

SL(5)583 – The Greenhouse Gas Emissions Trading Scheme Order 2020

Background and Purpose

This Order establishes a new emissions trading scheme covering greenhouse gas emissions from power and heat generation; energy intensive industries; and aviation. The scheme is to be known as the UK Emissions Trading Scheme (“UK ETS”), and will be the successor in the UK to the EU Emissions Trading System (“EU ETS”).

The UK ETS will cover greenhouse gas emissions from:

- power and heat generation;
- energy intensive industries; and
- aviation.

The Order is made in exercise of powers conferred by the Climate Change Act 2008 and contains 77 articles, divided into 9 Parts, and 11 Schedules.

Part 1 includes definitions used throughout the Order, the activities covered by the scheme and the different greenhouse gases covered by the scheme, the participants in the scheme and who is to be the scheme’s regulator (for different purposes).

Part 2 introduces the scheme and establishes a review requirement, and sets out other elements of the scheme relevant to both operators of installations, and to aircraft operators.

Parts 3 and 4 make specific provision in respect of operators of installations and to aircraft operators. Part 5 contains provision allowing the regulators to charge for the performance of their regulatory functions under the Order.

Part 6 contains provision enabling the regulators to monitor compliance with the Order, including through inspections and the exercise of powers of entry. Part 7 contains provision about enforcement, including a range of civil penalties that may be imposed in respect of specified breaches of the Order or of permit conditions.

Part 8 (which is supplemented by Schedules 9 and 10) contains provision about appeals from decisions made by the regulator about applications and appeals in respect of notices given under the Order. Part 9 makes provision in respect of information notices, Crown application and makes transitional provision (article 77 with Schedule 11).



Procedure

Draft Affirmative

Technical Scrutiny

The following points are identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Standing Order 21.2 (ix) – that it is not made or to be made in both English and Welsh

The Order has been made in English only. Part 1, Section 2 of The Welsh Government's Explanatory Memorandum (at page 2) states as follows:

"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."

Merits Scrutiny

The following points are identified for reporting under Standing Order 21.3 in respect of this instrument.

1. Standing Order 21.3 (ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd

The EU Emissions Trading Scheme is and has been a key policy for reducing emissions in the power sector, energy intensive industries, and the aviation sector. Provision is needed to ensure emissions from sectors currently covered by the EU ETS continue to be covered by a carbon pricing policy, following the UK's withdrawal from the European Union.

The objective of the policy is to incentivise cost-effective emissions reductions for sectors currently in scope of the EU ETS. Placing a price on carbon incentivises a reduction in emissions, encouraging the private sector to invest in emissions reduction measures. It is intended that a UK wide scheme will ensure continuity of a carbon pricing policy to stimulate decarbonisation of the power, industrial and aviation sectors.

Many of the design features of the UK ETS mirror the EU ETS, which could in future facilitate linking with the EU system. However, in line with the commitment across the UK to move towards net zero greenhouse gas emissions by 2050, the cap has been set at 5% below the notional UK share of the EU ETS cap.

Lesley Griffiths MS, Minister for Environment, Energy and Rural Affairs gave oral evidence to the Committee in relation to the Order on 14 September. Following the evidence session, the Minister wrote to the Committee on 18 September 2020, to provide a definitive list of the installations in Wales captured by the Order, and to answer some additional queries.



Implications arising from exiting the European Union

The establishment of a successor scheme to the EU ETS is one of the jointly agreed common framework areas. The UK's participation in the EU Emissions Trading System, which will cease at the end of the Transition Period on 31st December 2020 (subject to the UK's obligations in the Withdrawal Agreement pursuant to Article 96(2) in respect of 2020 compliance and the Protocol on Ireland/Northern Ireland). The UK ETS will commence on 1 January 2021 to ensure there is a carbon pricing policy in place when the UK ceases its participation in the EU Emissions Trading System (EU ETS). The UK ETS is intended to encourage cost-effective emissions reductions which will contribute to the UK's emissions reduction targets and net zero goal.

Welsh Government response

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

23 September 2020

