Committee on 1 February.

Delegated Powers and Law Reform Committee consideration

10. 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. It also wished to welcome that the Scottish Government is liaising with the other United Kingdom Administrations with a view to correcting the error at the next available opportunity. [Read the official report for the meeting on 18 January 2022.](#)

Procedure

11. Negative instruments are instruments that are “subject to annulment” by resolution of the Parliament for a period of 40 days after they are laid. This means they become law unless they are annulled by the Parliament. 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).
12. 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.
13. If the motion is agreed to by the lead committee, the Parliamentary Bureau must then lodge a motion to annul the instrument to be considered by the Parliament

as a whole. If that motion is also agreed to, the Scottish Ministers must revoke the instrument.

14. If the Parliament resolves to annul a negative instrument then what has been done under authority of the instrument remains valid but it can have no further legal effect. Following a resolution to annul a negative instrument, the Scottish Ministers (or other responsible authority) must revoke the instrument (make another instrument which removes the original instrument from the statute book.) Ministers are not prevented from making another instrument in the same terms and seeking to persuade the Parliament that the second instrument should not be annulled.
15. Each negative instrument appears on the Net Zero, Energy and Transport Committee's 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 the Committee to gather more information or to invite a Minister to give evidence on the instrument. Members should however note that, for scheduling reasons, it is not always possible to continue an instrument to the following week. For this reason, if any Member has significant concerns about a negative instrument, they are encouraged to make this known to the clerks in advance of the meeting.
16. In many cases, the Committee may be content simply to note the instrument and agree to make no recommendations on it.

Committee Consideration

17. The Committee is not required to report on negative instruments, but should it wish to do so, the deadline for reporting is 4 February 2022.

Annexe A: Policy Note

THE GREENHOUSE GAS EMISSIONS TRADING SCHEME (AMENDMENT) ORDER 2021

SI 2021/1455

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, 54 and 90(3), schedule 2 and paragraph 9 of schedule 3 of the Climate Change Act 2008. The Order in Council is subject to negative procedure.

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”)¹.

This instrument makes various technical and operational amendments to a number of aspects of 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. (For further information on the UK ETS, see the Policy Note accompanying the 2020 Order)²

Policy Objectives

The UK ETS was established by the four administrations (Scottish, UK and Welsh Governments, and the Northern Ireland Executive) in 2021, following the UK’s withdrawal from the EU. Further information on the UK ETS is available in the Policy Note accompanying the 2020 Order³.

This instrument will make changes to several operational procedures in the UK ETS. The main changes made by this instrument are in relation to monitoring and reporting processes for installations; technical aspects relating to hospitals or small emitters and ultra-small emitters; the treatment of certain aviation biofuels; amending an error in the process of calculating aviation free allocation; and clarifying the legal liability of the operators of the UK ETS Registry. These amendments were identified by the four nations together as needed to support effective operation and reduce administrative burden on operators. More detail on each of these provisions can be found in the UK Government’s Explanatory Memorandum.

This instrument is made according the same Order in Council process as the 2020 Order, according to the negative procedure. It will be laid in all four legislatures after being made at the Privy Council in December.

A further instrument, subject to the affirmative procedure, will make further technical amendments to the 2020 Order relating to civil penalties, offences and enforcement powers. Subject to the approval of the Parliaments in all four nations, the affirmative instrument is due to be in force by April 2022.

Consultation

Amendments to the 2020 Order to be made by this instrument were jointly consulted on 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 and the 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.

Scottish Government
Directorate for Energy and Climate Change

December 2021