

Explanatory Memorandum to the Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2024

This Explanatory Memorandum has been prepared for the Minister for Climate Change by the Directorate of Climate Change, Energy and Planning and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2024.

Julie James
Minister for Climate Change

23 February 2024

PART 1

1. Description

1.1 The UK Emissions Trading Scheme (“ETS”) was established by the Greenhouse Gas Emissions Trading Scheme Order 2020 (“the principal Order”) as a UK-wide greenhouse gas emissions trading scheme, to encourage cost-effective emissions reductions from the power, industry, and aviation sectors. It was designed jointly by the Governments of the UK, Scotland, Wales, and the Northern Ireland Executive. It contributes to the UK’s emissions reduction targets and net zero goal, as well as the emissions reduction pathway in Wales.

1.2 As the scheme matures the UK ETS Authority (“the Authority”) has been looking to improve how it functions. In December 2023, the Authority opened a 12-week consultation entitled “UK Emissions Trading Scheme: free allocation review”, which explores options to better target those most at risk of carbon leakage and to ensure that the Free Allocation (“FA”) of allowances covering greenhouse gas emissions is fairly distributed.

1.3 Under the current legislation, the next application window for FA is 1 April – 30 June 2024. The same application window also applies to Hospital Small Emitter (HSE) and Ultra Small Emitter (USE) applications and is the deadline by which operators of installations that do not apply for FA must provide information to the Authority.

1.4 However, the timeframe applicable to the consultation means that the final policy position would not be clear before the above window expires. Therefore, participants would not have certainty of their eligibility for FAs, or of the appropriate information to include in applications, making it impracticable for them to apply during that timeframe.

1.5 This Order therefore seeks to move FA the application window to 1 April – 30 June 2025. It also moves several other associated deadlines to accommodate the new timeframe.

2. Matters of special interest to the Legislation, Justice and Constitution Committee

2.1 Part 3 of Schedule 3 to the Climate Change Act 2008 (“CCA”) states that an emissions trading scheme that applies to England, Scotland, Wales and

Northern Ireland – such as in this case – must be established by Order in Council.

2.2 The procedure for making such an Order in Council is prescribed by section 48 to the CCA.

2.3 As the Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2024 does not contain any provisions which would be caught by section 48(3) of the CCA, the negative procedure applies to it.

2.4 As the Order in Council will be subject to UK Parliamentary scrutiny, it is not considered reasonably practicable for this instrument to be made or laid bilingually.

3. Legislative background

3.1 The principal Order set up the UK ETS to be operational from 1 January 2021. It runs for ten scheme years, split into two five-year “allocation periods”. The scheme works by requiring operators of energy intensive industrial installations, power generators, and aircraft operators to monitor, report on, and surrender “allowances” equivalent to their greenhouse gas emissions in each scheme year. Some participants receive an allocation of allowances free of charge, details of which are published in allocation tables.

3.2 There have been several amendments to the principal Order to give effect to technical changes that improve the operation of the UK ETS for both participants and regulators. These are contained in the following Orders in Council: the Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020, the Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021, the Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2022, the Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2022, the Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 3) Order 2022, the Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2023, and the Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2023.

3.3 The principal Order and these amending Orders in Council were made under section 44 of the CCA. The Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2024 is also being made under that power.

3.4 As noted above, the Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2024 is being made subject to negative resolution procedure.

3.5 There have also been amendments made to the UK ETS under the Finance Act 2020. These are contained in: the Greenhouse Gas Emissions Trading Scheme Auctioning Regulations 2021, the Recognised Auction Platforms and Greenhouse Gas Emissions Trading Scheme Auctioning (Amendment) Regulations 2021, the Greenhouse Gas Emissions Trading

Scheme Auctioning (Amendment) Regulations 2021, the Greenhouse Gas Emissions Trading Scheme Auctioning (Amendment) (No. 2) Regulations 2021, and the Greenhouse Gas Emissions Trading Scheme Auctioning (Amendment) Regulations 2023.

4. Purpose and intended effect of the legislation

4.1 The purpose of the Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2024 is to amend the principal Order and associated legislation to:

- 4.1.1 Move the FA application window for incumbent operators of the main scheme from 1 April – 30 June 2024 to 1 April – 30 June 2025.
- 4.1.2 Make same change to the timeline as regards the applications for HSE and USE status.
- 4.1.3 Make consequential changes to timeframes for application processing, for exchange of information between the Authority and regulators, and for publication of notifications by the Authority relating to the determination of FA applications.

4.2 The territorial extent of this Order is the whole of the United Kingdom.

4.3 The main changes are summarised below:

Changes to Greenhouse Gas Emissions Trading Scheme Order 2020

4.4 **Article 5** of the amending Order changes the meaning of a “FA installation” to specify the date from when an installation can become an FA installation as a result of an application for the same (1 January 2026) and sets out the circumstances when this would not apply, such as when a regulator deems that an application is not valid.

4.5 **Article 6** of the amending Order changes the year in which operators of installations who do not make applications for free allocation have to submit other information, from 2024 to 2025.

4.6 **Article 7** of the amending Order changes the date before which the allocation table for the 2026-2030 allocation period must be published, from 1 January 2026 to 28 February 2026.

4.7 **Articles 8 and 9** amend Schedules 7 and 8 respectively to the principal Order, so that the window for application for HSE and USE status for the 2026-2030 allocation period will be 1 April 2025-30 June 2025. They also provide that the regulator must preliminarily assess the application before 31 August 2025 and that the UK ETS Authority must publish the list of HSE and USEs before 17 October 2025.

4.8 In addition, **Article 8** sets out amended timelines with respect to certain administrative tasks that regulators need to carry out when HSE status comes to an end, in light of the other timeline changes mentioned above.

Changes to the Free Allocation Regulation (FAR) as it applies to domestic law

4.9 **Articles 11 and 12** of the amending Order move the FA application window from 1 April – 30 June 2024 to 1 April – 30 June 2025. This will apply to incumbent operators and also new entrants to the scheme.

4.10 **Article 13** of the amending Order amends the deadline for the regulator to provide information about FA applications to the Authority, to 30 September 2025.

4.11 **Article 14** of the amending Order provides that regulators must send the preliminary number of free allowances calculated for each installation to the Authority, as soon as possible after the benchmarks are set out. Where the benchmarks are delayed beyond 31 January 2026, regulators are required to send the calculations as soon as practicable after 31 January 2026.

5. Consultation

5.1 Before making an Order in Council under section 44 of the CCA, the Welsh Ministers are required to obtain, and take into account, the advice of the Climate Change Committee (section 48(1)(a) CCA). They are also required to consult such persons affected by the draft legislation as they consider appropriate (section 48(1)(b) CCA).

5.2 A focussed consultation with relevant stakeholders was held from 14 November 2023 – 28 November 2023, given the limited scope of the change. The Government Response to this was communicated to respondents on 05 February 2024. A copy is available on request.

5.3 The Climate Change Committee was consulted and has indicated that it is content for this legislation to be progressed.

6. Regulatory Impact Assessment (RIA)

6.1 While this Order contains minor changes to regulatory provision timelines, the amendments do not alter the policy (or its impact) in any significant way or how it is applied in a given situation. There is no or negligible costs or savings on the public, private, charity or voluntary sectors as a result of this amendment. Therefore, an RIA is not required. This is in line with the

policy set out in the Welsh Ministers' code of practice for carrying out regulatory impact assessments for subordinate legislation.

6.2 It should also be noted that the overall level of climate ambition in the UK ETS is unchanged by the proposals.

6.3 Although not required by Government policy, a regulatory impact assessment of the effect of the UK ETS on the costs of business, the voluntary sector and the public sector was produced and is available alongside the principal Order at: [The Greenhouse Gas Emissions Trading Scheme Order 2020 - Impact Assessment \(legislation.gov.uk\)](#).