

Explanatory Memorandum to the Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2025

This Explanatory Memorandum has been prepared for the Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs by the Directorate of Climate Change and Rural Affairs and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Cabinet Secretary'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) (No. 2) Order 2025.

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Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs

12 February 2025

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 and is governed by the UK ETS Authority (comprising UK Government, Scottish Government, Welsh Government and the Department of Agriculture, Environment and Rural Affairs in Northern Ireland). It contributes to the UK’s emissions reduction targets and net zero goal, as well as the emissions reduction pathway in Wales. The UK ETS replaced the UK’s participation in the EU Emissions Trading System from 1 January 2021.
- 1.2 The UK ETS incentivises decarbonisation by requiring operators to purchase allowances based on carbon emissions. Participants are required to monitor, report on, and surrender allowances in respect of their greenhouse gas emissions. Participating operators at risk of carbon leakage¹ are given a certain number of UK ETS allowances for free, to manage their exposure to the carbon price and to ensure that domestic industry is not disadvantaged by imports subject to lower carbon prices. Participants can also buy emission allowances at auction and in secondary markets.
- 1.3 The scheme has two allocation periods, 2021-2025 and 2026-2030, in which free allocation (“FA”) is calculated and provided to eligible operators.
- 1.4 Participants’ installations can be classed as Hospital and Small Emitters (“HSE”) or Ultra-Small Emitters (“USE”) installations, if they either provide services to hospitals or are installations emitting less than 25,000 and 2,500 tonnes respectively of carbon dioxide equivalent (CO₂eq) per year. Installations with HSE or USE status do not have to surrender allowances in respect of their emissions but instead are required to keep their emissions below a certain level.
- 1.5 Since the scheme began in 2021 the UK ETS Authority (“the Authority”) has been assessing how to further develop the scheme. In December 2023, the Authority opened a 12-week consultation entitled “*UK Emissions Trading Scheme: free allocation review*”², which explored options to better

¹ Carbon leakage is the movement of production and associated emissions from one country to another due to different levels of decarbonisation effort through carbon pricing and climate regulation.

² This refers to the December 2023 Free Allocation Review consultation, <https://www.gov.uk/government/consultations/uk-emissions-trading-scheme-free-allocation-review>, and the interim December 2024 Free Allocation Review Carbon Leakage consultation, <https://www.gov.uk/government/consultations/uk-emissions-trading-scheme-free-allocation-review-carbon-leakage>

target those most at risk of carbon leakage and to ensure that the FA of allowances covering greenhouse gas emissions is fairly distributed.

- 1.6 A key aspect of the 2023 consultation was to review how the Carbon Leakage List (CLL) is calculated, to make it more applicable to the UK context. The CLL sets out sectors deemed at risk of carbon leakage and impacts levels of FA awarded. There was a requirement to consult on this again to provide more specific proposals for CLL changes to stakeholders than were presented in the 2023 consultation, with the aim for changes to be made in 2026. This follow-up consultation on the CLL was previously planned for July 2024. However, given the complexity of the proposals, and the need to consider alignment with the announced confirmation of a UK Carbon Border Adjustment Mechanism³ (“CBAM”) being implemented in 2027, a decision was taken to delay the changes for implementation to 2027. This means the current FA allocation period needs to be extended in the legislation for an extra year to include 2026.
- 1.7 The Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2025 (“this Instrument”) moves the start of the second allocation period for stationary installations from 2026 to 2027, making 2026 a standalone year; and provides for the calculation of FA for the 2026 standalone year. This is achieved through free-standing provisions in Part 2 of this instrument and by amendments to the Principal Order⁴, the Free Allocation Regulation⁵ and the Activity Level Changes Regulation⁶.

This Instrument also:

- a) places a requirement on the Authority to publish details of all transfers of allowances between accounts in the UK ETS Registry annually, after a three-year delay. This is in line with international standards including the EU ETS. This change will provide transparency and support effective market analysis.
- b) creates an exception to the general prohibition on disclosure of information obtained or held under UK ETS legislation for the specific purposes of policy development relating to climate change. An example of where this is expected to be required is to enable the UK ETS Authority to disclose data to HM Treasury and HM Revenue and Customs to support the development and implementation of the UK CBAM. This Instrument will also create an exception to permit disclosure to the Climate Change Committee (“CCC”) to aid it in performing its statutory duties; and
- c) extends qualification criteria so that installations with low levels of emissions which started operations between 2 January 2021 and the 1 January 2024 (inclusive) can apply to be classed as USE during

³ CBAMs are a mitigation for carbon leakage. They address carbon leakage risk by applying an effective carbon price to products being imported into the UK. A UK CBAM will be applied to several sectors covered by the UK ETS.

⁴ [The Greenhouse Gas Emissions Trading Scheme Order 2020](#)

⁵ [Commission Delegated Regulation \(EU\) 2019/331](#)

⁶ [Commission Implementing Regulation \(EU\) 2019/1842](#)

the 2026 – 2030 period. At present, only installations whose activity began on or before 1 January 2021 are eligible to apply for USE status for the 2026-2030 period. This change will reduce the burden on, what are likely to be, small businesses.

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. The appropriate procedure for an Order in Council is prescribed by section 48 to the CCA. As this Instrument does not contain any provisions which would be caught by section 48(3) of the CCA, the negative procedure has been used.
- 2.2 As the Order in Council will be subject to Parliamentary scrutiny across the UK, it is not considered reasonably practicable for this Instrument to be made or laid bilingually.

3 Legislative background

- 3.1 The UK ETS was established under the Climate Change Act 2008 by the Principal Order. The Principal Order applies the Monitoring and Reporting Regulation 2018 and Verification Regulation 2018 on the monitoring, reporting and verification of emissions with modifications to ensure that they are appropriate for the UK ETS.
- 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 regulators⁷. The Principal Order and these amending Orders in Council were made under section 44 of the CCA. This Instrument is also being made under that power.
- 3.3 There have also been amendments made to the UK ETS via subordinate legislation made under the Finance Act 2020⁸.

⁷The principal Order has been amended by the Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020 [insert ref for all], 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, the Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2023, the Greenhouse Gas Emissions Trading Scheme Order 2024, the Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2024, the Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2024 and the Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2025.

⁸The 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 this Instrument is to amend the Principal Order and associated legislation to:
- allow the 2026 scheme year to be treated as an extension of the 2021-2025 allocation period for the purposes of calculating and distributing FA for scheme installations.
 - allow for changes to the sharing of UK ETS data, in terms of publication of Registry transaction data and for the purposes of improving policy development.
 - allow for operators who began a regulated activity between 2 January 2021 and 1 January 2024 to be eligible to apply for USE status.
- 4.2 Making the change to FA legislation means that the current rules will be extended and FA for installations for 2026 will be determined using the benchmarks, CLL and other rules already in legislation for the 2021-2025 allocation period and calculated using activity data currently held by regulators.
- 4.3 This delay affects only installations who receive FA within the scheme (amounting to 29 installations in Wales in the 2023 scheme year, which is the most recent available). However, no significant impacts or risks have been identified from this change. This is because it involves extending current rules which installations are already adhering to and makes no changes to those rules. It makes no change to the scheme cap or overall free allocation available, therefore does not impact the overall ambition of the scheme.
- 4.4 The delay may also provide some wider benefits in that it will allow for further time for the additional consultation and analysis to take place with stakeholders, ahead of any changes being made (aimed for 2027). It also allows for better alignment with the UK Government's CBAM policy, which has been announced for implementation in 2027.
- 4.5 Making the changes to the data sharing agreement will provide transparency and so support effective market analysis and policy development alongside supporting the CCC in their statutory functions.
- 4.6 Making the changes to the USE applications will reduce the administrative burden on (those which are likely to be) small businesses.
- 4.7 The territorial extent of this Instrument is the whole of the United Kingdom, and the legislation will affect operators who are within the UK ETS (including industry, power generation and aviation). It will come into force on 31 March 2025.
- 4.8 The main provisions are summarised below:

Part 2 of the Principal Order.

4.9 Article 4 applies to Part 2 of this Instrument and provides that for Part 2; “2026 incumbent” is given the meaning in article 5 and that “type 1 2026 incumbent” must be construed in accordance with article 5. It further provides that “Article 4 application” means an application for free allocation in the 2027- 2030 allocation period and that “sub-installation” has the same meaning as in the Free Allocation Regulation. Part 2 of the Instrument must be interpreted as being part of the Principal Order.

4.10 Article 5 of this instrument provides a specific definition for a “2026 incumbent” which is an installation that has already come under the 2021-2015 allocation period, or who has completed the first stage of an application for the following application period. It also provides definitions of a “type 1 2026 incumbent”, which is an installation who has received free allocation under the 2021-2025 allocation period, and a “type 2 2026 incumbent”, which is an installation who has not previously received free allocation but has applied to receive them in the 2026 allocation year.

4.11 Article 6 of this Instrument places a duty on the regulator the calculate preliminary and final free allocation and how they must make these calculations considering any activity level changes for a type 1 2026 incumbent. UK ETS Authority is placed under a duty to approve the final number of allowances in respect of the 2026 scheme year making corrections for the preliminary and final annual number of allowances as it considers appropriate.

4.12 Article 7 of this Instrument places a duty on the regulator, for the purposes of type 2 2026 incumbents, to determine in accordance with Article 15 of the Free Allocation Regulation the historical level of each sub-installation of the installation on the basis of the baseline data report and verification report submitted as part of the first stage of the Article 4 application.

4.13 The regulator is also placed under a duty to calculate in accordance with the relevant Articles and Annex of the Free Allocation Regulation the preliminary annual number if allowances to be allocated in respect of each sub-installation of the installation for the 2026 scheme year.

4.14 Additionally, it provides the regulator must provide specific data to the UK ETS Authority. The UK ETS Authority is placed under a duty to assess the documents submitted as part of the first stage of the Article 4 application and inform the regulator if the application is valid or not. If an application is not valid the regulator must notify the operator and provide reasons.

4.15 Article 8 of this Instrument provides for the procedure to be followed regarding the flexible reserve if the industry cap is exceeded in the 2026 scheme year, for 2026 incumbents.

- 4.16 Article 9 of this Instrument requires an operator to give a renunciation notice should they wish to renunciate free allocation in the 2026 allocation period. To be effective a renunciation notice must be given on or before 30 June 2025.
- 4.17 Article 10 of this Instrument provides for preliminary free allocation calculation in the 2026 scheme year for lime and malt extract manufacture.
- 4.18 Article 11 of this Instrument states that The Greenhouse Gas Emissions Trading Scheme Order 2020 is amended by Part 3 of the amending Order.
- 4.19 Article 12 of this Instrument alters Article 4 to make the required definition changes to the allocation period and the allocation table, so that the 2026 scheme year is a standalone year, and no longer included in the 2026-2030 allocation period. It further provides that the that the 2026 allocation period means the 2026 scheme year and that the 2027-2030 allocation periods mean the 2027-2030 scheme years.
- 4.20 Article 13 of this Instrument amends Article 4A to update the meaning of a FA installation, so that the 2026 scheme year is a standalone year, and no longer included in the 2026-2030 allocation period, and provides necessary amendments to reflect the resultant changes to the 2027-2030 allocation periods.
- 4.21 Articles 14 and 15 of this Instrument amend Articles 12 and 13 (which relate to aircraft operators) to change dates to account for the fact that 2026 will be a standalone year and will no longer be included in the 2026-2030 allocation period. Meaning the relevant date for both Article 12 and 13 is now 1 January 2026, previously it was the beginning of the 2026-2030 allocation period.
- 4.22 Article 16 of this Instrument amends Article 20 to remove the reference to 2026-2030 being an 'allocation' period so that cap on allowances still applies to the 2026-2030 period.
- 4.23 Article 17 of this Instrument amends Article 23A to make changes to references to reflect the 2026 allocation period and 2027-2030 allocation period regard in relation to the flexible reserve. It also inserts references to this instrument in the necessary places to ensure alignment.
- 4.24 Article 18 of this Instrument amends Article 27A to allow for the changes to the dates in relation to the information required for the next allocation period (which was 2026-2030 but will now be 2027-2030). It also amends the deadline for information to be submitted: ~~2022~~, in line with the separation of 2026 as a standalone year.

- 4.25 Article 19 of this Instrument amends Article 34A to make further changes to the legislation regarding allocations tables, to substitute references to 2026-2030 with 2027-2030. It also provides that a relevant installation for the purposes of inclusion in the 2027-2030 allocation table includes an application for free allocation in the 2027-2030 allocation period made under Article 4 of the Free Allocation Regulation that the UK ETS has informed the regulator is a valid application.
- 4.26 Article 20 of this Instrument inserts Article 34AA (after Article 34A) which places a duty on the Authority to compile an allocation table for the standalone 2026 period. Article 34AA includes details of eligibility criteria of installations that must be included in the table, the details that must be included in any entry and the calculation of allocation entitlement for installations.
- 4.27 Article 21 of this Instrument amends Article 34B to insert references to this instrument and to the newly inserted Article 34AA into the provision on allocation tables. This is to ensure that allowances approved pursuant to this instrument are included within the final annual number of allowances to be allocated to an installation in the allocation table.
- 4.28 Article 22 of this Instrument amends Article 34C to insert a reference to this instrument into provisions about updates to allocation tables.
- 4.29 Article 23 of this Instrument amends Article 34D to place a requirement on the Authority to publish a 2026 allocation table as soon as reasonably practicable and before 1 January 2026 at the latest. It also substitutes references to the dates to reflect the 2027-2030 allocation period and that 2026 will be a standalone scheme year.
- 4.30 Article 24 of this Instrument amends Article 34H to ensure that an error of the Authority or Regulator under this instrument is included within the definition of a 'relevant error'. Article 34H provides that a regulator must give notice to the operator of the installation of a relevant error. Article 24 of this instrument also makes amendments to clarify that 2026 is a standalone year, alongside the 2021-2025 and 2027-2030 allocation periods.
- 4.31 Article 25 of this Instrument amends Article 59 (civil penalties for ultra-small emitters where reportable emissions exceed the maximum amount) to remove references to 'allocation periods' in line with the separation of 2026 as a standalone year. As a result of these amendments a civil penalty under Article 59 may be imposed only in respect of the first scheme year beginning with 1 January 2021 and ending with 31 December 2025 or the 2026-2030 period in which the installation's reported emissions exceed the maximum amount and if the following scheme year is in the same period that scheme year

- 4.32 Article 26 of this Instrument amends Article 75B to permit data to be shared for the purposes of relevant policy development or implementation by a national authority, a Minister of the Crown, or His Majesty's Revenue and Customs, and for supporting the Committee on Climate Change to perform its functions. This will allow the Authority, a national authority, the regulator or the Registry administrator to share data that it holds for those purposes. It also inserts context for the definition of relevant policy development and the instances this may be the case.
- 4.33 Article 27 of this Instrument amends Article 75C to prohibit the publication of information about transfers of allowances if publication of the information would be contrary to the interests of national security.
- 4.34 Article 28 of this Instrument amends Schedule 3 to remove references to 'allocation periods' to provide that the relevant date range remains 2026-2030.
- 4.35 Article 29 of this Instrument amends Schedule 5A (paragraph 34) to provide further detail on the information that the Authority must publish regarding transfers of allowances. It also confirms that this requirement is subject to Article 75C (national security).
- 4.36 Article 30 of this Instrument amends Schedule 6 to remove references to 'allocation periods' so that the relevant date range for paragraph 8(3)(b)(iv) remains 2026-2030.
- 4.37 Article 31 of this Instrument changes references from the 2026-2030 *allocation* period to the 2026-2030 period, this has the effect that the date range remains unaltered by the inclusion of 2026 standalone period. It additionally makes changes to requirements on the regulator regarding applications to increase emissions targets for scheme years in the 2027-2030 allocation period.
- 4.38 Article 32 of this Instrument amends Schedule 8 in relation to USE status. It updates references to the 2026-2030 *allocation* period to the 2026-2030 period only, effect that the date range remains unaltered by the inclusion of 2026 as a standalone scheme year. Article 32 also updates the relevant conditions for obtaining USE status for 2026-2030 period to allow operators who began regulated activity between 2021 and 2024 to apply for USE status in the period 2026 – 2030. It inserts paragraph 7A to provide for voluntary exit of a USE operator from USE status for the 2027-2030 allocation period. The installation must notify the regulator on or before 30 June 2026 that it doesn't wish to claim USE status; in turn the regulator must, as soon as reasonably practicable, give notice to the operator

confirming it is no longer a USE (provided confirmation is provided to the regulator by the UK ETS Authority).

Changes to the Free Allocation Regulation

- 4.39 Article 33 states that the Commission Delegated Regulation (EU) 2019/331 is amended in accordance with Part 4 of this Instrument.
- 4.40 Article 34 of this Instrument amends Article 2 to substitute references to 2026-2030 with 2027-2030 in the definitions of incumbent installation, and baseline period. It also ensures that references within the Regulation to benchmarks for an allocation period are references to the benchmarks set out in Annex 8 (as updated by this instrument).
- 4.41 Article 35 of this Instrument amends Article 2a to substitute the 2026-2030 allocation period for the 2027-2030 allocation period and inserts references to this instrument where necessary regarding eligibility for FA. Article 35 also makes changes to reflect that an application under Article 4 of the Free Allocation Regulation (as amended by this instrument) will have two stages.
- 4.42 Article 36 of this Instrument amends Article 2b to substitute references to the 2026-2030 *allocation* period with 2026 and 2027-2030 allocation periods and insert references to this instrument where relevant regarding FA in 2026 and 2027-2030 allocation periods. Article 36 also makes changes to reflect that an application under Article 4 of the Free Allocation Regulation (as amended by this instrument) will have two stages to reflect that 2026 is now a standalone year.
- 4.43 Article 37 of this Instrument amends Article 2c to substitute references to the 2026-2030 allocation period with 2026 and 2027-2030 allocation periods in relation to the meaning of electricity generator and relevant CHP electricity.
- 4.44 Article 38 of this Instrument amends Article 4 to substitute references to the 2026-2030 allocation period with 2026 and 2027-2030 allocation periods in relation to applications for FA from incumbent installations. It clarifies the application process which will have two stages and timings in relation to the separation of 2026 as a standalone year. Article 38 also makes provision in relation to the application process for operators of an installation with USE or HSE status for 2026-2030.
- 4.45 Article 39 of this Instrument amends Article 5 to substitute references to 2026-2030 in the provision about application for FA by new entrants with 2026 and the 2027-2030 allocation period.

- 4.46 Article 40 of this Instrument amends Article 8 to substitute paragraph 7(a) to amend the dates when notices must be given (in relation to an operator having submitted a monitoring methodology plan to the regulator. These amendments reflect the changes to the 2027-2030 allocation period and the inclusion of 2026 as a standalone year.
- 4.47 Article 41 of this Instrument amends Article 15a to allow for the change in allocation period from 2026-2030 to 2027-2030. Article 41 makes amendments so that Article 15a applies where both stages of applications for free allocations are made within the 2027-2030 allocation period.
- 4.48 Article 42 of this Instrument amends Article 16 to substitute references to 2026 – 2030 with 2027-2030 throughout. It removes references to the benchmarks for the existing allocation periods as they are no longer correct. Article 42 also inserts a new definition of “relevant allocation period” for Articles 16 and 19 to 22 to reflect that 2026 will be a standalone scheme year.
- 4.49 Article 43 of this Instrument amends Article 16a to ensure that cross-sectoral correction factors only apply to the new 2027-2030 allocation period and not apply to the 2026 standalone year and. Article 43 also makes provision to ensure that if the industry cap for the 2026 scheme year exceeds the total final number of allowances approved under this instrument to be allocated for the 2026 scheme year in respect of all incumbents, the industry cap for the 2027 scheme year must be treated as being increased by the difference. Article 43 then updates the definition of “installation” for the purposes of Articles 16a and 16b to reflect the two-stage application process in Article 4 (once amended by this instrument) specifically as it relates to installations with HSE or USE status but who no longer wish for that status.
- 4.50 Article 44 of this Instrument amends Article 16b to substitute references to ‘2026-2030’ with ‘2027-2030’.
- 4.51 Article 45 of this Instrument amends Article 18 to substitute references to ‘relevant period’ with ‘relevant allocation period’ and consequentially update references to the ‘benchmark for the relevant period’, to the ‘benchmark of the relevant allocation period’. It also updates, for the purposes of Articles 18, 18b and 19 to 22, the definition of ‘relevant allocation period’ to reflect that 2026 will be a standalone scheme year, and the allocation period will then be 2027 – 2030.
- 4.52 Article 46 of this Instrument amends Article 24 by substituting paragraph 2 to clarify the dates by which an operator may give notice of renunciation of FA allowances, reflective of the 2026 and 2027-2030 allocation periods.

- 4.53 Article 47 of this Instrument amends Article 25 in relation to the transfer of a greenhouse gas emissions permit and updates that a regulator must give notice to the operator of each new installation to take account of the 2026 standalone allocation period. It amends the definition of “relevant allocation period” to take account of the 2026 standalone year and the 2026-2023 allocation period and provides definitions for “incumbent installation” which are date specific.
- 4.54 Article 48 of this Instrument amends section 4.2 of Annex 7 to substitute references to ‘2026-2030’ allocation period with ‘2027-2030 allocation period’, in relation to data monitoring methods.
- 4.55 Article 49 of this Instrument amends each table in Annex 8 to reflect the 2026 standalone scheme year in the provisions relating to benchmarks.

Changes to the Activity Level Changes Regulation

- 4.56 Article 50 states that the Commission Implementing Regulation (EU) 2019/1842 is amended in accordance with Part 5 of the amending Order.
- 4.57 Article 51 of this Instrument amends Article 3 to insert the requirement for operators, when submitting their annual report on the activity level of each sub-installation in the preceding calendar year, to provide data for the preceding 2 years in 2027 if they were not required to submit a report in 2026.
- 4.58 Article 52 of this Instrument amends Article 3a to insert references to this instrument, and substitute paragraph 4 to amend the definition of ‘relevant allocation period’ to reflect the separation of 2026 and 2027-2030 allocation periods.
- 4.59 Article 53 of this Instrument amends Article 5 by inserting paragraph 2a. This clarifies that in relation to adjustments to FA due to activity level changes, any reference in paragraph 2 to an “allocation period” must be read as a reference to the period consisting of the 2021-2025 allocation period and the 2026 allocation period.

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 In relation to the delay of the introduction of new FA rules, a two-week consultation period took place from 26 September 2024 until 11 October 2024. This was targeted to affected operators via regulators.
- 5.3 Responses to the proposed delay were majority in favour, with the ability to consider alignment of FA changes with the introduction of the UK CBAM cited as a key reason.
- 5.4 For the proposed technical and operational amendments regarding data sharing and the USE scheme, a three-week consultation took place from 24 September 2024 until 15 October 2024. This was targeted to affected operators via regulators.
- 5.5 Responses to the proposed amendments to registry data sharing were split, therefore an amendment has been suggested aligned with concerns around commercial data sensitivity. Regarding the other proposals relating to the disclosure of UK ETS information by a national authority) and to the changes to eligibility for USE status, responses were mostly in favour. Some disagreement occurred over whether a non-disclosure agreement was sufficient to protect UK ETS information. However, the response makes clear that there will be a high bar for data sharing and other processes such as anonymising the data where appropriate will be used.

6 Regulatory Impact Assessment (RIA)

- 6.1 While this Instrument makes changes to the legislation, the amendments do not alter the policy (or its impact) in any significant way or how it is applied in a given situation. The delay to the FA policy changes mean only that the current rules are continued for an additional year, and the changes to data-sharing involve sharing for policy development purposes only. There are no or negligible costs or savings on the public, private, charity or voluntary sectors as a result of these amendments. The HSE and USE scheme changes update eligibility requirements to allow operators who began operations between 2 January 2021 and 1 January 2024 to apply. However, it makes no substantive changes to the policy itself. 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 all of the proposals.