



HM Government



Scottish Government
Riaghaltas na h-Alba
gov.scot



Department of
**Agriculture, Environment
and Rural Affairs**

www.daera-ni.gov.uk



Llywodraeth Cymru
Welsh Government

Proposed amendments to the Greenhouse Gas Emissions Trading Scheme Order 2020

UK Government, Scottish Government,
Welsh Government and Department of
Agriculture, Environment and Rural Affairs
Response



This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3 or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk.

Where we have identified any third-party copyright information you will need to obtain permission from the copyright holders concerned.

Any enquiries regarding this publication should be sent to us at: enquiries@beis.gov.uk

Contents

Executive Summary	4
Introduction	5
Proposed amending order: the Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021	5
Summary of proposal	5
Question 1	6
Summary of responses	6
Proposed amending Order: the Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2022	7
Summary of proposal	7
Question 2	8
Summary of responses	8
Summary of responses out of scope for this consultation	8
Further amendments to be included in the Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021	9
Summary of responses	9
Further amendment to be included in the Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2022	10
Further changes to the proposed Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021 and Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2022	11
Finalised amending Orders	13
The Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021	13
The Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2022	17
Next Steps	18

Executive Summary

In July 2021¹, the UK ETS Authority (UK Government, Scottish Government, Welsh Government, and the Department of Agriculture, Environment, and Rural Affairs (DAERA)) consulted on a number of proposed amendments to the Greenhouse Gas Emissions Trading Scheme Order 2020 (“the 2020 Order”). We proposed further amendments to the 2020 Order, by introduction of two separate statutory instruments, published in draft.

We received 7 responses, largely not impacting the policy intent of the proposed draft provisions. As such, we will be proceeding with the Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021 and the Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2021 (now referred to as the Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2022) as amendments to the 2020 Order.

¹ <https://www.gov.uk/government/consultations/uk-emissions-trading-scheme-proposed-amendments>

Introduction

The UK ETS was established in law in 2020, with the 2020 Order introducing the majority of legal provisions under the powers granted by the Climate Change Act 2008 (CCA 2008). Amendments to the 2020 Order were subsequently made at the end of 2020 and provided for, amongst other things, free allocation of allowances and the establishment of an allowance registry for the UK ETS.

The July 2021 consultation proposed further amendments to the 2020 Order, by the introduction of two separate statutory instruments:

- the Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021, and
- the Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2022.

These amendments are considered necessary to address a number of technical and operational issues identified during the development and subsequent amendment of the 2020 Order.

This document details the responses received, and the UK ETS Authority decisions on the proposed amendments.

Proposed amending order: the Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021

Summary of proposal

The consultation set out our proposed amending order, subject to the negative resolution procedure for secondary legislation, which will introduce amendments to the 2020 Order. In broad terms, the amending Order will include technical amendments that improve the operation of the UK ETS, including aspects of monitoring and reporting.

Question 1

Do you have any comments on the proposed Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021, or on the specific proposals within?

Summary of responses

Policy Area	Responses received	UK ETS Authority responses
Hospital or small emitter capacity increases: Paragraphs 19A to 19E of Schedule 7	Can you confirm that targets will not be reduced to reflect any reduction in capacity or partial closures?	The capacity increase provision is designed for operators to voluntarily apply for an increase in their emissions targets. Reductions in capacity within the allocation period (2021-2025) will not otherwise affect the installation's target, which will be revised before the start of the next allocation period in 2026.
Hospital or small emitter capacity increases: Paragraphs 19A to 19E of Schedule 7	Will small emitter operators still be required to notify the regulator of capacity changes (either up or down) as was required under the previous small emitter scheme (2013-20)?	In the case that an operator applies for a revision of their emissions target, both capacity increases and decreases over the relevant period will be taken into account, so that the new target only reflects the net increase in capacity. There are no other requirements on hospital or small emitters to notify the regulator of changes in capacity.
Hospital or small emitter capacity increases: Paragraphs 19A to 19E of Schedule 7	Will the increases to small emitter targets be calculated on the basis of the relevant UK ETS / EU ETS benchmarks (multiplied by the net change in installed capacity, multiplied by capacity utilisation factor, multiplied by the reduction factor for the scheme year, multiplied by the first year factor?)	While the original emissions targets are based on historical emissions, the change based on capacity increase takes into account capacity utilisation and the relevant product benchmark to reflect how much the change in capacity affects emissions. It is then adjusted for the remaining years of the allocation period.

Policy Area	Responses received	UK ETS Authority responses
<p>Hospital or small emitter capacity increases:</p> <p>Paragraphs 19A to 19E of Schedule 7</p>	<p>Recommendation for a new calculation method to better calculate capacity increases.</p>	<p>Recommendation has been taken into account and has led to amending the provision. The re-drafted provision will now explicitly provide for the split of installations into sub-installations in accordance with the Free Allocation Regulation. The net change in capacity of each sub-installation is calculated without the need to provide evidence of or consider the capacity utilisation factor of any capacity decrease before being combined to give the net change in capacity of the installation overall. The new “combined capacity utilisation factor” takes account of the capacity utilisation of capacity increases only.</p>
<p>Changes to Annexes II and IV of the Monitoring and Reporting Regulation 2018</p>	<p>Suggestion to combine the Monitoring Plan (required under the Monitoring and Reporting Regulation 2018), and the Monitoring Methodology Plan (required under the Free Allocation Regulation). This simplification would reduce the regulatory and administrative burden on industry.</p>	<p>All operators are required to develop and maintain a Monitoring Plan to set out how they will monitor emissions. Additionally, those eligible for free allocation of allowances are required to develop and maintain a Monitoring Methodology Plan to monitor activity levels. As the plans have different functions, we shall continue to request the two plans as separate documents. However, moving forward, we will consider how to streamline reporting methods.</p>

Proposed amending Order: the Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2022

Summary of proposal

The consultation set out our proposed amending order, subject to the affirmative resolution procedure for secondary legislation, which will introduce amendments to the 2020 Order. In broad terms, the amending Order will enable: regulators to impose civil penalties for operators that fail to return allowances to which they are not entitled; the UK ETS authority to seize and

sell allowances to cover any unpaid civil penalties; to clarify the regulators' powers of enforcement; to make it an offence to intentionally obstruct a regulator or an authorised person in exercising powers of entry.

Question 2

Do you have any comments on the proposed Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2021, or on the specific proposals therein?

Summary of responses

Policy area	Responses received	UK ETS Authority responses
<p>Powers to recover unpaid penalties – seizing and selling allowances:</p> <p>Article 49A</p>	<p>Request for clarification of whether the proposed amendments will remove or retain the Sterling equivalent penalty of EUR 100 per tonne, as stipulated in the Greenhouse Gas Emissions Trading Scheme Regulations 2012 (reg 54(2)).</p>	<p>The 2012 Regulations have now been superseded by the 2020 Order. Excess emissions penalties are described within article 52 of the 2020 Order.</p> <p>The proposed amendment would not replace the GBP 100 “excess emissions penalty”. The power to seize and sell allowances may be exercised by the UK ETS Authority when any civil penalty, including the Excess Emissions Penalty, is not paid by the date specified in the penalty notice.</p>

Summary of responses out of scope for this consultation

We have received several responses which are outside the scope of this consultation. Broadly, these relate to:

- propose a reduction in Aviation Passenger Duty tax to help the industry recover from the COVID -19 crisis and assist it financially once the additional cost of carbon credits is applied;
- require the regulator to ensure that aircraft operators' CO2 emissions, NOx emissions, and estimated non CO2 impacts are recorded in the Registry;
- address important market issues in the context of the UK ETS relating to: pre-trade and post-trade transparency, transaction reporting, and position reporting.

These responses will be taken into consideration when developing future wider policy.

Further amendments to be included in the Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021

Since the publication of the consultation, additional proposed amendments have arisen and will be included into the planned Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021. These further proposed amendments have been subject to further targeted consultations where relevant.

Summary of responses

Policy area	Brief description	Consultation	Responses
Aviation Biofuels	<p>The proposals will amend a Schedule 4, paragraph 27 of the 2020 Order, which modifies article 54 of the Monitoring and Reporting Regulation 2018² in its application to the UK ETS to:</p> <ul style="list-style-type: none"> • Clarify that it is only possible to apply a zero emissions factor to a biofuel if it meets the sustainability criteria in the Renewable Transport Fuel Obligations (RTFO) Order 2007 • Address the treatment of mixed fuels and set out the options for determining the percentage of biofuel in a mixed fuel, including the use of purchase records. <p>The 2020 Order is not clear on how biofuel use can be claimed under the UK ETS and therefore, the intended purpose of these provisions is to provide for an interim policy measure whilst development of</p>	<p>A letter to stakeholders, including UK ETS participating aircraft operators, aviation trade associations and NGOs, was circulated on the 27th of September welcoming feedback by the 11th of October. A roundtable was held on the 5th of October.</p>	<p>We received feedback from a few stakeholders that reflected concerns around the temporary treatment of biofuels meeting the RTFO's Sustainability Criteria with a zero-emissions methodology. Feedback highlighted that the Authority needs to consider a range of methodologies for the treatment of biofuels, to ensure that any emissions from biofuels are fully represented.</p> <p>The Authority highlights that this is a temporary measure to support SAF claims in the UK ETS whilst wider UK SAF policy is developed, for example through the recent UK SAF mandate consultation.</p> <p>For the purpose of these SIs, we will be proceeding with the inclusion of the proposed temporary provision until further</p>

² [Commission Implementing Regulation \(EU\) 2018/2066](#)

Policy area	Brief description	Consultation	Responses
	the wider policy on use of sustainable aviation fuels (SAF) is underway.		development and alignment with wider SAF policy can be achieved for SAF treatment under the UK ETS. As SAF policy develops, additional views on the treatment of SAF in the UK ETS will be welcomed.
Aviation Special Reserve	<p>The proposals will amend article 34J and article 34N of the 2020 Order to enable us to:</p> <ul style="list-style-type: none"> Amend the definition of “historical aviation activity” set out in article 34J(1)(c)(ii) of the 2020 Order and recalculate the UK ETS free allocation entitlement for applicants whose full-scope TKM data increased by an average of more than 18% annually between 2010 and 2014 (qualifying as fast growers under the EU ETS). Amend the aviation allocation table to reflect this recalculation. 	<p>A letter was circulated to stakeholders whose free allocation applications are impacted by this amendment on the 7th of October, welcoming views by the 14th of October.</p> <p>A round table was held on the 14th of October.</p>	<p>The proposals were largely welcomed by affected operators.</p> <p>One aircraft operator raised concerns with current UK ETS design for aviation free allocation. We will consider all the points raised as part of the ongoing free allocation review and will welcome further views in an upcoming consultation.</p>

Further amendment to be included in the Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2022

Since the publication of the consultation, it has been decided to include an additional proposed amendment into the planned Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2022. The additional provision makes minor amendments to a process in place and is

within the scope of the policy previously consulted on policies in the Future of UK Carbon Pricing Consultation and Government Response published in 2019.

Policy area	Brief description
Surrender and revocation notices	Provision will require that a surrender or revocation notice given to the operator of an installation whose permit is surrendered or revoked must include a requirement on the operator to surrender allowances to cover any deficit from a previous scheme year (in a case where the operator did not surrender sufficient allowances to cover reportable emissions in a previous scheme year), in addition to the requirement to surrender allowances to cover reportable emissions in the year in which the notice takes effect. This provision applies to greenhouse gas emissions permit holders only.

Further changes to the proposed Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021 and Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2022

After further consideration, we will not be proceeding with the inclusion of the following proposed policies outlined in the consultation.

Policy area and brief description	Brief description
Aviation – assistance of Civil Aviation Authority	The purpose of this amendment is to enable the UK ETS authority, national authorities and regulators to seek assistance and advice from the Civil Aviation Authority, and for the CAA to subsequently request remittance of expenses incurred in such activity from the person requiring the advice.
Powers to recover unpaid penalties – seizing and selling allowances	Provision to afford the UK ETS authority the power to seize and sell allowances to cover any unpaid civil penalties owed by the operator or aircraft operator. This is to

	support the recovery of unpaid penalties from operators and aircraft operators.
--	---

Finalised amending Orders

The published draft Orders will be appropriately revised to reflect the further amendments and considerations from stakeholders' as described above.

The Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021

Below are the policy issues we will be resolving in the Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021.

Policy Issue/Area	Brief description
Hospital or small emitter capacity increases	The re-drafted provision will now explicitly provide for the split of installations into sub-installations in accordance with the Free Allocation Regulation (Commission Delegated Regulation (EU) 2019/331). The net change in capacity of each sub-installation is calculated without the need to provide evidence of or consider the capacity utilisation factor of any capacity decrease before being combined to give the net change in capacity of the installation overall. The new "combined capacity utilisation factor" takes account of the capacity utilisation of capacity increases only.
Registry and UKETSA functions - limitation of liability	To introduce a limitation of liability for the UK ETS authority (UKETSA) and the registry administrator when undertaking statutory functions under Schedule 5A to the Greenhouse Gas Emissions Trading Scheme Order 2020. The exclusion from liability does not apply to acts in "bad faith", which is intended to cover acts that are fraudulent or malicious, or to claims under the Human Rights Act 1998. We would welcome consultees' views on the scope and the drafting of the proposed limitation of liability.
Registry accounts	Provision to enable holders of accounts in the registry to apply for an account to be suspended.
Reportable/ aviation emissions figure	To require the regulator to ensure that operators' and aircraft operators' emissions are recorded in the Registry following submission to the regulator at the end of the reporting year.

Policy Issue/Area	Brief description
Hospital or small Emitters (HSEs) and Ultra Small Emitters (USEs) eligibility for free allocation on return to main scheme	<p>The purpose of this amendment is to outline the process by which operators of HSEs and USEs, who are required to rejoin the main scheme if emission thresholds are breached, may be allocated free allowances, if eligible, when rejoining the main scheme.</p>
Reversal of allocations	<p>If there is an error in the free allocation of allowances, the registry needs to be able to reverse these actions. This provision allows for such errors to be remedied by the registry administrator.</p>
Changes to Annexes II and IV of the Monitoring and Reporting Regulation 2018	<p>This amendment is to mirror changes made to Annexes II and IV of the EU ETS Monitoring and Reporting Regulation 2018 (MRR) in 2020 – specifically, combining sections 4 and 5 of Annex II into one section and amending the references in Annex IV to reflect that change. The UK ETS Order currently applies the MRR to the UK ETS with modifications that do not include the 2020 changes. Implementing the 2020 changes will reduce the administrative burden for operators in respect of MRV for process emissions.</p>
Regulator approval of monitoring plans / monitoring methodology plans	<p>Provision for the regulator to reject an installation’s monitoring plan and for the operator of the installation to appeal; for the regulator to refuse to issue a permit unless a monitoring plan has been approved or the monitoring plan complies with the Monitoring and Reporting Regulation 2018; and to require that any new or varied Monitoring Plans and Monitoring Methodology Plans (MMPs) submitted with a permit transfer application must be approved by the regulator under the Monitoring and Reporting Regulation (MRR) and Free Allocation Regulation (FAR) as applicable before the application is granted. This is to ensure the appropriate level of assurance that monitoring plans and monitoring methodology plans are adequate in all cases.</p>
Permit transfers: partial permit transfer	<p>A provision to allow the regulator, in the case of a partial permit transfer request, to effect such a transfer by means of a variation to an existing permit held by the new operator, where the new operator already has a permit for one or more installation(s) on the same site. This is to avoid the unnecessary issuance of new permits where a variation to an existing permit is a more efficient alternative.</p>

Policy Issue/Area	Brief description
MRR modifications for hospital or small emitters	<p>Modification of the MRR as it applies to installations in the hospital or small emitter opt-out scheme so that Article 69(4) of the MRR (obligation to submit improvement reports) does not apply to such installations. This is to avoid unnecessary administrative burdens for operators in the opt-out scheme.</p>
MRR modifications in Schedule 4	<p>Minor modifications of the MRR as it applies to the UK ETS including changing references to Directive 2003/87/EC to UK legislation and replacing references to Commission guidance in Article 43 and Annex 4 to guidance of the UK ETS authority.</p>
Emissions Monitoring Plans (EMPs)	<p>The purpose of this amendment is to enable a person who has not yet become an aircraft operator to be able to apply for an emissions monitoring plan, in addition to extant Aircraft Operators (AO).</p> <p>Compliance with the EMP would not begin until the person becomes an AO, so this provision would not result in the person being under any new obligations or at risk of penalties by proactively applying for an EMP.</p>
Changes to article 34H and 34R error provisions	<p>The purpose of this amendment is to make it clear that the process for correcting errors in allocation tables applies even if the error has resulted in a failure to include an installation or an aircraft operator in the allocation table.</p>
Amending penalties	<p>Amendment to Article 57 (Hospitals and Small Emitters failure to notify when ceasing to meet criteria) penalty calculation:</p> <ul style="list-style-type: none"> • Amending penalty calculation for hospital or small emitters that fail to notify the regulator when ceasing to meet criteria for being excluded for the main emissions trading scheme by adding in consideration of free allocation entitlement. <p>Amendment to Article 60 penalty calculation (USE failure to notify where reportable emissions exceed maximum amount):</p> <p>Amending penalty calculations for ultra small emitters failing to notify when reportable emissions exceed criteria for being excluded for the main emissions trading scheme by adding in consideration of free allocation entitlement.</p>

Policy Issue/Area	Brief description
<p>Aviation Biofuels</p>	<p>The proposals will amend a Schedule 4, paragraph 27 of the 2020 Order, which modifies article 54 of the Monitoring and Reporting Regulation 2018 in its application to the UK ETS to:</p> <ul style="list-style-type: none"> • Clarify that it is only possible to apply a zero emissions factor to a biofuel if it meets the sustainability criteria in the Renewable Transport Fuel Obligations (RTFO) Order 2007 • Address the treatment of mixed fuels and set out the options for determining the percentage of biofuel in a mixed fuel, including the use of purchase records. <p>The 2020 Order is not clear on how biofuel use can be claimed under the UK ETS and therefore, the intended purpose of these provisions is to provide for an interim policy measure whilst development of the wider policy on use of sustainable aviation fuels (SAF) is underway.</p>
<p>Aviation Special Reserve</p>	<p>The proposals will amend article 34J and article 34N of the 2020 Order to enable us to:</p> <ul style="list-style-type: none"> • Amend the definition of “historical aviation activity” set out in article 34J(1)(c)(ii) of the 2020 Order and recalculate the UK ETS free allocation entitlement for applicants whose full-scope TKM data increased by an average of more than 18% annually between 2010 and 2014 (qualifying as fast growers under the EU ETS). • Amend the aviation allocation table to reflect this recalculation.

The Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2022

Below are the policy issues we will be resolving in the Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2022.

Policy Issue/Area	Brief description
Penalties	<p>Targeted penalty for failure to return allowances:</p> <ul style="list-style-type: none">Article 34V of the GGETS Order 2020 provides for the regulator to give a notice to an operator or aircraft operator requiring the return of allowances to which the person was not entitled. An enforcement notice under article 44 is currently the only enforcement response if the notice to return is not complied with. It is therefore proposed that, where operators or aircraft operators fail to return allowances, the regulator should be able to impose a civil penalty to incentivise their compliance with a notice to return allowances.
Registry administrator's powers of enforcement	<p>To put beyond doubt that the registry administrator has the power to give enforcement notices and information notices under articles 44 and 75 of the GGETS Order 2020</p>
Powers of entry	<p>This provision will make it an offence for a person to intentionally obstruct the regulator or an authorised person in the exercise of enforcement powers under article 40 of the GGETS Order 2020.</p>
Powers to inspect	<p>Provision to make it clear that the power to inspect premises under article 39 of the GGETS Order 2020 to ensure compliance may be exercised by an "authorised person" as well as the regulator.</p>
Surrender and revocation notices	<p>Provision will require that a surrender or revocation notice given to the operator of an installation whose permit is surrendered or revoked must include a requirement on the operator to surrender allowances to cover any deficit from a previous scheme year (in a case where the operator did not surrender sufficient allowances to cover reportable emissions in a previous scheme year), in addition to the requirement to surrender</p>

Policy Issue/Area	Brief description
	allowances to cover reportable emissions in the year in which the notice takes effect. This provision applies to greenhouse gas emissions permit holders only.

Next Steps

Once redrafted, we will amend the 2020 Order by proceeding to make the two proposed SIs, subject to the approval of all four legislatures: The Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021 and, The Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2022). Both SIs are expected to be in force no later than 31 March 2022.

This publication is available from: www.gov.uk/government/consultations/uk-emissions-trading-scheme-proposed-amendments

If you need a version of this document in a more accessible format, please email enquiries@beis.gov.uk. Please tell us what format you need. It will help us if you say what assistive technology you use.