

Net Zero, Energy and Transport Committee

28th Meeting, 2022 (Session 6), Tuesday, 1 November 2022

SSI cover note for: The Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 3) Order 2022 [draft]

Title of Instrument:	The Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 3) Order 2022
Type of Instrument:	Affirmative
Laid Date:	21 September 2022
Circulated to Members:	23 September 2022
Meeting Date:	1 November 2022
Minister to attend meeting:	Yes
Motion to approve:	S6M-06005
Drawn to the Parliament's attention by the Delegated Powers and Law Reform Committee?	No
Reporting deadline:	15 November 2022

Background

1. This instrument seeks to amend the UK Emissions Trading Scheme (UK ETS), a UK-wide regime established following EU-exit to replace the UK's participation in the EU ETS scheme, to include flights from Great Britain to Switzerland as part of the UK's allocated allowance for emissions from aviation activity from 1 January 2023 onwards.
2. It will be laid in the Scottish Parliament, UK Parliament and Senedd Cymru with the intention of it being made at the Privy Council later this year.
3. An electronic copy of the **Order** is available at: <https://www.legislation.gov.uk/ukdsi/2022/9780348238761/contents>
4. A copy of the UK Government's Explanatory Note is included in **Annexe A**.

5. A copy of the Scottish Government's Policy Note is included in **Annexe B**.

Purpose

6. This instrument amends the 2020 Order to include into the UK ETS flights from Great Britain to Switzerland within the definition of aviation activity, to require the recalculation of entitlements to a free allocation of allowances to take account of the new category of historic aviation activity, and to permit applications for a free allocation of allowances on the basis of this historic aviation activity by persons who have not previously applied for a free allocation of allowances.

Delegated Powers and Law Reform Committee consideration

7. At its [meeting on 4 October 2022](#), the DPLR Committee considered the instrument and determined that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit. [Read the Official Report for the meeting on 4 October 2022](#).

Procedure for Affirmative instruments

8. The draft Order was laid on 21 September 2022 and referred to the Net Zero, Energy and Transport Committee. The Order is subject to affirmative procedure (Rule 10.6). It is for the Net Zero, Energy and Transport Committee to recommend to the Parliament whether the Order should be approved. The Cabinet Secretary for Net Zero, Energy and Transport has, by motion [S6M-06005](#) (set out in the agenda), proposed that the Committee recommends the approval of the Order.

Recommendation

9. The Committee must decide whether or not to agree to the motion, and then report to Parliament accordingly, by 15 November 2022.

Clerks
Net Zero, Energy and Transport Committee

Annexe A

UK Government Explanatory Note

EXPLANATORY MEMORANDUM TO THE GREENHOUSE GAS EMISSIONS TRADING SCHEME (AMENDMENT) (NO. 3) ORDER 2022

2022 No. [XXXX]

1. Introduction

This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy (the “Department”) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This instrument amends the 2020 Order to include into the UK ETS flights from Great Britain to Switzerland within the definition of aviation activity, to require the recalculation of entitlements to a free allocation of allowances to take account of the new category of historic aviation activity, and to permit applications for a free allocation of allowances on the basis of this historic aviation activity by persons who have not previously applied for a free allocation of allowances.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is Great Britain.
4.2 The territorial application of this instrument is Great Britain.

5. European Convention on Human Rights

- 5.1 The Rt Hon Greg Hands, MP, Minister of State for Energy, Clean Growth and Climate Change at the Department for Business, Energy and Industrial Strategy, has made the following statement regarding Human Rights:

“In my view the provisions of the Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 3) Order 2022 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 The UK ETS was established under the Climate Change Act 2008 by the Greenhouse Gas Emissions Trading Scheme Order 2020 (the 2020 Order) as a UK-wide greenhouse gas emissions trading scheme to encourage cost-effective emissions reductions which will contribute to the UK’s emissions reduction targets and net zero goal. This scheme replaced the UK’s

participating in the EU Emissions Trading System (EU ETS), and the 2020 Order applied EU ETS rules on the monitoring, reporting and verification of emissions with modifications to ensure that they work for the UK ETS.

- 6.2 The 2020 Order was subsequently amended by the Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020 to include provisions for the free allocation of allowances and the UK ETS Registry. Regulations under the Finance Act 2020 established the rules for auctioning allowances and mechanisms to support market stability.
- 6.3 Technical and operational amendments, including additional penalties, and improvements to monitoring, reporting, and enforcement of scheme rules were made by the Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021 and the Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2022.
- 6.4 Further technical and operational amendments will be made by the Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2022 (which will be subject to the negative procedure) and is due to come into force before 1 January 2023.

7. Policy background

What is being done and why?

- 7.1 The UK ETS covers domestic flights, flights from the UK to the European Economic Area (“EEA”) and flights between the UK and Gibraltar. In 2019, these flights made up 44% of all commercial flights to and from UK airports. The EU ETS covers flights within the EEA, flights from the EEA to Switzerland and flights from the EEA to the UK.
- 7.2 Since our departure from the European Union, flights between the UK and Switzerland are not covered in either the UK ETS or Swiss Emissions Trading System creating a gap in ETS coverage. In the 2020 government response to The Future of UK Carbon Pricing consultation we committed to include UK to Switzerland flights within the scope of the UK ETS if an agreement could be reached with Switzerland. We have now agreed with Switzerland to cover these flights and Switzerland have amended the relevant domestic legislation to ensure that flights from Switzerland to the UK are included in the Swiss ETS from 2023.
- 7.3 This instrument amends the 2020 Order to include flights from Great Britain to Switzerland within the definition of aviation activity and bringing them within the scope of the UK ETS for the start of the 2023 scheme year. It requires the recalculation of entitlements to a free allocation of allowances to take account of the new category of historic aviation activity and permits applications for a free allocation of allowances on the basis of this historic aviation activity by persons who have not previously applied for a free allocation of allowances. The instrument also amends the definition of “full-scope flights” to include flights departing from and arriving in an aerodrome situated in Switzerland, mirroring the treatment of EEA flights under the UK ETS.
- 7.4 To note, the policy intent is to include flights from the UK to Switzerland within the scope of the UK ETS. As the Northern Ireland Assembly was not able to

consider affirmative legislation at the time this instrument began the legislative process, this legislation only brings GB to Switzerland flights into scope of the UK ETS. Further legislation will be brought forward in relation to Northern Ireland to Switzerland flights when feasible.

Explanations

What did any law do before the changes to be made by this instrument?

- 7.5 The 2020 Order did not include flights from Great Britain to Switzerland within the scope of the UK ETS.

Why is it being changed?

- 7.6 Flights from the UK to Switzerland were previously covered by the UK's participation in the EU ETS. The EU-Swiss linking agreement came into force in 2020, bringing flights from the EEA to Switzerland into scope of the EU ETS and flights from Switzerland to the EEA into scope of the Swiss ETS. Following the UK's departure from the EU, flights between the UK and Switzerland are not covered in either the UK ETS or Swiss ETS, creating a gap in ETS coverage. The proposed amendments and concurrent amendments to the Swiss ETS will cover this gap. This will introduce an incentive to decarbonise aviation emissions on these flights.

What will it now do?

- 7.7 The introduction of these amendments will enable the inclusion of flights from Great Britain to Switzerland within the scope of the UK ETS.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument is not being made under the European Union (Withdrawal) Act 2018 but relates to the withdrawal of the United Kingdom from the European Union because it relates to the UK ETS, which is a policy replacement for the UK's participation in the EU ETS.

9. Consolidation

- 9.1 There are no plans to consolidate the legislation amended by this instrument.

10. Consultation outcome

- 10.1 Between 25th March and 17th June 2022, the UK Government and Devolved Administrations ran a public consultation on a package of proposals to develop the UK ETS, one of which consulted on the policy content of this instrument.
- 10.2 Alongside the consultation, the UK Government, Scottish Government, Welsh Government and Department for Agriculture Environment, and Rural Affairs, jointly sought the advice of the Committee on Climate Change (CCC) on the public consultation. The CCC reviewed the policy content of this draft Statutory Instrument and only had clarification questions and no further comments.
- 10.3 The public consultation section relating to the content of this explanatory memoranda received 46 responses, largely from airline operators. The

majority of responses agreed with the proposal; therefore there was no impact on the policy intent.

- 10.4 The Government Response to the consultation was published on 31st August 2022.
- 10.5 Full details of the consultation and response can be found at: <https://www.gov.uk/government/consultations/developing-the-uk-emissions-trading-scheme-uk-ets>

11. Guidance

- 11.1 The UK ETS guidance has been published and is available at: <https://www.gov.uk/government/publications/participating-in-the-uk-ets/participating-in-the-uk-ets>. Guidance will be updated regularly, and updates will take account of relevant changes to legislation.

12. Impact

- 12.1 The impact on business, charities or voluntary bodies is set out in the analytical annex to the Government Response.
- 12.2 The impact on the public sector will mainly be in the form of additional revenues from the auctioning of allowances for these flights. Other impacts will be insignificant for the 2023 compliance year and will depend on the final decision on the UK ETS cap in subsequent years.
- 12.3 A full Impact Assessment has not been prepared for this instrument because it is not a regulatory provision. However, an analytical annex was published alongside the Government Response to the public consultation found here: <https://www.gov.uk/government/consultations/developing-the-uk-emissions-trading-scheme-uk-ets>
- 12.4 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 Decarbonisation and Emissions Trading Energy Directorate, Department for Business, Energy and Industrial Strategy, 1 Victoria Street, London SW1H 0ET and is available alongside the 2020 Order on www.legislation.gov.uk.

13. Regulating small business

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 The 2020 Order commits the UK ETS authority (the UK Government and Devolved Administrations) to reviewing the operation of the UK ETS (including the measures introduced by this instrument) in 2023 and in 2028. The UK ETS authority must subsequently publish a report setting out the conclusions of the review.

15. Contact

- 15.1 Francis Collie at the Department for Business, Energy and Industrial Strategy can be contacted with any queries regarding the instrument.
- 15.2 Charlie Lewis, Deputy Director for Emissions Trading, at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Rt Hon Greg Hands, MP, Minister for Business, Energy and Clean Growth at the Department for Business, Energy and Industrial Strategy, can confirm that this Explanatory Memorandum meets the required standard.

Annexe B

Scottish Government Policy Note

THE GREENHOUSE GAS EMISSIONS TRADING SCHEME (AMENDMENT) (No. 3) ORDER 2022

SI 2022/XXXX

1. The above instrument is to be made in exercise of the powers conferred by sections 44 and 90(3) of, and Schedule 2 and paragraph 9 of Schedule 3 to, the Climate Change Act 2008. The Order in Council is subject to affirmative procedure.

Summary

2. The Order amends the UK-wide Emissions Trading Scheme (“UK ETS”) established by the Greenhouse Gas Emissions Trading Scheme Order 2020 (“the 2020 Order”).
3. This instrument amends the 2020 Order to include into the UK ETS flights from Great Britain to Switzerland within the definition of aviation activity, to require the recalculation of entitlements to a free allocation of allowances to take account of the new category of historic aviation activity, and to permit applications for a free allocation of allowances on the basis of this historic aviation activity by persons who have not previously applied for a free allocation of allowances.

Policy Objectives

4. The UK ETS was established by the four administrations (Scottish, UK and Welsh Governments, and the Northern Ireland Executive) in 2021, following the UK’s withdrawal from the EU. Further information on the UK ETS is available in the Policy Note accompanying the [2020 Order](#).
5. This instrument will expand the scope of the UK ETS to include flights departing an aerodrome in Great Britain and arriving in an aerodrome in Switzerland (GB to Switzerland flights), to take effect from 1 January 2023. Aircraft operators will be required to monitor and report their aviation emissions on flights from Great Britain to Switzerland, and surrender an equivalent amount of UK ETS Allowances. This instrument will also allow aircraft operators to apply for free allocation by 31 March 2023 only if their historical aviation activity includes flights between Great Britain and Switzerland. It also includes provisions to allow regulators recalculate free allocation entitlements, and make the necessary adjustments, to aircraft operators with historical aviation activity between Great Britain and Switzerland. More detail on each of these provisions can be found in the UK Government’s Explanatory Memorandum.
6. This instrument is made according the same Order in Council process as the 2020 Order, according to the affirmative procedure. It will be laid in the Scottish

Parliament, UK Parliament and Senedd Cymru with the intention of it being made at the Privy Council later this year.

7. A further instrument, subject to the negative procedure, will make further technical amendments to the 2020 Order relating to permitting of virtual site visits for aviation verifiers; updating the references in UK ETS legislation to the Renewable Transport Fuel Obligation (RTFO) sustainability criteria that are relevant to the eligibility of sustainable aviation fuels; amending the Activity Level Changes Regulation (Commission Implementing Regulation (EU) 2019/1842, as it forms part of domestic law) due to the 2020 COVID year; and introducing further operational amendments to the UK ETS, including penalties, minor permitting, monitoring, reporting & verification (PMRV) amendments and a window for Hospitals and Small Emitters to re-enter the main scheme. The negative instrument is due to be in force by January 2023.

Consultation

8. Amendments to the 2020 Order to be made by this instrument were jointly consulted on by the four administrations between 25 March and 17 June 2022. Alongside the consultation, the four nations jointly sought the advice of the Committee on Climate Change (CCC) on the public consultation. Advice was commissioned from the CCC on the consultation proposals.
9. The first part of the Government Response to the consultation, which only includes the amendments mentioned above, was published on 2 September 2022, and full details of the consultation and response can be found at: [Developing the UK Emissions Trading Scheme \(UK ETS\)](#)
10. The second part of the Government Response, which will contain the remaining proposals included in the consultation, is expected to be published early next year. The consultation was divided into two parts as a small number of proposals require implementation via legislation ahead of the 2023 scheme year, which are those included in the early Government Response.

Guidance

11. UK ETS guidance has been published and is available at: [Guidance - Participating in the UK ETS](#). Guidance will be updated regularly, and updates will take account of relevant changes to legislation.

Impact Assessments

12. The Cabinet Secretary for Net Zero, Energy and Transport confirms that no BRIA is necessary as very limited impact upon business, charities or voluntary bodies is foreseen by the inclusion of Swiss flights within the scope of the UK ETS, given this was part of the EU ETS.
13. The overall level of climate ambition in the UK ETS is unchanged by the proposals in this Statutory Instrument. There is no overall impact on the monetised costs and benefits to businesses. There is no change to the supply of

allowances or the expected emissions from emitters. There is also no expected change to the general administrative burden for emitters.

14. However, an analytical annex was published alongside the early Government Response to the public consultation, assessing the impacts of the decisions set out in the document, which can be found here:

<https://www.gov.uk/government/consultations/developing-the-uk-emissions-trading-scheme-uk-ets>

Scottish Government
Directorate for Energy and Climate Change
September 2022