

Net Zero, Energy and Transport Committee  
Tuesday 14 January 2025  
2<sup>nd</sup> Meeting, 2025 (Session 6)

## Note by the Clerk on the Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2025 (draft)

### Overview

1. At this meeting, the Committee will take evidence from the acting Cabinet Secretary for Net Zero and Energy and officials on the Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2025 (draft) before debating a motion in the name of the Cabinet Secretary inviting the Committee to recommend approval of the instrument.
2. This is a draft Statutory Instrument, which requires approval by resolution of the Parliament before it can become law.

**Title of instrument:** [Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2025](#)

**Laid under:** Sections 44, 54 and 90(3) of, and Schedule 2 and paragraph 9 of Schedule 3 to, the [Climate Change Act 2008](#).

**Laid on:** 03 December 2024

**Procedure:** Affirmative

**Lead committee to report by:** 27 January 2025

**Commencement:** See Article 2 of the instrument

### Procedure

3. Under the affirmative procedure, an instrument must be laid in draft and cannot be made (or come into force) unless it is approved by resolution of the Parliament. In this case, the instrument also requires approval by resolution of Senedd Cymru, the Northern Ireland Assembly and both Houses of the UK Parliament.
4. Once laid, the instrument is referred to:
  - the Delegated Powers and Law Reform (DPLR) Committee, for scrutiny on various technical grounds, and
  - a lead committee, whose remit includes the subject-matter of the instrument, for scrutiny on policy grounds.
5. The lead committee, taking account of any recommendations made by the DPLR Committee (or any other committee), must report within 40 days of the instrument being laid.

6. In line with standard practice for affirmative instruments, there will be two agenda items for this item:
  - an evidence session with the relevant Minister and officials, followed by
  - a formal debate on a motion, lodged by the Minister, inviting the lead committee to recommend approval of the instrument.
7. Only MSPs may participate in the debate, which may not last for more than 90 minutes. If there is a division on the motion, only committee members may vote. If the motion is agreed to, it is for the Chamber to later decide whether to approve the instrument.

## Delegated Powers and Law Reform Committee consideration

8. The DPLR Committee considered the instrument on 10 December and reported on it in its [76<sup>th</sup> Report, 2024](#). The DPLR Committee made no recommendations in relation to the instrument.

## Purpose of the instrument

9. This instrument will make changes to permanent cessation policy in the UK Emissions Trading Scheme (the “UK ETS”). The UK ETS is a system of carbon reduction and trading for UK businesses in energy-intensive sectors run by the governments of the United Kingdom. It aims to reduce overall emissions by imposing a cost on them and therefore create an incentive to decarbonise.
10. The UK-ETS involves some amount of free allocation of allowances to various business as a means of ensuring they are not at a disadvantage when competing with firms in other jurisdictions, and preventing carbon leakage (businesses relocating to jurisdictions with lesser environmental regulations). Many businesses [receive free allocations](#), and a [Free Allocation Review](#) has been held in recent years.
11. The permanent cessation policy in the UK ETS applies to operators of installations and participants in the scheme who stop carrying out regulated activities permanently. This policy ensures that operators are no longer required to comply with obligations under the UK ETS once they cease operations, provided certain conditions are met. Currently, [the permanent cessation policy](#) means that when there is permanent cessation of some level of activity within a business, operators can benefit from a surplus of free allowances during the year in which the cessation occurred.
12. The main changes made by this instrument are set out in the policy note and include:
  - Permanent cessations, free allocations: the volume of free allocation which an operator is entitled to in the final year in which operations are carried out at one or more sub-installation is calculated by reference to the level of activity at the relevant sub-installation in that year (the “final year rule”). To facilitate

this, amendments are made to UK ETS legislation requiring operators to prepare an activity level report in respect of the final year in which operations are carried out at a sub-installation. That activity level report will be used to recalculate the volume of free allocation the operator is entitled to in the final year in which operations are carried out at a sub-installation and any overallocation must be returned in accordance with existing scheme rules.

- The SI changes the permanent cessation policy so that the level of allowances given in the final year of operation would be based on actual activity levels for that final year, as opposed to average levels of activity. This would mean that the free allocation in their final year is proportionate to their activity levels.
- This instrument includes an exception to the final year rule in circumstances in which the permanent cessation of operations at a sub-installation is part of a series of changes which result in a material increase in the carbon efficiency of activities which continue to be carried out at the installation.
- The SI also involves an exemption to the new rules so that if the business can prove that the cessation of activity will ultimately result in more carbon efficient operations, they can retain the free allowances. An example of this is when an older piece of equipment ceases activity and is replaced by a more efficient new piece of equipment. Participants closing for decarbonisation will therefore be able to retain the full entitlement, subject to sufficient evidence being provided.
- Permanent cessations, definitions: This instrument also amends the circumstances in which an installation or sub-installation has “ceased operation” for the purposes of the UK ETS Order.
- Permanent cessations, operator notifications: This instrument also introduces a requirement for the operators to notify the relevant scheme regulator of circumstances in which regulated activities cease to be carried out at an installation by the end of the scheme year in which the cessation occurs and confirm whether the operator intends for one or more regulated activities to resume at the installation. Operators are similarly required to provide details of a cessation of operations in respect of sub-installation in annual activity level reports.

## **Report**

13. The Convener will invite the Committee to delegate to him authority for considering and approving a draft report prepared by the clerks after the meeting. In relation to any report finalised in this way, Committee Members may ask to see the draft and comment on it before the Convener authorises it for publication.

**Clerks to the Committee  
January 2025**

## **Annexe A: Scottish Government Policy Note**

### **POLICY NOTE**

#### **THE GREENHOUSE GAS EMISSIONS TRADING SCHEME (AMENDMENT) ORDER 2025**

#### **SI 2025/XXXX**

The above instrument is to be made in exercise of the powers conferred by sections 44, 54 and 90(3) of, and Schedule 2 and paragraph 9 of Schedule 3 to the Climate Change Act 2008. The instrument is subject to affirmative procedure.

#### **Summary Box**

This instrument makes amendments to the legislation which gives effect to the UK Emissions Trading Scheme (the “UK ETS”). This includes providing for the recalculation of the volume of free allocation which an operator is entitled to in circumstances in which one or more sub-installation has “ceased operation”. That recalculation ensures that the volume of free allocation which an operator is entitled to reflects actual activity levels at the relevant sub-installation in the final year in which those operations permanently ceased.

The instrument includes an exemption from this recalculation in circumstances in which the cessation is a part of a series of changes which result in an improvement in the carbon efficiency of the activities carried out at the installation.

This Order also makes changes to circumstances in which an installation or sub-installation has “ceased operation” for the purposes of UK ETS legislation and provides a power for a scheme regulator to issue a notice which provides that an installation or sub-installation has “ceased operation” where it is not satisfied that certain conditions are met.

For further information on the UK ETS, see the Policy Note accompanying the Greenhouse Gas Emissions Trading Scheme Order 2020<sup>1</sup>.

#### **Policy Objectives**

The UK ETS was established under the Climate Change Act 2008 by 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. The UK ETS is operated by the UK ETS Authority, comprising the UK Government, Scottish Government, Welsh Government and the Department of Agriculture, Environment and Rural Affairs for Northern Ireland. The scheme is regulated by the Environment Agency, the Scottish Environment Protection Agency, Natural Resources Wales, the Northern Ireland Environment Agency, and the Offshore Petroleum Regulator for Environment and Decommissioning. This scheme replaced the UK’s participation in the EU Emissions Trading System (EU ETS), and

<sup>1</sup> [Draft Greenhouse Gas Emissions Trading Scheme Order \(legislation.gov.uk\)](https://www.legislation.gov.uk)

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.

Under the UK ETS, participants are required to monitor, report on, and surrender allowances in respect of their greenhouse gas emissions. Participating operators at risk of carbon leakage are given a certain number of UK ETS allowances for free, to manage their exposure to the carbon price and the risk that business' decarbonisation efforts could be undermined by higher-carbon imports. Participants can also buy emission allowances at auction and in secondary markets.

This instrument will make changes to permanent cessation policy in the UK ETS. The main changes made by this instrument are in relation to:

- *Permanent cessations, free allocations:* the volume of free allocation which an operator is entitled to in the final year in which operations are carried out at one or more sub-installation is calculated by reference to the level of activity at the relevant sub-installation in that year (the "final year rule"). To facilitate this, amendments are made to UK ETS legislation requiring operators to prepare an activity level report in respect of the final year in which operations are carried out at a sub-installation. That activity level report will be used to recalculate the volume of free allocation the operator is entitled to in the final year in which operations are carried out at a sub-installation and any overallocation must be returned in accordance with existing scheme rules.
- This instrument includes an exception to the final year rule in circumstances in which the permanent cessation of operations at a sub-installation is part of a series of changes which result in a material increase in the carbon efficiency of activities which continue to be carried out at the installation.
- This exception to the final year rule will incentivise decarbonisation, as operators who can demonstrate the relevant requirements are met will continue to be entitled to the free allocation calculated in accordance with usual UK ETS scheme rules (which is calculated in advance on the basis of historic activity levels).
- *Permanent cessations, definitions:* This instrument also amends the circumstances in which an installation or sub-installation has "ceased operation" for the purposes of the UK ETS Order. The updated definitions provide that an installation has ceased operation when the relevant activity (in the case of an installation) or operation (in the case of a sub-installation) has permanently ceased to be carried out at the installation.
- For these purposes an installation has "ceased operation" if all regulated activities have permanently ceased to be carried out (and a sub-installation has "ceased operation" if all operations have permanently ceased to be carried out). This amendment increases certainty for both the scheme regulators and operators.
- *Permanent cessations, operator notifications:* This instrument also introduces a requirement for the operators to notify the relevant scheme regulator of circumstances in which regulated activities cease to be carried out at an installation by the end of the scheme year in which the cessation occurs and

confirm whether the operator intends for one or more regulated activities to resume at the installation. Operators are similarly required to provide details of a cessation of operations in respect of sub-installation in annual activity level reports.

- Providing scheme regulators with the power to issue a notice which determines that an installation or sub-installation has “ceased operation” will increase certainty for operators and facilitate equivalent treatment for all installations undergoing a cessation.

## **EU Alignment Consideration**

The UK ETS was established 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. The UK ETS is operated by the UK ETS Authority, comprising the UK Government, Scottish Government, Welsh Government and the Department of Agriculture, Environment and Rural Affairs in Northern Ireland. The UK ETS replaces the UK membership of the EU Emissions Trading Scheme following the UK’s exit from the EU. Directive 2003/87/EC (as amended) established the EU emissions trading scheme, which created a European Union market in greenhouse gas emissions allowances. 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.

This instrument is legislation to implement the policy decisions in the joint Government Response to the ‘Free Allocation Review’ consultation, published in November 2024. Overall, this instrument aligns with EU ETS policy, as they updated their Permanent Cessation rules on 4 April 2024.

## **Consultation**

The UK ETS Authority ran a public consultation “Free Allocation Review” between 18 December 2023 and 11 March 2024.

The consultation received responses from over 60 organisations, with broad support of the proposed technical changes to the treatment of permanent cessations.

Following the consultation, the advice of the Climate Change Committee (CCC) on the associated policy proposals in this instrument was sought. The CCC reviewed these proposals and had no comments.

The Authority has reported on the findings from this consultation in the joint response: <https://www.gov.uk/government/consultations/uk-emissions-trading-scheme-free-allocation-review>

As a result of that consultation the decisions detailed above have been made regarding the rules to permanent cessations.

## **Impact Assessments**

A full Impact Assessment has not been prepared for this instrument because it is not a regulatory provision.

The Government Response to the consultation has a UK-wide impact analytical assessment on the decisions made.

## **Financial Effects**

The Government Response to the Free Allocation Review consultation sets out several technical policy changes, such as the ones introduced by this affirmative instrument. Officials have assessed the impact on businesses, charities, or voluntary bodies relating to permanent cessations which is within the analytical annex.

The changes made to legislation through this instrument do impact small or micro businesses. This is because small or micro businesses (employing up to 50 people), operators with relatively low levels of emissions are either not caught by the scheme or participate in the HSE or USE schemes, which have lower compliance burdens than the main UK ETS.

There is no significant impact on the public sector. Hospitals participate in the HSE scheme, which has lower compliance burdens than the main UK ETS.

Scottish Government  
Energy and Climate Change Directorate

*December 2024*