
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 is an offence to intentionally obstruct persons in the exercise of the enforcement powers referred to in article 40(1) (see amendments to article 40).
- Persons who fail to comply with a notice to return allowances under article 34V may be subject to a civil penalty (see amendments to article 47 and new article 64A).
- Where an installation’s permit is surrendered or revoked, the surrender or revocation notice given will include a requirement to surrender any deficit of allowances from previous scheme years (see amendments to paragraphs 11 and 12 of Schedule 6). The operator will not be subject to a second “excess emissions penalty” in respect of any failure to comply with this requirement (see amendments to article 52).

The Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020 (the “2020 Amendment Order”) made amendments to articles 44, 65 and 75 of the UK ETS Order in relation to enforcement powers. The Joint Committee on Statutory Instruments reported the 2020 Amendment Order on the grounds that there is a doubt as to whether it is *intra vires* in one respect, namely that the amendments were contained in an instrument subject to the negative, rather than the affirmative, resolution procedure (see the Fortieth Report of Session 2019-21). The effect of articles 7, 11, 12 and 14 of this Order is that the amendments made by the 2020 Amendment Order are revoked and are re-made by this Order, which is subject to the affirmative resolution procedure.

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, 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.