

*Draft Order in Council laid before Parliament, the Northern Ireland Assembly, the Scottish Parliament and Senedd Cymru under paragraph 11 of Schedule 3 to the Climate Change Act 2008 for approval by resolution of each House of Parliament, the Northern Ireland Assembly, the Scottish Parliament and Senedd Cymru.*

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DRAFT STATUTORY INSTRUMENTS

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**2021 No. XXXX**

**CLIMATE CHANGE**

**The Greenhouse Gas Emissions Trading Scheme (Amendment)  
(No. 2) Order 2021**

*Made* - - - - *\*\*\**

*Coming into force in accordance with article 2*

At the Court at Buckingham Palace, the *\*\*\** day of *\*\*\** 2021

Present,

The Queen's Most Excellent Majesty in Council

This Order is made in exercise of the powers conferred by sections 44, 46(3) and 90(3) of, and Schedule 2 and paragraph 9 of Schedule 3 to, the Climate Change Act 2008(a).

In accordance with paragraph 10 of Schedule 3 to that Act, before the recommendation to Her Majesty in Council to make this Order was made—

- (a) the advice of the Committee on Climate Change was obtained and taken into account; and
- (b) such persons likely to be affected by the Order as the Secretary of State, the Department of Agriculture, Environment and Rural Affairs, the Scottish Ministers and the Welsh Ministers considered appropriate were consulted.

In accordance with paragraph 11 of that Schedule, a draft of the instrument containing this Order was laid before Parliament, the Northern Ireland Assembly, the Scottish Parliament and Senedd Cymru and approved by resolution of each House of Parliament, the Northern Ireland Assembly, the Scottish Parliament and Senedd Cymru.

Accordingly, Her Majesty, by and with the advice of Her Privy Council, makes the following Order:

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(a) 2008 c. 27.

## PART 1

### Preliminary

#### **Citation**

1. This Order may be cited as the Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2021.

#### **Commencement**

2. This Order comes into force on the day after the day on which it is made.

#### **Extent**

3. This Order extends to the whole of the United Kingdom.

## PART 2

### Greenhouse Gas Emissions Trading Scheme Order 2020 amended

#### **Greenhouse Gas Emissions Trading Scheme Order 2020 amended**

4. The Greenhouse Gas Emissions Trading Scheme Order 2020(a) is amended in accordance with this Part.

#### **Article 39 amended (inspections)**

5.—(1) Article 39 is amended as follows.

(2) In paragraph (1) after “regulator” insert “or an authorised person(b)”.

#### **Article 40 amended (powers of entry, etc)**

6.—(1) Article 40 is amended as follows.

(2) In paragraph (4)—

(a) in paragraph (a) omit the final “or”;

(b) in paragraph (b)(ii) for “answer.” substitute “answer; or”;

(c) after paragraph (b) insert—

“(c) intentionally to obstruct the regulator, or an authorised person, in the exercise of a power referred to in paragraph (1).”.

#### **Article 47 amended (penalty notices)**

7.—(1) Article 47 is amended as follows.

(2) In paragraph (6)(d) after “maximum amount” insert “(if any)”.

(3) After paragraph (8) insert—

“(8A) A penalty notice imposing a civil penalty that consists of a daily penalty under article 64A(2)(b) (for which there is no maximum) may be given at such intervals as the regulator considers appropriate.”.

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(a) S.I. 2020/1265, amended by S.I. 2020/1557 and 2021/XXXX.

(b) “Authorised person” is defined in article 38(2) of S.I. 2020/1265.

(4) For paragraph (10) substitute—

“(10) A civil penalty imposed by a penalty notice is recoverable in either or both of the following ways—

- (a) by the regulator as a civil debt;
- (b) by the seizure and sale of allowances under article 49A.”.

(5) In paragraph (12)—

- (a) in the opening words for “article 48” substitute “articles 48 and 49A”;
- (b) in the definition of “daily penalty” after “64(2)(b),” insert “64A(2)(b),”.

#### **Article 49A inserted**

8. After article 49 insert—

##### **“Recovery of unpaid civil penalties by seizing and selling allowances**

**49A.**—(1) This article applies where—

- (a) the whole or part of a civil penalty imposed by a penalty notice has not been paid by an operator or an aircraft operator (the “debtor”);
- (b) the date set out in the notice by which the penalty had to be paid has passed;
- (c) the period for bringing an appeal against the notice has expired or, if an appeal has been brought, the appeal has been determined or withdrawn; and
- (d) the UK ETS authority proposes to seize and sell allowances held in the debtor’s operator holding account or aircraft operator holding account to discharge the unpaid penalty.

(2) The UK ETS authority may instruct the registry administrator to transfer a specified number of allowances from the debtor’s operator holding account or aircraft operator holding account to a specified central account.

(3) In paragraph (2), “specified” means specified in the instruction.

(4) After the allowances have been transferred, the UK ETS authority must—

- (a) sell the allowances for the best price that can reasonably be obtained;
- (b) apply the proceeds of sale in the following order—
  - (i) to pay the costs of sale;
  - (ii) to pay the unpaid penalty;
- (c) pay the balance (if any) to the debtor.

(5) The UK ETS authority must pay the part of the proceeds of sale applied to pay the unpaid penalty to the appropriate national authority.

(6) A failure to sell the allowances for the best price that can reasonably be obtained does not make a sale under this article void or voidable.

(7) Where the UK ETS authority instructs the registry administrator to transfer allowances under paragraph (2), the UK ETS authority must also give notice to the debtor.”.

#### **Article 64A inserted**

9. After article 64 insert—

### **“Failure to comply with notice to return allowances**

**64A.**—(1) A person is liable to a civil penalty where the person fails to comply (or to comply on time) with the requirements of a notice (the “notice to return allowances”) given under article 34V.

(2) The civil penalty is—

- (a) £20,000; and
- (b) a daily penalty at a daily rate of £1,000 for each day that the person fails to comply with the requirements of the notice to return allowances, beginning with the day on which the initial notice is given.”.

## **PART 3**

### **Other**

#### **Power of registry administrator to give enforcement notices and information notices**

**10.** To avoid doubt about whether they are *intra vires*, the amendments made to the Greenhouse Gas Emissions Trading Scheme Order 2020 by articles 24, 26 and 31 of the Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020(a) have effect as if made by this Order.

*Name*  
Clerk of the Privy Council

#### **EXPLANATORY NOTE**

*(This note is not part of the Order)*

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. 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 to provide as follows:

- The power to inspect premises to ensure compliance may be exercised by an “authorised person” as well as the regulator (see amendment to article 39 of the UK ETS Order).
- It an offence to intentionally obstruct persons in the exercise of the enforcement powers referred to in article 40(1) (see amendments to article 40).
- Allowances held by operators and aircraft operators in the UK ETS registry may be seized and sold to cover unpaid civil penalties (see new article 49A).
- Persons who fail to comply with a notice to return allowances under article 34V may be subject to a civil penalty (see new article 64A).

Article 10 of this Order provides that certain amendments relating to enforcement powers made to the UK ETS Order by the Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020 have effect as if made by this Order.

A regulatory impact assessment of the effect of the UK ETS on the costs of business, the voluntary sector and the public sector is available from the Industrial Energy Directorate,

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(a) S.I. 2020/1557. The Joint Committee on Statutory Instruments reported the instrument on the grounds that there is a doubt as to whether it is *intra vires* in one respect: see the Fortieth Report of Session 2019-21.

Department for Business, Energy and Industrial Strategy, 1 Victoria Street, London SW1H 0ET  
and is available alongside the UK ETS Order on [www.legislation.gov.uk](http://www.legislation.gov.uk).