Draft Order in Council laid before Parliament, the Scottish Parliament and Senedd Cymru under paragraph 11 of Schedule 3 to the Climate Change Act 2008 for approval by resolution of each House of Parliament, the Scottish Parliament and Senedd Cymru.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2022 No. XXX

CLIMATE CHANGE

The Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 3) Order 2022

Made - - - - ***

Coming into force in accordance with article 1(2)

At the Court at Windsor Castle, the **** day of ******* 2022

Present,

The Queen's Most Excellent Majesty in Council

This Order is 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(**a**).

In accordance with paragraph 10 of Schedule 3 to that Act, before the recommendation to Her Majesty in Council to make this Order was made—

(a) the advice of the Committee on Climate Change was obtained and taken into account; and

(b) such persons likely to be affected by the Order as the Secretary of State, the Scottish Ministers and the Welsh Ministers considered appropriate were consulted.

In accordance with paragraph 11 of that Schedule, a draft of the instrument containing this Order was laid before Parliament, the Scottish Parliament and Senedd Cymru and approved by resolution of each House of Parliament, the Scottish Parliament and Senedd Cymru.

Accordingly, Her Majesty, by and with the advice of Her Privy Council, makes the following Order:

Citation, commencement and extent

1.—(1) This Order may be cited as the Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 3) Order 2022.

(2) This Order comes into force as follows—

(a) articles 3 and 5 on 1st January 2023, and

(**a**) 2008 c. 27.

(b) all other provisions, on the day after the day on which the Order is made.

(3) This Order extends to England and Wales, and Scotland.

Greenhouse Gas Emissions Trading Scheme Order 2020 amended

2. The Greenhouse Gas Emissions Trading Scheme Order 2020(**a**) is amended in accordance with articles 3, 4 and 5.

Interpretation

3. In article 4(1), in the definition of "full-scope flights", after "Gibraltar" insert ", Switzerland".

Free allocation entitlement

4.—(1) In article 34L (application for aviation free allocation entitlement)(**b**)—

(a) in paragraph (6), for "An application" substitute "Unless paragraph (7) applies, an application";

(b) after paragraph (6), insert—

"(7) A person who did not submit an application under this article on or before 31st March 2021 but who may be entitled to a free allocation of allowances on the basis of historical aviation activity level due to aviation activity within paragraph 1(1)(c) of Schedule 1 may submit an application under this article for a free allocation of allowances on or before 31st March 2023.

(8) An application made under paragraph (7) may not be made on the basis of historical aviation activity level due to any aviation activity other than aviation activity within paragraph 1(1)(c) of Schedule 1.".

(2) In article 34M (processing of applications and calculation of aviation free allocation entitlement)—

(a) in paragraph (1), for sub-paragraph (b), substitute—

"(b) a calculation of the applicant's aviation free allocation—

(i) for each scheme year in the 2021-2025 allocation period, or

(ii) where the application is made in accordance with article 34L(7), for the 2023, 2024 and 2025 scheme years in that allocation period,

applying paragraphs (2) to (6);";

(b) in paragraph (3)(a), after "2021" insert "in relation to flights departing from Great Britain and arriving in an aerodrome in Switzerland before that date";

(c) after paragraph (6), insert—

"(6A) The regulator must recalculate the aviation free allocation entitlement for the 2023, 2024 and 2025 scheme years in relation to each person who had made an application under article 34L ("A") before article 34L(7) came into force, to take into account any historical aviation activity level attributable to A due to aviation activity within paragraph 1(1)(c) of Schedule 1 immediately before 1st January 2021.

(6B) The regulator may, by notice submitted to A, request A to produce such information specified in the notice, within the reasonable period so specified, as may be necessary to enable the regulator to make the recalculation required under paragraph (6A).

(6C) The regulator must, as soon as reasonably practicable and in any event before 30th June 2023, submit the recalculation made under paragraph (6A) to the UK ETS authority, with—

(**a**) S.I. 2020/1265, amended by S.I. 2020/1557, 2021/1455 and 2022/454.
(**b**) Articles 34A to 34W were inserted by S.I. 2020/1557.

(a) sufficient information to identify A; and

(b) any other information related to the recalculation which the regulator holds.

(6D) Paragraph (6C) does not apply if A fails, without reasonable excuse, to provide any information requested under paragraph (6B) within the period specified in the notice, or such later period as may be agreed with the regulator.";

(d) in paragraph (7)(a)—

(i) after "entitlement" insert "or an increase in that entitlement following recalculation under paragraph (6A)", and

(ii) after "paragraph (1)(b)" insert "or the recalculation referred to in paragraph (6A)".

(3) In article 34N (aviation allocation table for 2021-2025 allocation period), for paragraph (4), substitute—

"(4) The UK ETS authority must update the aviation allocation table to take account of any approval of the UK ETS authority under—

(a) article 34M(7)—

(i) of the applicant's aviation free allocation entitlement following an application made in reliance on article 34L(7);

(ii) of an increase in a person's aviation free allocation following a recalculation by the regulator under article 34M(6A); or

(b) article 34Q (transfers of allocations) or article 34R (errors in aviation allocation table).".

Amendments to Schedule 1

5. In Schedule 1 (aviation activity), after paragraph 1(1)(b), insert—

"(c) a flight departing from an aerodrome situated in Great Britain and arriving in an aerodrome situated in Switzerland.".

Name

Date — Clerk of the Privy Council

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 include flights from Great Britain to Switzerland within the definition of aviation activity, so bringing them within the scope of the UK ETS, 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.

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.

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