

SL(5)702 – The Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020

Background and Purpose

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, divided into two “allocation periods”, the 2021-2025 allocation period and the 2026-2030 allocation period. 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 and other legislation, largely to provide for a registry for the UK ETS and for the free allocation of allowances. The legislation amended includes Commission Delegated Regulation (EU) 2019/331 (the “Free Allocation Regulation”) and Commission Implementing Regulation (EU) 2019/1842 (the “Activity Level Changes Regulation”). Both Regulations are retained EU law, originally made for the EU Emissions Trading System (“EU ETS”), but adapted for the UK ETS.

The new article 8A of the UK ETS Order defines five bodies as the “registry administrator”, including Natural Resources Wales and the Secretary of State. In practice, the intention is for the Environment Agency to exercise the functions of the registry administrator on behalf of the other four bodies.

Procedure

Negative.

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

We note the breach of the 21- day rule (i.e. the rule that 21 days should pass between the date a negative resolution instrument is laid before the Senedd and the date the instrument comes into force), and the explanation for the breach provided by Rebecca Evans MS, Minister for Finance and Trefnydd, in a letter to the Llywydd dated 17 December 2020.

In particular, we note the following in the letter:

“This Order was made on 16 December 2020, the date of the first Privy Council meeting after the meeting at which the principal Order was made, and was laid as soon reasonably practicable thereafter. A later commencement date is considered impossible for two reasons. Firstly, in order to ensure that there will be no pause in the obligations on operators of installations relating to the monitoring of data for the purposes of free allocation. This avoids uncertainty for participants and ensures a seamless transition from the EU Emissions Trading System to the UK ETS. Secondly, there is a need to undo a prospective revocation of Commission Delegated Regulation (EU) 2019/331 (“the Free Allocation Regulation”) by regulation 62 of the Greenhouse Gas Emissions Trading Scheme (Amendment) (EU Exit) (No. 2) Regulations 2019, which takes effect from Implementation Period completion day. This instrument was made as part of the UK Government’s previous “no deal” preparations in spring 2019.”

Welsh Government response

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

20 January 2021

