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Consultation on proposed amendments to the Greenhouse Gas Emissions Trading Scheme Order 2020

A joint consultation of the UK Government,
Scottish Government, Welsh Government
and Department of Agriculture, Environment
and Rural Affairs for Northern Ireland

Closing date: 07 September 2021

July 2021



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Any enquiries regarding this publication should be sent to us at: beis.bru@beis.gov.uk

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General information

Why we are consulting

We are consulting on proposed amendments to the Greenhouse Gas Emissions Trading Scheme Order 2020. These additional provisions will support effective operation of the UK Emissions Trading Scheme (UK ETS) by addressing a number of residual technical issues identified during the development and legislation of the scheme.

Consultation details

Issued: 28 July 2021

Respond by: 07 September 2021

Enquiries to:

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Please avoid sending enquiries or responses to the department by post whilst coronavirus (COVID-19) restrictions are still in place, as we will not be able to access them.

Consultation reference: Consultation on proposed amendments to the Greenhouse Gas Emissions Trading Scheme Order 2020

Audiences:

This consultation will be of particular interest to individual companies and representatives of industrial, power and aviation sectors with obligations under the UK ETS and environmental bodies (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)). This consultation is not limited to these stakeholders; any organisation or individual is welcome to respond.

Territorial extent:

The territorial extent and application of these instruments is the whole of the United Kingdom.

How to respond

We encourage responses to be submitted by email.

Respond online at: <https://beisgovuk.citizenspace.com/energy-efficiency/uk-emissions-trading-scheme-proposed-amendments>

or

Email to: emissions.trading@beis.gov.uk

When responding, please state whether you are responding as an individual or representing the views of an organisation.

Your response will be most useful if it is framed in direct response to the questions posed, though further comments and evidence are also welcome.

Confidentiality and data protection

This consultation is being undertaken on behalf of the Department for Business, Energy and Industrial Strategy (BEIS), the Scottish Government, the Welsh Government, and Northern Ireland's Department for Agriculture, Environment, and Rural Affairs (DAERA). Information you provide in response to this consultation, including personal information, may be shared between these bodies, and disclosed in accordance with UK legislation (the Freedom of Information Act 2000, the Data Protection Act 2018 and the Environmental Information Regulations 2004). Responses may also be shared with HM Treasury and the Department for Transport, given the role these departments play within the UK ETS Authority.

If you want the information that you provide to be treated as confidential please tell us, but be aware that we cannot guarantee confidentiality in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not be regarded by us as a confidentiality request.

We will process your personal data in accordance with all applicable data protection laws. See our [privacy policy](#).

We will summarise all responses and publish this summary on [GOV.UK](#). The summary will include a list of names or organisations that responded, but not people's personal names, addresses or other contact details.

Quality assurance

This consultation has been carried out in accordance with the government's [consultation principles](#).

If you have any complaints about the way this consultation has been conducted, please email: beis.bru@beis.gov.uk.

Background

What is the purpose of the proposed amendments?

The UK ETS was established in law in 2020, with the Greenhouse Gas Emissions Trading Scheme Order 2020 (“the Order 2020”) introducing the majority of legal provisions under the powers granted by the Climate Change Act 2008 (CCA 2008). Amendments to the Order 2020 were subsequently made at the end of 2020 and provided for, amongst other things, free allocation of allowances and the establishment of an allowance registry for the UK ETS.

The subject of this consultation is the further amendment of the Order 2020, by the introduction of two separate statutory instruments (the Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021 and the Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2021), to address a number of technical and operational issues identified during the development and amendment of the Order 2020.

Why are the amendments to the Greenhouse Gas Emissions Trading Scheme Order (2020) being proposed?

The UK ETS is being delivered incrementally, through a series of statutory instruments. The timing and order of this series has been designed to reflect operational priorities and so ensure that specific legal provisions are introduced ahead of them becoming operationally necessary. Therefore, the provisions proposed within this consultation and the accompanying draft statutory instruments were not essential for the establishment of the UK ETS on the 1st January 2021, but are considered as necessary for ongoing operation of the scheme.

The proposals

The Greenhouse Gas Emissions Trading Scheme (Amendment) Order (No.1) 2021

This proposed amending order, to be introduced under the negative legislative procedure, will introduce amendments to the existing Order 2020. These proposed amendments are briefly outlined below, with the accompanying draft SI setting out in full the proposed legislative text.

Policy Issue/Area	SI reference	Brief description
<p>Hospital or small emitter capacity increases</p>	<p>Articles 22(4)(b) and 23(5)</p>	<p>Provisions to allow installations currently within the hospital or small emitter opt-out scheme to report an anticipated increase in their emissions resulting from capacity growth and trigger a re-assessment of their emissions target by the regulator based on a specified procedure.</p> <p>This proposed provision is intended to address the disincentivisation of business growth by static and invariable emissions targets.</p> <p>It should be noted that the baseline targets for hospital or small emitters are calculated on the basis of historic reportable emissions of the installation only and do not take capacity into account; and that the proposed methodology for determining increases to emissions targets does not cover all activities in respect of which emissions must be reported. We welcome feedback on our proposed approach and are open to suggestions for further improvement to the methodology.</p>
<p>Registry and UKETSA functions - limitation of liability</p>	<p>Article 21(3)</p>	<p>To introduce a limitation of liability for the UK ETS authority (UKETSA) and the registry administrator when undertaking statutory functions under Schedule 5A to the Greenhouse Gas Emissions Trading Scheme Order 2020.</p> <p>The exclusion from liability does not apply to acts in “bad faith”, which is intended to cover acts that are fraudulent or malicious, or claims under the Human Rights Act 1998. We would welcome consultees’ views on the scope and the drafting of the proposed limitation of liability.</p>
<p>Registry accounts</p>	<p>Article 21(5)</p>	<p>Provision to enable holders of accounts in the registry to apply for an account to be suspended.</p>

Policy Issue/Area	SI reference	Brief description
Reportable/aviation emissions figure	Article 21(2)	To require the regulator to ensure that operators' and aircraft operators' emissions are recorded in the Registry following submission to the regulator at the end of the reporting year.
Hospital or small Emitters (HSEs) and Ultra Small Emitters (USEs) eligibility for free allocation on return to main scheme	Articles 5, 8, 10, 11, 13, 22(3)(b), 25 and 27	The purpose of this amendment is to outline the process by which operators of HSEs and USEs, who are required to rejoin the main scheme if emission thresholds are breached, may be allocated free allowances, if eligible, when rejoining the main scheme.
Aviation – assistance of Civil Aviation Authority	Article 19	This amendment is to enable the UK ETS authority, national authorities and regulators to seek assistance and advice from the Civil Aviation Authority, and for the CAA to subsequently request remittance of expenses incurred in such activity from the body or person requiring the advice.
Reversal of allocations	Article 21(4)	If there is an error in the free allocation of allowances, the registry needs to be able to reverse these actions. This provision allows for such errors to be remedied by the registry administrator.
Changes to Annexes II and IV of the Monitoring and Reporting Regulation 2018	Articles 20(5) and (6) and 26	This amendment is to mirror changes made to Annexes II and IV of the EU ETS Monitoring and Reporting Regulation 2018 (MRR) in 2020 – specifically, combining sections 4 and 5 of Annex II into one section and amending the references in Annex IV to reflect that change. The UK ETS Order currently applies the MRR to the UK ETS with modifications that do not include the 2020 changes. Implementing the 2020 changes will reduce the administrative burden for operators in respect of MRV for process emissions.

Policy Issue/Area	SI reference	Brief description
Regulator approval of monitoring plans / monitoring methodology plans	Articles 17, 18, 20(2), 22(2), (3)(a), (6) and (7)(a) and (b), 23(2), (3), (6) and (7), 24 and 27	Provision for the regulator to reject an installation's monitoring plan and for the operator of the installation to appeal; for the regulator to refuse to issue a permit unless a monitoring plan has been approved or the monitoring plan complies with the Monitoring and Reporting Regulation 2018; and to require that any new or varied Monitoring Plans and Monitoring Methodology Plans (MMPs) submitted with a permit transfer application must be approved by the regulator under the Monitoring and Reporting Regulation (MRR) and Free Allocation Regulation (FAR) as applicable before the application is granted. This is to ensure the appropriate level of assurance that monitoring plans and monitoring methodology plans are adequate in all cases.
Permit transfers: partial permit transfer	Article 22(4)(a), (5), (7)(c) and (8)	A provision to allow the regulator, in the case of a partial permit transfer request, to effect such a transfer by means of a variation to an existing permit held by the new operator, where the new operator already has a permit for one or more installation(s) on the same site. This is to avoid the unnecessary issuance of new permits where a variation to an existing permit is a more efficient alternative.
MRR modifications for hospital or small emitters	Article 23(4)	Modification of the MRR as it applies to installations in the hospital or small emitter opt-out scheme so that Article 69(4) of the MRR (obligation to submit improvement reports) does not apply to such installations. This is to avoid unnecessary administrative burdens for operators in the opt-out scheme.
MRR modifications in Schedule 4	Article 20(4), (6) and (7)	Minor modifications of the MRR as it applies to the UK ETS including changing references to Directive 2003/87/EC to UK legislation and replacing references to Commission guidance

Policy Issue/Area	SI reference	Brief description
		in Article 43 and Annex 4 to guidance of the UK ETS authority.
Emissions Monitoring Plans (EMPs)	Articles 6, 7 and 8	<p>The purpose of this amendment is to enable a person who has not yet become an aircraft operator to be able to apply for an emissions monitoring plan, in addition to extant Aircraft Operators (AO).</p> <p>Compliance with the EMP would not begin until the person becomes an AO, so this provision would not result in the person being under any new obligations or at risk of penalties by proactively applying for an EMP.</p>
Changes to article 34H and 34R error provisions	Articles 12 and 14	The purpose of this amendment is to make it clear that the process for correcting errors in allocation tables applies even if the error has resulted in a failure to include an installation or an aircraft operator in the allocation table.
Amending penalties	Articles 15 and 16	<p>Amendment to Article 57 (Hospitals and Small Emitters failure to notify when ceasing to meet criteria) to amend penalty calculation for hospital or small emitters that fail to notify the regulator when ceasing to meet criteria for being excluded for the main emissions trading scheme by adding in consideration of free allocation entitlement.</p> <p>Amendment to Article 60 penalty calculation for ultra small emitters failing to notify when reportable emissions exceed criteria for being excluded for the main emissions trading scheme by adding in consideration of free allocation entitlement.</p>

Question 1

Do you have any comments on the proposed Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021, or on the specific proposals therein?

The Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2021

The proposed amending order, to be introduced under the affirmative legislative procedure, will introduce amendments to the existing Order 2020. These proposed amendments are briefly outlined below, with the accompanying draft SI setting out in full the proposed legislative text.

Policy Issue/Area	SI reference	Brief description
Penalties	Articles 7, 8 and 9	<p>1) Article 34V of the Order 2020 provides for the regulator to give a notice to an operator or aircraft operator requiring the return of allowances to which the person was not entitled. An enforcement notice under article 44 is currently the only enforcement response if the notice to return is not complied with. It is therefore proposed that, where operators or aircraft operators fail to return allowances, the regulator should be able to impose a civil penalty to incentivise their compliance with a notice to return allowances.</p> <p>2) Provision to afford the UK ETS Authority the power to seize and sell allowances to cover any unpaid civil penalties owed by the operator or aircraft operator. This is to support the recovery of unpaid penalties from operators and aircraft operators.</p>
Registry administrator's powers of enforcement	Article 10	To clarify that the registry administrator has the power to give enforcement

Policy Issue/Area	SI reference	Brief description
		notices and information notices under articles 44 and 75 of the Order 2020.
Powers of entry	Article 6	This provision will make it an offence for a person to intentionally obstruct the regulator or an authorised person in the exercise of enforcement powers under article 40 of the Order 2020.
Powers to inspect	Article 5	Provision to make it clear that the power to inspect premises under article 39 of the Order 2020 to ensure compliance may be exercised by an “authorised person” as well as the regulator.

Question 2

Do you have any comments on the proposed Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2021, or on the specific proposals therein?

Assessing Impacts

The issues being addressed by these proposals are technical and operational issues identified during the development and amendment of the Order 2020. The proposals under consideration are considered as necessary for operation of the scheme by the beginning of the 2022 calendar year or the surrender deadline in April 2022.

The overall level of climate ambition in the UK Emissions Trading Scheme (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 administration burden for emitters.

In terms of other impacts, these provisions are also designed to address a number of specific circumstances for regulators including options to apply penalties if operators or aircraft operators fail to return allowances and to use other methods of recovering money owed from penalties when not repaid. Again, these are not expected to generally apply, but might take effect in specific circumstances.

Any further assessment of the impact will be considered when the Government responds to the replies to the consultation.

Consultation questions

1. **Do you have any comments on the proposed Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021, or on the specific proposals therein?**
2. **Do you have any comments on the proposed Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2021, or on the specific proposals therein?**

Next steps

This consultation will close on 07 September 2021, after which responses will be analysed and a government response published as soon as possible on GOV.UK. We will consider any changes to the draft legislation that may be suggested in stakeholders' responses to the consultation and, if necessary, appropriately revise the draft Order. The government response is intended to be published within 12 weeks of the closing date.

This consultation is available from: www.gov.uk/beis

If you need a version of this document in a more accessible format, please email enquiries@beis.gov.uk. Please tell us what format you need. It will help us if you say what assistive technology you use.