

## **UK ETS Authority Consultation: Technical and operational amendments to the UK Emissions Trading Scheme: data publication, data sharing and Ultra-Small Emitter eligibility criteria for 2026-30**

### **Introduction**

The UK ETS Authority ('the Authority') is seeking views on proposals to make amendments to the Greenhouse Gas Emissions Trading Scheme Order 2020 ('the Order')<sup>1</sup> relating to:

1. The publication of UK ETS Registry transaction data
2. The disclosure of UK ETS information by a national authority<sup>2</sup>
3. Applications to obtain Ultra-Small Emitter (USE) status for the 2026-2030 allocation period

Proposal 1 relates to the publication of transaction data held in the UK Emissions Trading Registry ('the Registry'). Proposal 2 relates to the disclosure of information held or obtained under UK ETS legislation<sup>3</sup> (which we refer to throughout this document as 'UK ETS information') by the four national authorities that make up the UK ETS Authority for the purposes of the development and implementation of policy relating to climate change, including policy addressing carbon leakage risk, and to support the Committee on Climate Change in performing its statutory role. Proposal 3 relates to the process for obtaining USE status for the 2026-2030 allocation period, to allow operators which started operation after 1 January 2021 to apply for USE status, and specifying the time periods for the data which such operators will be required to submit to obtain USE status.

This consultation is for the attention of:

1. All Registry account holders

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<sup>1</sup> <https://www.legislation.gov.uk/ukxi/2020/1265/contents>

<sup>2</sup> This refers to a) the Secretary of State, b) the Scottish Ministers, c) the Welsh Ministers or d) the relevant Northern Ireland department, as defined at <https://www.legislation.gov.uk/ukpga/2008/27/section/95>

<sup>3</sup> As per article 75B(4) of the Order 'UK ETS legislation' means any of the following: the Order, the Monitoring and Reporting Regulation 2018, the Verification Regulation 2018, the Free Allocation Regulation and the Activity Level Changes Regulation.

2. All users of the Manage your Emissions Trading Scheme service (METS)
3. All holders of UK ETS permits, including Hospital and Small Emitters (HSEs) permits
4. All Ultra-Small Emitters (USEs)
5. All operators intending to apply for Ultra-Small Emitter (USE) status for the 2026-30 allocation period
6. Trade bodies representing operators

Note: electricity generators in Northern Ireland, which under the terms of the Windsor Framework participate in the EU ETS instead of the UK ETS, will not be affected by these proposals.

### **Context and legislative background**

The UK ETS Authority, in line with its obligations under the Order, publishes a range of reports to regular deadlines. These include Registry participants and allocations for operator holding accounts (OHAs); Registry participants and allocations for aircraft operator holding accounts (AOHAs); account holders of Registry trading accounts, and the emissions and surrenders compliance report. These reports are available at <https://reports.view-emissions-trading-registry.service.gov.uk/ets-reports.html>.

Currently, under paragraph 34 of [Schedule 5A to the Order](#), the UK ETS Authority is also obliged to publish annual summaries of transactions made between Registry accounts, three years in arrears, starting from 1 May 2025 or as soon as reasonably practicable thereafter. Specifically, the requirement for 2025 is to publish a transaction data summary for the first 16 months of scheme operation, and then each year from 2026 onwards, a summary for each subsequent 12 months of scheme operation – so that for example, the requirement in 2026 would be to publish a summary for May 2022 to April 2023, inclusive.

The current obligation requires the summary data to include numbers of transactions, and numbers of allowances involved in transactions, broken down by type of transferring account and type of receiving account. The different types of accounts are set out at paragraph 5(2)(a) of Schedule 5A to the Order and include central accounts; the auction delivery account; operator holding accounts for installations; aircraft operator holding accounts and trading accounts.

In addition to these obligations to publish specific data, [article 75BA of the Order](#) gives the UK ETS Authority a power to publish information held or obtained under UK ETS legislation either “to ensure the effective operation of the UK ETS” or “to inform the public about the operation of the UK ETS”. This power is subject to consideration of commercial sensitivity and proportionality under paragraph (2) of article 75BA.

Other disclosures of information held or obtained under UK ETS legislation, whether by the UK ETS Authority, an individual national authority, a regulator or the Registry Administrator, are prohibited by article 75B, except in the cases listed in paragraph (3) of that article. In particular, paragraph (3) specifically permits disclosures which are required by law, which includes for example those made in response to requests covered by the Environmental Information Regulations 2004 or the Environmental Information (Scotland) Regulations 2004.

This consultation follows on from the 2022 targeted consultation on Registry Data Publication<sup>4</sup>. The UK ETS Authority response to this consultation confirmed our intention to introduce legal obligations to publish UK ETS compliance data and other scheme data as detailed above. We also stated our commitment to making more data available which would be of use to market participants, subject to consultation with affected stakeholders. As stated in the response, we continue to have robust and efficient data publication mechanisms to ensure that confidential and commercially sensitive information is not published. This includes figures on the number of allowances held in individual Registry accounts.

Current USEs are operators that have obtained their status in 2021 and have been included on the ‘ultra-small emitter list for 2021-2025’<sup>5</sup>, having made a successful application to the UK ETS Authority as detailed in [Schedule 8 of the Order](#). They must emit less than 2,500 tonnes of carbon dioxide equivalent annually and be operating within a sector covered by the UK ETS. There will be an application period between 1 April 2025 and 30 June 2025 for operators to apply for USE status for the 2026-2030 allocation period. This application will be assessed against the criteria included in paragraph 3 of Schedule 8 of the Order. It is not possible for operators to obtain USE status other than in the application period.

### **Proposal 1: Publication of Registry transaction data**

The UK ETS Authority proposes to replace the obligation to publish the summaries described above with an obligation to publish the full history of completed transactions between Registry accounts, other than internal transfers between two central UK ETS Authority accounts, after a three-year delay as in the current obligation. For each transfer the report will include:

- The transaction ID number
- The transaction type
- The date and time of the transfer

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<sup>4</sup> <https://www.gov.uk/government/publications/registry-data-publication-consultation-uk-ets-authority-response#:~:text=The%20UK%20ETS%20Authority%20launched,publiation%20of%20additional%20HSE%20data>

<sup>5</sup> <https://www.gov.uk/guidance/opt-out-of-the-uk-ets-if-your-installation-is-an-ultra-small-emitter>

- The number of allowances transferred
- The following for both the transferring and receiving account:
  - The name of the account holder
  - The name of the account
  - The type of account
  - A unique account ID (different from the confidential account number).

Moving to a position of publishing the full Registry transaction history, rather than only summary data, would increase market transparency. This publication would allow external bodies to analyse the functioning of the UKA market. Publishing full transaction data would aid the functioning of the UK ETS market by helping participants to make effective decisions on buying and selling allowances and associated financial instruments. It would also help operators to effectively plan abatement activities, and so help facilitate cost-effective decarbonisation. We believe that maintaining the three-year delay before publication would provide an appropriate level of protection for cases of commercial sensitivity.

In the original consultation on establishing a UK ETS, *The Future of UK Carbon Pricing* (2019)<sup>6</sup>, the UK ETS Authority stated the policy intent to align the domestic legislative framework for the UK ETS Registry with the EU Registry Regulation for Phase IV as closely as possible, thereby ensuring maximum continuity for participants in the transition from Phase III EU ETS to the UK ETS. A similar provision to this proposal is included in the EU Registry Regulation for Phase IV<sup>7</sup>. Since the first point of transaction publication for the UK ETS will occur from May 2025, the UK ETS Authority proposes to make this amendment now to ensure continued alignment with EU legislation and provide continuity of Registry user experience. Mirroring the publication will also enable effective comparison of the two schemes for the purposes of market analysis.

**1. Do you agree with the proposal to annually publish the details of all UK ETS transactions made using the Registry, three years in arrears, starting from May 2025 ('Proposal 1')? Please provide reasons where possible.**

### **Proposal 2: Disclosure of UK ETS information by a national authority<sup>8</sup>.**

As set out in article 75B(1) of the Order, the UK ETS Authority, a national authority, the regulators and the Registry Administrator are generally prohibited from disclosing or

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<sup>6</sup> <https://www.gov.uk/government/consultations/the-future-of-uk-carbon-pricing>

<sup>7</sup> Section 4 of Annex XIII to Commission Delegated Regulation (EU) 2019/1122 supplementing Directive 2003/87/EC of the European Parliament and the Council as regards the functioning of the Union Registry, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32019R1122>

<sup>8</sup> Section 95(1) of the Climate Change Act 2008 defines 'national authority'.

sharing UK ETS information (such as data collected from operators for purposes of monitoring and reporting). Exceptions to this prohibition are set out in article 75B(3), which states when the disclosure is permitted, such as when it is required by law, where it is necessary for the exercise of a national authority's functions under UK ETS legislation or necessary for monitoring and evaluating the effectiveness of the UK ETS. Unless one of the exceptions in article 75B(3) is met, the persons listed are unable to disclose UK ETS information.

Disclosure to HM Treasury, HM Revenue & Customs, and other departments across the UK Government, Scottish Government, Welsh Government, and NI Executive

Currently, it is not always possible under article 75B for the four governments to share UK ETS information outside of the departments responsible for UK ETS for the purpose of policy development. However, UK ETS information will be essential, or highly advantageous, for the development of policy in areas related to UK ETS, such as reducing, or removing, greenhouse gas emissions, countering carbon leakage, and adaptation to the effects of climate change. Such policies may be developed and implemented by HM Treasury, HM Revenue & Customs, and other departments across the four governments, as well as a number of arms-length public bodies and agencies. We believe that disclosure of certain UK ETS information is necessary for such policies to succeed, and vital to ensure that there are no unforeseen negative consequences for industry from their implementation. While some disclosures may fall under the exemptions listed above, we propose to amend Article 75B(3) to allow this information to be shared.

For example, it will be necessary to share UK ETS information with HM Treasury in order to ensure the effective development and operation of the UK Carbon Border Adjustment Mechanism (CBAM). The UK CBAM is aimed at preventing carbon leakage by levying a charge on imported carbon-intensive goods that have been subject to a lower effective carbon price than for the same product produced in the UK. This will ensure highly traded, carbon intensive goods from overseas face a comparable carbon price to those produced here. The use of UK ETS information, including product-level emissions data which it is currently not possible to share, will be vital for determining the appropriate level of charges for such imports for when the UK CBAM is introduced from 2027.

To safeguard against the unnecessary disclosure of UK ETS information, we propose that only a national authority<sup>9</sup> will be able to disclose information under any new exemption, and will only be able to do so where it is necessary or expedient for the purpose of developing or implementing policies for limiting or encouraging the

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<sup>9</sup> This refers to a) the Secretary of State, b) the Scottish Ministers, c) the Welsh Ministers or d) the relevant Northern Ireland department, as defined at [section 95](#) of the Climate Change Act 2008.

reduction, or removal, of greenhouse gas emissions; countering carbon leakage; or adaptation to the effects of climate change.

#### Disclosure to external contractors

Occasionally, specialist external contractors are required to provide support to national authorities in the development of policies relating to net zero. Disclosure in such circumstances is extremely limited under the current exemptions under article 75B(3), meaning that a national authority is usually unable to share UK ETS information with them. Our proposal will enable a national authority to disclose UK ETS information to a contractor when such circumstances arise.

In terms of safeguarding this information, we propose that only a national authority will be able to disclose under this exemption. We propose that they will only be able to do so when it is necessary or expedient to do so for the purpose of: developing or implementing policies to limit, or encourage activities which reduce, or remove, greenhouse gas emissions; to counter carbon leakage; or which have as their purpose adaptation to the effects of climate change. Given that any such disclosure by a national authority will be subject to the standard clauses on non-disclosure common to all such contracts with external contractors, we do not consider that any additional safeguarding measures should be provided for in the Order.

#### Disclosure to the CCC

Finally, we are proposing to include an exemption to specifically permit the sharing of UK ETS information under article 75B with the Climate Change Committee (CCC)<sup>10</sup>. The CCC is an independent statutory body established under the Climate Change Act 2008 to advise the UK and devolved governments and parliaments on emissions targets and on mitigating and adapting to climate change. This proposed exemption would ensure that such information can be shared where necessary or expedient to support the CCC in performing its statutory functions, even where this would not have been permitted under one of the other existing exemptions in Article 75B(3).

To safeguard against unnecessary disclosure of UK ETS information, we propose that a national authority will be able to disclose to the CCC under this exemption where necessary or expedient to enable the CCC to perform its functions under the Climate Change Act 2008. Any disclosure of UK ETS information to the CCC will be covered by standard non-disclosure agreements (as with the third parties referred to above). We therefore do not consider that any additional safeguarding measures should be provided for in the Order.

#### Data governance

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<sup>10</sup> More information on the CCC can be found at <https://www.theccc.org.uk/>.

All UK ETS information currently collected on behalf of the UK ETS Authority as part of its functions is subject to stringent rules on data governance to prevent any unnecessary disclosure of commercially sensitive information submitted by scheme participants. This includes restricted access to data stores, password protection of files and data anonymisation. These rules will be rigorously enforced whenever data is shared outside of the members of the UK ETS Authority, the UK ETS regulators or the Registry Administrator, including the use of non-disclosure agreements whenever needed.

- 2. Do you agree with the proposal to permit a national authority to disclose UK ETS information where necessary or expedient for the purpose of developing policies to limit, or encourage activities which reduce, or remove, greenhouse gas emissions; to counter carbon leakage; or which have as their purpose adaptation to the effects of climate change ('Proposal 2')? Please provide reasons where possible.**
- 3. Do you agree with the proposal to permit a national authority to disclose UK ETS information to the Committee on Climate Change (CCC) where necessary or expedient to permit the CCC to perform its statutory functions under the Climate Change Act 2008? Please provide reasons where possible.**
- 4. Do you agree that the use of commercial non-disclosure agreements will be sufficient to protect UK ETS information disclosed to third parties? Please provide reasons where possible.**

### **Proposal 3: obtaining ultra-small emitter status for the 2026-3030 allocation period**

Paragraph 3 of Schedule 8 to the Order<sup>11</sup> sets out the conditions that must be met for an installation to be classed as a USE during the 2026-2030 allocation period. (Aircraft operators are not able to apply for USE status.) These include requirements that:

- The regulated activity must have begun to be carried out at the installation on or before 1 January 2021.
- The installation's reportable emissions in 2021, 2022 and 2023 scheme years do not exceed the maximum amount (2,499 tonnes CO<sub>2</sub>e as per paragraph 1 of Schedule 8 to the Order).

These requirements would exclude operators that have begun operations after 1 January 2021 but emit below the maximum amount. These operators would need to continue to participate in the main UK ETS until at least 2030, which may mean additional administrative and compliance burdens despite meeting the other criteria to become a USE.

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<sup>11</sup> <https://www.legislation.gov.uk/uksi/2020/1265/schedule/8/paragraph/3>

We propose that installations with at least one full scheme year of operations before the application deadline should be permitted to apply for USE status for 2026-2030. This means that their regulated activity must have begun on or before 1 January 2024 in order to be eligible. Any operators who have begun operations after 1 January 2021 will be current participants in the main UK ETS and will therefore already have a permit and be required to monitor and verify their emissions annually. We propose the following data should be submitted in the application period of 1 April to 30 June 2025 and used by the UK ETS Authority to assess whether USE status should be granted for 2026-2030:

- For installations that begun regulated activity on or before 1 January 2021, the eligibility period shall remain the same, with data from scheme years 2021, 2022 and 2023 submitted.
- For installations that begun regulated activity between 2 January 2021 and 1 January 2022, data from scheme years 2022, 2023 and 2024 should be submitted.
- For installations that begun regulated activity between 2 January 2022 and 1 January 2023, data from scheme years 2023 and 2024 should be submitted.
- For installations that begun regulated activity between 2 January 2023 and 1 January 2024, data from scheme year 2024 should be submitted.

We believe it is important for applicants to have a full year of verified data before the application period, as during the 2026-2030 period, USEs will not be required to submit further verified data on an annual basis. The above proposal will allow the UK ETS Authority to assess applicants' status with the best available data, while keeping the assessment period and criteria the same for those installations who are existing USEs. If an installation with USE status ceases to meet the criteria during the 2026-2030 allocation period, they will lose this status and will instead join the main UK ETS (or may become a Hospital or Small Emitter, if eligible). It will not be possible to apply to join the USE scheme between 2026-2030 other than in this application period.

**5. Do you agree with the proposal to permit applications for ultra-small emitter (USE) status for the 2026-30 allocation period with the requirements for submission of data as set out above? Please provide reasons where possible.**



## **Timing**

The UK ETS Authority intends to make these changes through secondary legislation which is expected to enter into force by 1 April 2025. This would enable the first publication of historical transaction data to take place from May 2025, as described under Proposal 1 above; would enable sharing of UK ETS information by a national authority for the purposes set out under Proposal 2 above from May 2025; and would enable applications for USE status from the start of the 2025 application window as set out in Proposal 3 above.

## **How to respond**

Please submit a written response by email to [ukets.consultationresponses@energysecurity.gov.uk](mailto:ukets.consultationresponses@energysecurity.gov.uk). When responding, please state your name and whether you are responding as an individual or representing the views of an organisation (including the name of the organisation). Please contact us if you would like to arrange a meeting to discuss the proposals.

Your response will be most useful if it is framed in direct response to the questions posed, though further comments and evidence are also welcome. You are not obliged to respond to all questions.

Please respond by **15 October 2024**.

## **Next steps**

Responses will be analysed, and the UK ETS Authority will respond in advance of making any legislation.