



Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **Legislative routes to implement changes to UK Emissions Trading Scheme**

DATE **21 July 2023**

BY **Julie James MS, Minister for Climate Change**

As I set out in my oral statement, delivered on 4 July 2023, the UK Emissions Trading Scheme (UK ETS) Authority – formed of Welsh Government, UK Government, Scottish Government, and Northern Ireland Executive – have now published the Government Response to the “Developing the UK ETS” consultation.

In the statement I outlined the strategic and technical changes contained within the Government Response and what they mean for Wales. The key strategic change I announced is the reduction of the UK ETS cap to bring it in line with net zero targets. The Authority has publicly committed to implement this new cap from January 2024 and aims to pursue a legislative programme in line with the decisions and intentions made in the Government Response, including for the cap.

Most of the changes resulting from the Government Response are technical and/or operational in nature and will be implemented through a statutory instrument (SI), subject to the negative procedure, amending the Greenhouse Gas Emissions Trading Scheme Order 2020 (“the 2020 Order”) pursuant to the Climate Change Act 2008 (the 2008 Act”). This will enable a number of operational changes to the scheme which can be applied UK-wide, such as the inclusion of benchmarks into UK law. It is still possible to lay legislation under negative resolution procedure in Northern Ireland. Once laid, the SI will come into force on the specified commencement date. However, on their return, if the NI Assembly passes a resolution of annulment within the statutory period (being a period comprising at least 10 days on which the Assembly has been sitting, but not in any event less than 30 calendar days during one or more than one session of the Assembly) then that rule will be void from the date of that resolution.

Other more significant changes, such as the cap, would ordinarily have been made through SIs in the form of Orders in Council, subject to the affirmative procedure, laid in all legislatures of the UK in parallel, pursuant to the 2008 Act. However, due to the absence of a Northern Ireland Executive and sitting Assembly, it is not possible to make UK-wide legislation, through the affirmative procedure.

Most of these significant changes can, and will, be implemented through an SI, subject to the affirmative procedure, which will apply only to Great Britain, for example capping aviation free allocation at 100% of an operator's emissions. As there are currently no operators in Northern Ireland who would be affected by the provisions in this SI, the Authority have agreed that a Great Britain-only SI would be acceptable in the short term.

Changes to the cap however, cannot apply to Great Britain only as it affects the UK as a whole. With no clear date on when a Northern Ireland Executive will be formed and with timing critical to implement the changes required, an alternative to laying an SI in all legislatures of the UK in parallel is therefore required.

The solution agreed is for the UK Government to amend the Greenhouse Gas Emissions Trading Scheme Auctioning Regulations 2021 (the "Auctioning Regulations") through an enabling power under the Finance Act 2020, until the changes can be made under the 2008 Act.

The Auctioning Regulations are part of the UK ETS Framework and are used to determine the share of allowances which can be brought to auction each year. This amendment will set the auction share, and therefore the number of allowances that enter circulation, in line with the new net zero cap. This will mean the number of allowances available to the market is in line with a lower cap, consistent with net zero. It is important to note that the amendments to the Auctioning Regulations do not lower the cap as set out in the 2020 Order. Legislation amendments, via an enabling power under the 2008 Act will be needed to deliver policy in the long term. However, this interim change will have the desired effect until the legislation under the 2008 Act can be made; namely limiting the emissions of participants by reducing the number of allowances available.

As you will be aware, in accordance with the UK ETS Common Framework, the Welsh Government's stance on the UK ETS is that the financial elements are simply the mechanism by which the ultimate goal of the system – environmental protection via incentivising decarbonisation – is achieved. As the amendment to lower the auctioning allowances is being made to the Auctioning Regulations, and not primary legislation, a Legislative Consent Motion is not relevant. The amendment is being made by an SI to subordinate legislation. As the subordinate legislation being amended is not retained direct principal EU legislation under paragraph 4 of part 1 under schedule 8 of the European Union (Withdrawal) Act 2018, the procedure to be applied before the Senedd is not what would apply to that legislation as if it were amending an enactment contained in primary legislation. An SI Consent Memorandum is therefore unnecessary, as per the Standing Orders of the Welsh Parliament¹

Modifying the Auctioning Regulations, without making the necessary changes through the enabling power under the 2008 Act, potentially eliminates the opportunity for the

¹ [Standing Orders of the Welsh Parliament \(senedd.wales\)](https://www.senedd.wales)

Senedd (and other Parliaments) to assess the proposed changes. Consequently, I am cautious about using this approach.

Nevertheless, reducing the UK ETS cap is time critical. Without an agreed legislative route, the Government Response with the commitment to implement the cap by 2024 could not have been published. Failing to do this would have delayed the implementation of the cap and therefore posed significant risks to both our climate targets and the participants of the UK ETS. Delaying implementation of the cap will only result in a steeper cap (and decarbonisation) trajectory later in this decade, placing greater pressure on our industries.

While I am committed to ensuring that the Senedd has the right and ability to assess provisions which fall within its legislative competence, it is important that the process in Northern Ireland is respected. Therefore, in recognition of the urgency and importance of this change, I have agreed with the other Portfolio Ministers across the Authority for the amendments to be made in this way. To avoid delaying the publication of the Government Response and therefore the implementation of the new cap, the scrutiny process will be carried out as normal across the four legislatures when the cap is legislated for, through the enabling power under the 2008 Act.

I have written to the Chairs of the Climate Change, Environment, and Infrastructure Committee and the Legislation, Justice, and Constitution Committee to inform them of the circumstances and the process which will be used. Furthermore, I and the other Portfolio Ministers across the Authority have also committed via an exchange of letters to legislate under the 2008 Act to lower the UK ETS cap as soon as practicably possible. Moving forward, I will continue to seek the Senedd's approval where matters fall within the competence of the Senedd.

This statement is being issued during recess in order to keep members informed. Should members wish me to make a further statement or to answer questions on this when the Senedd returns I would be happy to do so.