

SL(6)559 – The Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2025

Background and Purpose

The UK Emissions Trading Scheme (“ETS”) was established by the Greenhouse Gas Emissions Trading Scheme Order 2020 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 four governments in the United Kingdom who jointly operate the ETS as the UK ETS Authority (“the Authority”). It contributes to the UK’s emissions reduction targets and net zero goal, as well as the emissions reduction pathway in Wales.

In December 2023, the Authority opened a 12-week consultation entitled “UK Emissions Trading Scheme: free allocation review”, which explored options to better target those most at risk of carbon leakage and to ensure that the free allocation of allowances covering greenhouse gas emissions is fairly distributed. A small number of the technical changes proposed in the December consultation require implementation via legislation ahead of the 2025 Activity Level Report submissions.

The proposed amendments to be made by this Order are to:

- Change the treatment of free allowances in the final year of activity of an installation or sub-installation where permanent cessation has occurred, so that operators’ free allowances entitlement in the final year of operation would be based on actual activity levels. Where the permanent cessation is due to decarbonisation activity, operators can apply to continue to receive a full year of free allowances. The suggested change will therefore not apply to these operators (subject to sufficient evidence).
- Update the definition of permanent cessation to capture scenarios where temporary cessation of an activity may be deemed permanent.

Procedure

Draft Affirmative.

A draft of the Order has been laid before Senedd Cymru, the United Kingdom Parliament, the Northern Ireland Assembly and the Scottish Parliament. The draft must be approved by each of those legislatures before it can be made by His Majesty.

Technical Scrutiny

One point is 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

We note that the Explanatory Memorandum states:

As the Order in Council will be subject to UK, Scottish, and Northern Irish Parliamentary scrutiny, it is not considered reasonably practicable for this instrument to be made or laid bilingually.

Merits Scrutiny

One point is identified for reporting under Standing Order 21.3 in respect of this instrument.

2. 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 preamble to the Order states that the Order is made in exercise of powers conferred by various provisions of the Climate Change Act 2008, including Schedule 2. Schedule 2 of the 2008 Act consists of 31 paragraphs. Clarification is requested as to which of these paragraphs contains the power(s) to make this Order and why Schedule 2 is referred to generally without reference to the appropriate specific paragraph(s).

Welsh Government response

A Welsh Government response is required to reporting point 2 only.

Legal Advisers

Legislation, Justice and Constitution Committee

9 December 2024

Government response: *The Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2025*

Merit Scrutiny point 1: The point is gratefully noted. s.44 of the Climate Change Act 2008 contains the power to make provision by regulations for trading schemes relating to greenhouse gas emissions, such as the UK Emissions Trading Scheme. s.46(1) of the Climate Change Act 2008 explains that Schedule 2 specifies matters that may, or must, be provided for in Regulations under s.44. The approach taken in connection with each of the UK Emissions Trading Scheme Orders made under s.44, since the inception of the UK Emissions Trading Scheme, has been to cite Schedule 2 in the preamble, without specific reference to which of the 31 paragraphs contains the relevant powers. For example, the first Order establishing the scheme (The Greenhouse Gas Emissions Trading Scheme Order 2020) and the most recent Order modifying it (The Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2024).

The provisions in Schedule 2 were intended to establish an overarching framework in relation to trading schemes. As they were not designed with the UK Emissions Trading Scheme in mind, they are necessarily general in nature. As a result, amendments to the operation of the



scheme have the potential to be relevant to a number of those general, framework provisions. That is the case with this Order. Citing each and every paragraph which contains a potentially relevant power has the potential to result in unwieldy and unnecessarily complex preambles, which is not an aid to the reader.

We will keep this approach under review as we continue to legislate to develop the UK Emissions Trading Scheme.



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

—

Welsh Parliament

Legislation, Justice and Constitution Committee