

## **Explanatory Memorandum to the Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 3) Order 2022.**

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) (No. 3) Order 2022.

**Julie James**  
**Minister for Climate Change**

27 September 2022

## **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 and 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 we have in Wales. Amendments to the 2020 Order were made at the end of 2020<sup>1</sup> to enable the UK ETS to operate from 1 January 2021.
- 1.2 The legislation underpinning the UK ETS is being delivered incrementally, through a series of statutory instruments. The timing and order of this series has been designed to ensure that specific legal provisions are introduced as they become operationally necessary, with two further amendments made in December 2021<sup>2</sup> and April 2022<sup>3</sup>.
- 1.3 Earlier in 2022, the UK ETS Authority consulted on “Developing the UK Emissions Trading Scheme (UK ETS)” which contained a number of proposed amendments considered necessary to address technical and operational needs identified during the first year of operation of the UK ETS. These need to be implemented ahead of the 2023 scheme year.
- 1.4 One such proposal was to include flights from the UK to Switzerland in the scope of the UK ETS from January 2023. This would help to cover a gap in ETS coverage since the UK’s departure from the EU ETS and fulfil our commitment in the Government Response to the Future of UK Carbon Pricing consultation to do so.

### **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

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<sup>1</sup> The Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020.

<sup>2</sup> The Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021.

<sup>3</sup> The Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2022.

Northern Ireland (or any combination thereof that includes Scotland) – such as in this case – must be established by Order in Council.

- 2.2 The appropriate procedure for an Order in Council is prescribed by section 48 to the CCA.
- 2.3 Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 3) Order 2022 contain provisions which would be caught by section 48(3) of the CCA. Therefore, the draft affirmative procedure will be used.
- 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.
- 2.5 While the UK ETS is a 4-nation scheme currently Northern Ireland cannot pass affirmative legislation as the Assembly have failed to nominate a Speaker and an Executive has not been formed. As a result, officials have secured Ministerial approval from Northern Ireland to proceed in the first instance with legislation covering Great Britain only.
- 2.6 The legislation covering the flights from Great Britain (England, Scotland and Wales) to Switzerland, would be in effect from 1 January 2023. The legislation covering flights from Northern Ireland to Switzerland would be implemented as soon as the Northern Ireland Assembly is able to progress legislation.

### **3. Legislative background**

- 3.1 The principal Order set up the UK ETS to be operational from 1 January 2021 and runs for ten scheme years. 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 – 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 purpose of these amendments was to effect technical changes to improve the operation of the UK ETS for both participants and regulators.
- 3.3 Currently there is no provision in the UK ETS legislation to cover flights departing the UK and arriving in Switzerland, as was provided for under the EU ETS legislation. This is due to an oversight in drafting the principal Order.

3.4 The principal Order and the several amendments were made under section 44 of the CCA. The Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 3) Order 2022 is also being made under the powers given by the same.

3.5 As noted above, the Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 3) Order 2022 is being made under the draft affirmative resolution procedure.

#### **4. Purpose and intended effect of the legislation**

4.1 The purpose of the Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 3) Order 2022 is to amend the UK ETS Order to include flights from Great Britain to Switzerland within the definition of aviation activity, thereby bringing them within the scope of the UK ETS (Articles 3 and 5).

4.2 The territorial extent of this Order is England, Wales, and Scotland. The Order has a direct impact on aviation. However, it should be noted that there are no aviation operators in Wales.

4.3 Article 4 of the amending order allows applications for a free allocation of allowances on the basis of this historic aviation activity by persons who have not previously applied for a free allocation of allowances. It does this by amending the article 34L in the principal Order.

4.4 Article 4 also amends article 34M of the principal Order to require the recalculation of entitlements to a free allocation of allowances to take account of the new category of historic aviation activity. This would be carried out by regulators and would require the update of aviation free allocation table by the UK ETS Authority.

#### **5. Consultation**

5.1 A consultation- “Developing the UK Emissions Trading Scheme (UK ETS)” was held from 25 March to 12 June, running for 12 weeks on the proposed amendments. It also contained other proposals not subject to this Order.

5.2 Full details of the consultation and response covering the current amendment can be found at: [Developing the UK Emissions Trading Scheme \(UK ETS\) - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/developing-the-uk-emissions-trading-scheme-uk-ets)

#### **6. Regulatory Impact Assessment (RIA)**

6.1 While this Order contains regulatory provisions, it does not impact Wales as there are no aviation operators in Wales. 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 on [www.legislation.gov.uk](http://www.legislation.gov.uk).