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## EXPLANATORY NOTE

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

This Order establishes a new emissions trading scheme covering greenhouse gas emissions from power and heat generation, energy intensive industries and aviation. The scheme will be called the UK Emissions Trading Scheme or UK ETS (see article 16). It is the successor, in the UK, to the EU Emissions Trading System (established by [Directive 2003/87/EC](#)).

Part 1 contains definitions that are used throughout the Order, including key concepts such as the “trading period” (1 January 2021 to 31 December 2030 – see article 4) the activities covered by the scheme (“regulated activity”, defined in article 4 and Schedule 2, and “aviation activity”, defined in article 4 and Schedule 1), the different greenhouse gases covered by the scheme (see article 4 and Schedule 2 for installations and the definition of “aviation emissions” for aircraft), the participants in the scheme (“operators” of installations, defined in article 5, and “aircraft operators”, defined in articles 6 to 8) and who the scheme’s “regulator” is for different purposes (articles 9 to 13). Article 15 introduces Schedule 3 which contains provision about applications, notices, etc.

Part 2, after introducing the scheme and establishing a review requirement (articles 16 and 17), sets out other elements of the scheme relevant to both operators of installations and aircraft operators. The basic proposition of the scheme is that, for each year, participants have to surrender “allowances” equivalent to their greenhouse gas emissions within the scope of the scheme. So article 18 sets out what an allowance is and articles 19 to 22 set out rules limiting the number of allowances that can be issued. Article 23 permits allowances to be traded except where this is prohibited by other legislation. The rules on how allowances are to be issued do not, however, appear in this Order and will be the subject of separate legislation on free allocation of allowances and auctioning. Articles 24 and 25 introduce Schedules 4 and 5 which adapt existing EU legislation on monitoring and reporting of greenhouse gas emissions, and how reports of emissions are verified, for the purposes of the UK ETS.

Parts 3 and 4 contain provisions specific (respectively) to operators of installations and aircraft operators. The scheme has slightly different rules for these different types of participants. For operators of installations there is a general rule that they need a permit (article 26(1)) and need to surrender allowances to account for emissions (article 27). From the general rule, there are different levels of derogation for hospitals and small emitters and for ultra-small emitters. Detailed provision in respect of each category of operator is set out in Schedules 6 to 8, although for operators subject to the general rule, and for hospitals and small emitters, many of the rules take the form of specified contents of permits. For aircraft operators, there is no need for a permit as such. However, aircraft operators must apply for emissions monitoring plans which fulfil some of the same functions (article 28). For aircraft operators, provisions about reporting emissions and surrendering allowances are in articles 33 and 34.

Part 5 contains provision allowing the regulators to charge for the performance of their regulatory functions under the Order.

Part 6 contains provision allowing the regulators to monitor compliance with the Order, including through inspections of premises and exercising powers of entry.

Part 7 contains provision about enforcement, including a range of civil penalties (articles 50 to 68) that may be imposed in respect of specified breaches of the Order or of permit conditions. General provision about civil penalties is in articles 47 and 48. In addition, article 44 makes provision about enforcement notices and article 45 about circumstances where a regulator can determine the greenhouse gas emissions of a participant in the UK ETS.

**Draft Legislation:** This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: The Greenhouse Gas Emissions Trading Scheme Order 2020 No. 1265

Part 8, which is supplemented by Schedules 9 and 10, contains provision about appeals from decisions made by the regulator about applications and appeals in respect of a number of notices (specified in article 70(2)) that may be given under the Order.

Part 9 brings together provisions without a natural home elsewhere in the Order, covering information notices (article 75), Crown application (article 76) and transitional provisions (article 77 with Schedule 11).

A regulatory impact assessment of the effect that the UK ETS will have on the costs of business, the voluntary sector and the public sector is available from the Industrial Energy Directorate, Department for Business, Energy and Industrial Strategy, 1 Victoria Street, London SW1H 0ET and is available alongside the instrument on [www.legislation.gov.uk](http://www.legislation.gov.uk).