

This draft Statutory Instrument has been laid before Parliament and published in consequence of defects in S.I. 2020/1265 and 2020/1557 and is being issued free of charge to all known recipients of those Statutory Instruments.

Draft Order in Council laid before Parliament, the Northern Ireland Assembly, the Scottish Parliament and Senedd Cymru under paragraph 11 of Schedule 3 to the Climate Change Act 2008 for approval by resolution of each House of Parliament, the Northern Ireland Assembly, the Scottish Parliament and Senedd Cymru.

DRAFT STATUTORY INSTRUMENTS

2022 No. XXXX

CLIMATE CHANGE

**The Greenhouse Gas Emissions Trading Scheme (Amendment)
Order 2022**

Made - - - - *****

Coming into force in accordance with article 2

At the Court at Buckingham Palace, the ***** day of ***** 2022

Present,

The Queen's Most Excellent Majesty in Council

This Order is made in exercise of the powers conferred by sections 44 and 90(3) of, and Schedule 2 and paragraph 9 of Schedule 3 to, the Climate Change Act 2008(a).

In accordance with paragraph 10 of Schedule 3 to that Act, before the recommendation to Her Majesty in Council to make this Order was made—

- (a) the advice of the Committee on Climate Change was obtained and taken into account; and
- (b) such persons likely to be affected by the Order as the Secretary of State, the Department of Agriculture, Environment and Rural Affairs, the Scottish Ministers and the Welsh Ministers considered appropriate were consulted.

In accordance with paragraph 11 of that Schedule, a draft of the instrument containing this Order was laid before Parliament, the Northern Ireland Assembly, the Scottish Parliament and Senedd Cymru and approved by resolution of each House of Parliament, the Northern Ireland Assembly, the Scottish Parliament and Senedd Cymru.

Accordingly, Her Majesty, by and with the advice of Her Privy Council, makes the following Order:

(a) 2008 c. 27.

PART 1

Preliminary

Citation

1. This Order may be cited as the Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2022.

Commencement

2. This Order comes into force on the day after the day on which it is made.

Extent

3. This Order extends to the whole of the United Kingdom.

PART 2

Greenhouse Gas Emissions Trading Scheme Order 2020 amended

Greenhouse Gas Emissions Trading Scheme Order 2020 amended

4. The Greenhouse Gas Emissions Trading Scheme Order 2020(a) is amended in accordance with this Part.

Article 39 amended (inspections)

5.—(1) Article 39 is amended as follows.

(2) In paragraph (1) after “regulator” insert “or an authorised person(b)”.

Article 40 amended (powers of entry, etc)

6.—(1) Article 40 is amended as follows.

(2) In paragraph (4)—

- (a) in sub-paragraph (a) omit the final “or”;
- (b) in sub-paragraph (b)(ii) for “answer.” substitute “answer; or”;
- (c) after sub-paragraph (b) insert—

“(c) intentionally to obstruct the regulator, or an authorised person, in the exercise of a power referred to in paragraph (1).”.

Article 44 amended (enforcement notices)

7.—(1) Article 44 is amended as follows.

(2) In paragraph (2)(a)—

- (a) in paragraph (i) after “this Order” insert “, except for Schedule 5A”;
- (b) after paragraph (ii) insert—

“(iii) the Verification Regulation 2018(a);

(a) S.I. 2020/1265, amended by S.I. 2020/1557 and 2021/XXXX.

(b) “Authorised person” is defined in article 38(2) of S.I. 2020/1265.

- (iv) the Free Allocation Regulation**(b)**;
- (v) the Activity Level Changes Regulation**(c)**.”.

(3) After paragraph (2) insert—

“(2A) Where the registry administrator considers that a person has contravened, is contravening or is likely to contravene a requirement imposed on the person by or under Schedule 5A, the registry administrator may give notice (an “enforcement notice”) to the person.”.

(4) In paragraph (3)(a) after “regulator” insert “, or the requirement imposed by or under Schedule 5A that the registry administrator,”.

(5) In paragraph (5) after “regulator” insert “or the registry administrator”.

Article 47 amended (penalty notices)

8.—(1) Article 47 is amended as follows.

(2) In paragraph (6)(d) after “maximum amount” insert “(if any)”.

(3) After paragraph (7) insert—

“(7A) A penalty notice imposing a civil penalty that consists of a daily penalty under article 64A(2)(b) (for which there is no maximum) may be given at such intervals as the regulator considers appropriate.”.

(4) In paragraph (12) in the definition of “daily penalty” after “64(2)(b),” insert “64A(2)(b),”.

Article 52 amended (failure to surrender allowances)

9.—(1) Article 52 is amended as follows.

(2) After paragraph (3)(a) insert—

“(aa) under paragraph (1)(a)(ii), paragraph 11(4)(b)(iii)(bb) of Schedule 6 must be disregarded;

(ab) under paragraph (1)(a)(iii), paragraph 12(5)(b)(iii)(bb) of Schedule 6 must be disregarded;”.

Article 64A inserted

10. After article 64 insert—

“Failure to comply with notice to return allowances

64A.—(1) A person is liable to a civil penalty where the person fails to comply (or to comply on time) with the requirements of a notice (the “notice to return allowances”) given under article 34V.

(2) The civil penalty is—

(a) £20,000; and

(b) a daily penalty at a daily rate of £1,000 for each day that the person fails to comply with the requirements of the notice to return allowances, beginning with the day on which the initial notice is given.”.

(a) “Verification Regulation 2018” is defined in art 4(1) of S.I. 2020/1265 as Commission Implementing Regulation (EU) 2018/2067 of 19 December 2018. Article 25 of that Order provides that the Regulation has effect for the purposes of the UK Emissions Trading Scheme, subject to modifications set out in Schedule 5 to that Order.

(b) EUR 2019/331, amended by S.I. 2020/1557 and S.I. 2021/XXXX. (“Free Allocation Regulation” is defined in article 4(1) of S.I. 2020/1265.)

(c) EUR 2019/1842, amended by S.I. 2020/1557. (“Activity Level Changes Regulation” is defined in article 4(1) of S.I. 2020/1265.)

Article 65 amended (failure to comply with enforcement notice)

- 11.**—(1) Article 65 is amended as follows.
- (2) In the heading omit “given by regulator”.
- (3) In paragraph (1) omit “by the regulator”.

Article 75 amended (information notices)

- 12.**—(1) Article 75 is amended as follows.
- (2) In paragraph (1)—
- (a) for “or a regulator” substitute “, a regulator or the registry administrator”;
- (b) after sub-paragraph (c) insert—
- “(d) the Free Allocation Regulation;
- (e) the Activity Level Changes Regulation.”.

Schedule 6 amended (permits)

- 13.**—(1) Schedule 6 is amended as follows.

Paragraph 11 amended (surrender of permits)

- (2) For paragraph 11(4)(b)(iii) substitute—
- “(iii) where the permit is a greenhouse gas emissions permit, on or before a date set out in the notice (which must not be before 30th April in the end year), surrender allowances equal to the sum of—
- (aa) the installation’s reportable emissions in the period referred to in sub-paragraph (i); and
- (bb) if, in relation to reportable emissions before that period, the operator fails to comply with the surrender condition of the permit, the number of allowances in respect of which the operator fails to comply.”.

Paragraph 12 amended (revocation of permits)

- (3) For paragraph 12(5)(b)(iii) substitute—
- “(iii) where the permit is a greenhouse gas emissions permit, on or before a date set out in the notice (which must not be before 30th April in the end year), surrender allowances equal to the sum of—
- (aa) the installation’s reportable emissions in the period referred to in sub-paragraph (i); and
- (bb) if, in relation to reportable emissions before that period, the operator fails to comply with the surrender condition of the permit, the number of allowances in respect of which the operator fails to comply.”.

PART 3

Other

Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020 amended

- 14.**—(1) The Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020(a) is amended as follows.
- (2) Omit articles 24, 26 and 31.

(a) S.I. 2020/1557.

Name
Clerk of the Privy Council

EXPLANATORY NOTE

(This note is not part of the Order)

The United Kingdom Emissions Trading Scheme (the “UK ETS”) was established by the Greenhouse Gas Emissions Trading Scheme Order 2020 (the “UK ETS Order”). The UK ETS runs for ten “scheme years” beginning in 2021. 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.

This Order amends the UK ETS Order to provide as follows:

- The power to inspect premises to ensure compliance may be exercised by an “authorised person” as well as the regulator (see amendment to article 39 of the UK ETS Order).
- It is an offence to intentionally obstruct persons in the exercise of the enforcement powers referred to in article 40(1) (see amendments to article 40).
- Persons who fail to comply with a notice to return allowances under article 34V may be subject to a civil penalty (see amendments to article 47 and new article 64A).
- Where an installation’s permit is surrendered or revoked, the surrender or revocation notice given will include a requirement to surrender any deficit of allowances from previous scheme years (see amendments to paragraphs 11 and 12 of Schedule 6). The operator will not be subject to a second “excess emissions penalty” in respect of any failure to comply with this requirement (see amendments to article 52).

The Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020 (the “2020 Amendment Order”) made amendments to articles 44, 65 and 75 of the UK ETS Order in relation to enforcement powers. The Joint Committee on Statutory Instruments reported the 2020 Amendment Order on the grounds that there is a doubt as to whether it is *intra vires* in one respect, namely that the amendments were contained in an instrument subject to the negative, rather than the affirmative, resolution procedure (see the Fortieth Report of Session 2019-21). The effect of articles 7, 11, 12 and 14 of this Order is that the amendments made by the 2020 Amendment Order are revoked and are re-made by this Order, which is subject to the affirmative resolution procedure.

A regulatory impact assessment of the effect of the UK ETS on the costs of business, the voluntary sector and the public sector is available from the Industrial Energy Directorate, Department for Business, Energy and Industrial Strategy, 1 Victoria Street, London SW1H 0ET and is available alongside the UK ETS Order on www.legislation.gov.uk.