



Northern Ireland  
Assembly

## Research and Information Service Briefing Note

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Paper 42/20

17 September 2020

NIAR 244-20

**Suzie Cave**

# Common framework background paper: Emissions Trading

## Introduction

The purpose of the following paper is to provide some background context to the new common framework on a UK emissions trading scheme (ETS). It will give a brief summary of the current policy area covered by the proposed common framework, to include existing EU provisions. It will also give a brief overview of the proposed UK ETS common framework, focusing on the provisions of the legislative Order (the Greenhouse Gas Emissions Trading Scheme Order 2020) and raise a number of further considerations around the common framework and its operation.

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## 1 Climate change, GHGs and ETS - the link

The following section will explore how climate change, greenhouse gases (GHGs) and emissions trading systems (ETS) all relate to one another.

The United Nations (UN) describes climate change as

*one of the greatest challenges of our time [...] undermining the ability of all countries to achieve sustainable development.*<sup>1</sup>

According to the UN:

*Increases in global temperature, sea level rise, ocean acidification and other climate change impacts are seriously affecting coastal areas and low-lying coastal countries, including many least developed countries and small island developing States. The survival of many societies, and of the biological support systems of the planet, is at risk.*<sup>2</sup>

In their Fifth Assessment Report, the [Intergovernmental Panel on Climate Change](#)<sup>3</sup> (IPCC 2014) concluded that they are 'now 95% certain that humans are the main cause of current global warming' and that climate change is a consequence of greenhouse gas (GHG) emissions from human activity.<sup>4</sup>

Of the greenhouse gases, carbon dioxide (CO<sub>2</sub>) has received the most significant attention from scientists and policymakers. According to the UK's Committee on Climate Change (CCC), this is because CO<sub>2</sub> emissions are the primary contributing factor to climate change<sup>5</sup>. IPCC explained in 2014 that;

*Emissions of CO<sub>2</sub> from fossil fuel combustion and industrial processes contributed about 78% of the total GHG emissions increase from 1970 to 2010*<sup>6</sup>.

However, as explained in a [Scottish Parliament research \(SPICe\) briefing paper](#) (April 2019), there are other potent greenhouse gases, including methane, nitrous oxide and chlorofluorocarbons. Quantities of greenhouse gases are commonly expressed as a measure of the potency of their contribution to the greenhouse effect – e.g. tonnes of CO<sub>2</sub> equivalent (tCO<sub>2</sub>e)<sup>7</sup>.

<sup>1</sup> United Nations (UN), '[Transforming our World: the 2030 Agenda for Sustainable Development](#)', accessed 7 December 2017.

<sup>2</sup> *ibid.*

<sup>3</sup> The UN's body for scientific assessment of climate change.

<sup>4</sup> Intergovernmental Panel on Climate Change. (2014, November 1). Climate Change 2014 Synthesis Report. Available from [https://www.ipcc.ch/site/assets/uploads/2018/02/SYR\\_AR5\\_FINAL\\_full.pdf](https://www.ipcc.ch/site/assets/uploads/2018/02/SYR_AR5_FINAL_full.pdf)

<sup>5</sup> Committee on Climate Change (CCC) [online]. <https://www.theccc.org.uk/the-science-of-climate-change/climate-variations-natural-and-human-factors/>

<sup>6</sup> Intergovernmental Panel on Climate Change. (2014, November 1). Climate Change 2014 Synthesis Report. Available from [https://www.ipcc.ch/site/assets/uploads/2018/02/SYR\\_AR5\\_FINAL\\_full.pdf](https://www.ipcc.ch/site/assets/uploads/2018/02/SYR_AR5_FINAL_full.pdf)

<sup>7</sup> Ecometrica. (2012, August). Greenhouse Gases, CO<sub>2</sub>, CO<sub>2</sub>e, and Carbon: What Do All These Terms Mean?. Retrieved from <https://ecometrica.com/assets/GHGs-CO2-CO2e-andCarbon-What-Do-These-Mean-v2.1.pdf> as cited in SPICe (2019) EU Emissions Trading Scheme (p.5) <https://digitalpublications.parliament.scot/ResearchBriefings/Report/2019/4/5/EU-Emissions-Trading-System>

The significance of these greenhouse gases is their potential to increase the earth's temperatures, which could have devastating environmental, health and social impacts. According to an IPCC 2018 report, current efforts to tackle climate change:

*cumulatively track toward a warming of 3°-4°C above pre-industrial temperatures by 2100, with the potential for further warming thereafter.*<sup>8</sup>

The report suggested that increased efforts are needed to keep warming at 1.5°C, so as to reduce the likelihood of extreme weather events associated with our current trajectory.

### **The Paris Agreement**

The [Paris agreement](#) (December 2015) set out an aim of limiting global temperature rise by 2100 to 'well below 2 degrees Celsius above pre-industrial levels and to pursue efforts to limit the temperature increase even further to 1.5 degrees'.

## 1.1 So what is an emission trading system?

An emission trading system (ETS) is a tool used to reduce emissions and combat climate change. Also known as a 'cap and trade scheme', the government sets an overall limit on the level of emissions of a gas or pollutant. Allowances for one unit of emissions are created within the limit. Participants obtain allowances from the government or through purchasing from other participants. ETS is a flexible system allowing participants to decide whether to actively reduce their emissions, or purchase additional allowances to cover their needs. For those who have a surplus of allowances, they may sell them on to other participants in need of allowances.<sup>9</sup>

The European Union Emissions Trading System (EU ETS) is one of a number of measures used by the EU to reduce greenhouse gas emissions and combat the global threat of climate change. The system is designed to help meet the EU's targets set in the Kyoto Protocol. This is explained in more detail in section 4.

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<sup>8</sup> Intergovernmental Panel on Climate Change. (2018, October 8). Special Report on Global Warming of 1.5°C. Available from <https://www.ipcc.ch/sr15/>

<sup>9</sup> SPICe (April 2019) EU Emission Trading System. Available at <https://digitalpublications.parliament.scot/ResearchBriefings/Report/2019/4/5/EU-Emissions-Trading-System#Executive-Summary>

## 2 Current Situation in Northern Ireland

### 2.1 Emissions

The UK ratified the United Nations Framework Convention on Climate Change (UNFCCC) in December 1993, and the Convention came into force in March 1994. Parties to the Convention are committed to develop, publish, and regularly update national emission inventories of greenhouse gases (GHGs). In line with this, GHGs in NI are recorded by DAERA and reported in the Greenhouse Gas Inventories. These feed into the United Kingdom's [National Inventory Report](#) (NIR). The latest figures are for 1990-2018, and these form the UK's 2020 submission to the UNFCCC. They also form the UK's submission under the Kyoto Protocol (see section 3 for further detail).<sup>10</sup>

The latest [GHG Inventory for NI](#) (1990-2018) reports that:

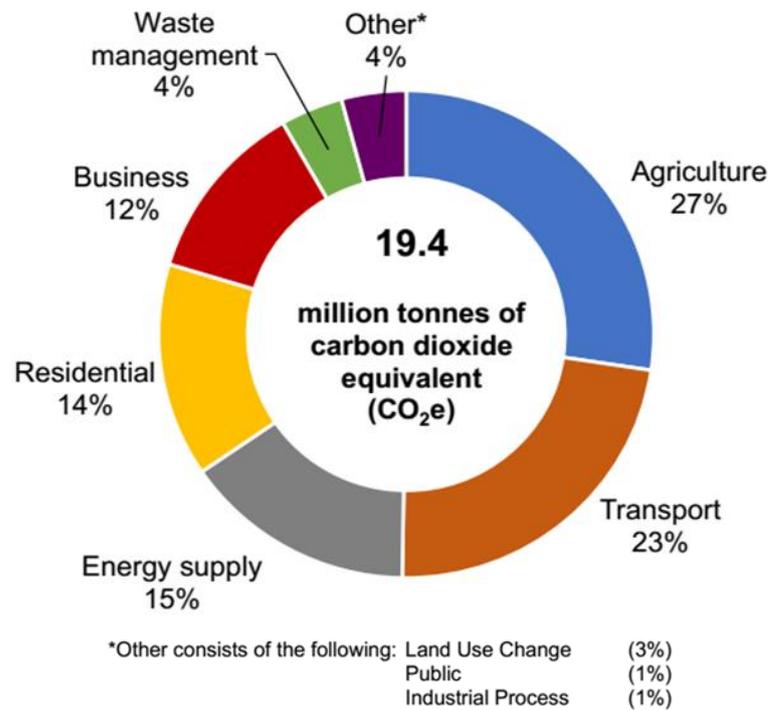
- In 2018, Northern Ireland's greenhouse gas emissions were estimated to be 19.4 million tonnes of carbon dioxide equivalent. This was a decrease of 2% compared with 2017, and a decrease of 20% compared to the base year (1990).
- Northern Ireland accounted for 4.3% of total UK greenhouse gas emissions in 2018 and produced the equivalent of 10.3 tonnes of CO<sub>2</sub> per person compared with a UK figure of 6.8 tonnes of CO<sub>2</sub> per person.
- The UK makes up approximately 1% of global emissions. Based on estimates- NI's share of global emissions is 0.04%<sup>11</sup>.
- In total, the UK reduced emissions by 43% between the base year and 2018. England and Scotland reduced emissions by 46% and 45% respectively. Wales and Northern Ireland reduced emissions by 31% and 20% respectively.
- In Northern Ireland, agriculture was the sector with the most emissions with 27% (see figure 1). This was larger than other parts of the UK (England 8%; Wales 14.6% and Scotland 18.8%) and is explained due to the greater relative importance of agriculture to the NI economy.
- Carbon dioxide accounted for 68% of all greenhouse gas emissions in Northern Ireland (13.1 MtCO<sub>2</sub>e) in 2018 (see Figure 2).

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<sup>10</sup> National Atmospheric Emissions Inventory (Department for Business, Energy and Industrial Strategy) - [Greenhouse Gas Inventories for England, Scotland, Wales & Northern Ireland: 1990-2018](#). Available at [https://naei.beis.gov.uk/reports/reports?section\\_id=3](https://naei.beis.gov.uk/reports/reports?section_id=3)

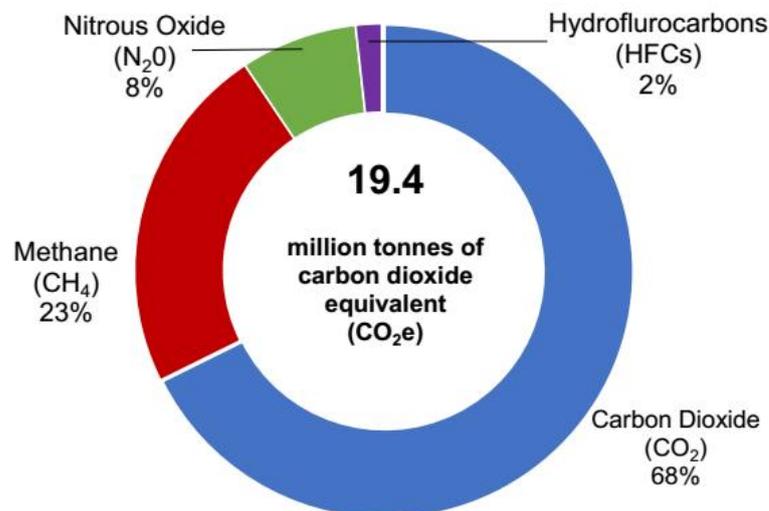
<sup>11</sup> Northern Ireland does not submit annual inventories to the United Nations Framework Convention on Climate Change (UNFCCC), therefore there is no reference for global CO<sub>2</sub> emissions based on national inventory reporting. However, DAERA provided this figure using data sourced from the World Resources Institute on total 'world greenhouse gas emissions' (provided by email correspondence to AERA Committee (18/08/2020)

**Figure 1: Greenhouse gas emissions by sector, 2018**



Source: DAERA<sup>12</sup>

**Figure 2: Greenhouse gas emissions by gas type, 2018**



Source: DAERA<sup>13</sup>

<sup>12</sup> DAERA (2020) Northern Ireland Greenhouse gas statistics 1990-2018 statistical bulletin (p.7). Available at <https://www.daera-ni.gov.uk/publications/northern-ireland-greenhouse-gas-inventory-1990-2018-statistical-bulletin>

<sup>13</sup> DAERA (2020) Northern Ireland Greenhouse gas statistics 1990-2018 statistical bulletin (p.6). Available at <https://www.daera-ni.gov.uk/publications/northern-ireland-greenhouse-gas-inventory-1990-2018-statistical-bulletin>

## 2.2 Emissions Trading System

The EU ETS is the world's first and largest emissions trading system, covering around 45% of the EU's greenhouse gas emissions. It includes more than 11,000 power stations and industrial plants across the EU with around 1,000 of these in the UK.

It was expected that sectors covered by the EU ETS, would account for over 50% of the emissions reductions needed to meet UK targets between 2013 and 2020.<sup>14</sup>

According to information provided by DAERA<sup>15</sup>, there are currently 21 participants from NI under the EU ETS scheme. Importantly, five of these are power generators and therefore exempt from the UK ETS under Annex 4 of the [Ireland/Northern Ireland Protocol](#) (further details on the Protocol are in section 4.3). Table 1 provides a list of the NI participants, with the five exempt power generators highlighted dark blue.

**Table 1: EU ETS Participants in NI**

Operator name	Installation Name
Encirc Limited	Encirc Limited
EP Ballylumford Ltd	Ballylumford Power Station
Linery Ltd	Ulster Farm Byproducts Ltd
Lafarge Cement Ireland	Lafarge Cement Ireland Cookstown works
Belfast Health & Social Care Trust	The Royal Hospitals
LacPatrick Dairies NI Limited	TMC Dairies (NI) Ltd Artigarvan
Altnagelvin WH&SC Trust	Altnagelvin WH&SC Trust
Dalefarm Ltd	Dalefarm Ltd
Lakeland Dairies	ArmaghDown Creameries Ltd
The Lycra Company Limited	The Lycra Company Maydown Site
Belfast Health and Social Care Trust	Belfast City Hospital
Huhtamaki (Lurgan) Ltd	Huhtamaki (Lurgan) Ltd
EP Kilroot Power Ltd	EP Kilroot Power Ltd
Glanbia Cheese Ltd	Glanbia Cheese Ltd
Short Brothers PLC	Bombardier Aerospace
LE Pritchitt & Co. Ltd	Pritchitts
Coolkeeragh ESB Limited	Coolkeeragh ESB Limited
Moy Park Ltd.	Moy Park Ltd., Dungannon
Contourglobal Solutions (NI) Ltd	Knockmore Hill CHP Plant
Veolia	Duncure Incinerator
ERE Development	Lisahalley Power station

<sup>14</sup> Gov.uk (2015) 2010 to 2015 government policy: greenhouse gas emissions  
<https://www.gov.uk/government/publications/2010-to-2015-government-policy-greenhouse-gas-emissions/2010-to-2015-government-policy-greenhouse-gas-emissions#appendix-2-eu-emissions-trading-system-eu-ets>

<sup>15</sup> Communication via email from DAERA (20/08/2020)

### 3 Legislative framework

The following section considers the legislative framework for greenhouse gas emissions and the Emissions Trading Scheme (ETS) from the international level, to the EU, UK and domestic level implementation.

#### 3.1 International obligations

As highlighted in section 1 above, climate change is recognised as a global problem, requiring global action. In light of this there are a number of international commitments.

The [United Nations Framework Convention on Climate Change](#) (UNFCCC) is the main international forum on climate action. It entered into force in 1994 and is ratified by 197 countries. Its main aim is to stabilise greenhouse gas concentrations,

*at a level that would prevent dangerous anthropogenic (human induced) interference with the climate system.<sup>16</sup>*

It is under the auspices of the UNFCCC that the [Kyoto Protocol](#) was developed in 1997 and entered into force in 2005.

#### The Kyoto Protocol

The [Kyoto Protocol](#) put the onus on developed countries to address the issue of climate change, as they were considered the main contributor in the past.<sup>1</sup> It committed industrialised countries to limit and reduce greenhouse gases emissions in accordance with agreed individual targets over two commitment periods. The first commitment period was to below 5% of 1990 levels. The second commitment period was by at least 18 % below 1990 levels from 2013 to 2020.

However, the Kyoto Protocol omitted some of the largest emerging developing economies such as China. As such, it has been succeeded by the [Paris Agreement](#):

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<sup>16</sup> UNFCCC [online] What is the UNFCCC <https://unfccc.int/process/the-convention/what-is-the-united-nations-framework-convention-on-climate-change>

### The Paris Agreement

The [Paris Agreement](#) applies to all nations under the UNFCCC whether developed or developing. The Paris Agreement entered into force in November 2016 and has been ratified by 170 parties. It was ratified by the UK in November 2016<sup>1</sup>. The main aims of the Paris Agreement are:

- To strengthen the global response to the threat of climate change by keeping a global temperature rise this century well below 2 degrees Celsius above pre-industrial levels and to pursue efforts to limit the temperature increase even further to 1.5 degrees Celsius.
- To strengthen the ability of countries to deal with the impacts of climate change.

## 3.2 EU

The EU represents the UK and other Member States in the negotiation and implementation of international agreements relating to climate change, such as the Paris Agreement. Keeping in line with global agreements, requirements are written into EU law.

### 3.2.1 EU Emissions framework

The EU has established key emissions reduction targets for 2020, 2030 and 2050. In December 2008 the European Parliament adopted the [Climate and Energy Package](#). The package contained the so-called 20-20-20 targets (detailed in column 1 of Table 2). The [2030 Climate and Energy framework](#) was adopted by EU leaders in October 2014 and contained 2030 targets which built on the 2020 climate and energy package (see column 2 Table 1). As part of the European [Green Deal](#) (an ambitious package of measures for cutting greenhouse gas emissions, research and innovation, and environment preservation), the Commission proposed on 4 March 2020 the following 2050 targets:

- the first [European Climate Law](#) to enshrine the 2050 climate-neutrality (net-zero emissions) target into law; and

- a [European Climate Pact](#) to engage citizens and all parts of society in climate action. A 12-week consultation was held to shape the Climate Pact, which is hoped to be launched before the UNFCCC Conference in Glasgow November 2020<sup>17</sup>.

**Table 2: Emissions targets 2020, 2030, 2050**

2020 <sup>18</sup>	2030 <sup>19</sup>	2050 <sup>20</sup>
<ul style="list-style-type: none"> <li>• 20% reduction in greenhouse gas emissions compared with 1990 levels,</li> <li>• 20% of total energy consumption must be generated from renewable resources,</li> <li>• 20% improvement in energy efficiency</li> <li>• 21% reduction in emissions compared to 2005, for ETS sectors.</li> <li>• Up to 20% reduction for non-ETS sectors, compared to 2005. Written as national binding targets according to national wealth).</li> </ul>	<ul style="list-style-type: none"> <li>• 40% reduction in greenhouse gas emissions compared to 1990 levels,</li> <li>• at least 32% of total energy consumption must be generated from renewable resources,</li> <li>• at least 32.5% improvement in energy efficiency of at least</li> <li>• 43% reduction in emissions compared to 2005 for ETS sectors</li> <li>• non-ETS sectors will need to cut emissions by 30% (compared to 2005). Written into national targets.</li> </ul>	<ul style="list-style-type: none"> <li>• The the European Commission has set out a strategic long-term vision for achieving a carbon-neutral (net- zero emissions) European economy by 2050.</li> <li>• This builds on the <a href="#">2011 road map for a competitive low carbon Europe</a>, which set a target of - 80-95% reduction in emissions compared to 1990 levels.</li> </ul>

### 3.2.2 EU ETS framework

The EU ETS is the EU's cornerstone piece of policy for dealing with climate change by reducing greenhouse gas emissions. It was introduced under the [EU ETS directive \(2003/87/EC\)](#). Further details of its operation are explored in section 4.2 of this paper.

### 3.3 UK

At present, climate change policy in the UK is largely driven by EU law which requires Member States to produce their own national legislation. The UK's measures to tackle climate change are embedded in national legislation through the UK [Climate Change Act 2008](#). The Act gives powers to set emission targets and create an emissions trading scheme (ETS).

<sup>17</sup> EC Press Release (March 2020) Committing to climate-neutrality by 2050: Commission proposes European Climate Law and consults on the European Climate Pact. **Available at** [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_335](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_335)

<sup>18</sup> EC [online] 2020 climate & energy package. Available at [https://ec.europa.eu/clima/policies/strategies/2020\\_en](https://ec.europa.eu/clima/policies/strategies/2020_en)

<sup>19</sup> EC [online] 2030 climate & energy framework. Available at [https://ec.europa.eu/clima/policies/strategies/2030\\_en](https://ec.europa.eu/clima/policies/strategies/2030_en)

<sup>20</sup> EC [online] 2050 long-term strategy. Available at [https://ec.europa.eu/clima/policies/strategies/2050\\_en](https://ec.europa.eu/clima/policies/strategies/2050_en)

### 3.3.1 UK Emissions framework

The [2008 Climate Change Act](#) set the target of an 80% reduction in carbon emissions by 2050. However, this was [amended](#) in June 2019 to reflect the Government's net zero ambitions with a target of 100% emissions reduction by 2050 compared to 1990 levels.<sup>21</sup>

Under the Climate Change Act, the UK Government is required to set legally binding carbon budgets to act as intermediate targets toward the 2050 target. These are set for 5-year periods up to 2050, and act as a cap on emissions over that period. The carbon budgets targets include:

- A 51% reduction by 2025 (compared with 1990 levels),
- A 57% reduction by 2030.
- In June 2019, the UK Government furthered its ambition by setting a legally binding target to achieve net-zero greenhouse gas emissions across the UK economy by 2050<sup>22</sup>

Further information can be found on the [Committee for Climate Change pages](#).

#### **Scotland**

While the UK Climate Change Act extends to Scotland, the Scottish Government passed its own more ambitious targets under the Climate Change (Scotland) Act 2009. This set a target of 42% reduction in emissions by 2020.

However, the [Climate Change \(Emissions Reduction Targets\) \(Scotland\) Act 2019](#) received Royal Assent on 31 October 2019. The Act amends the Climate Change (Scotland) Act 2009 setting a more ambitious target than the UK for net-zero emissions of all greenhouse gases by 2045.<sup>23</sup>

### 3.3.2 NI domestic emissions framework

The UK Climate Change Act 2008 extends to Northern Ireland. However, there are no specific targets for Northern Ireland and it is implicit that Northern Ireland contributes to the UK effort under the Act.<sup>24</sup>

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<sup>21</sup> Climate Change Act 2008 (2050 Target Amendment) Order 2019 <https://www.legislation.gov.uk/ukdsi/2019/9780111187654>

<sup>22</sup> National Atmospheric Emissions Inventory (Department for Business, Energy and Industrial Strategy) p. 50- [Greenhouse Gas Inventories for England, Scotland, Wales & Northern Ireland: 1990-2018](#)

<sup>23</sup> Scottish Government [online] Climate Change <https://www.gov.scot/policies/climate-change/>

<sup>24</sup> The Climate Change Act (2008) <http://www.legislation.gov.uk/ukpga/2008/27/contents> . For more information see The UK Committee on Climate Change <http://www.theccc.org.uk/tackling-climate-change/the-legal-landscape/global-action-on-climate-change/>

The Climate Change Act 2008 established an independent body called the Committee on Climate Change (CCC) to advise the UK Government on reducing greenhouse gas emissions (GHGs). In [December 2015](#) the CCC reiterated its support for specific climate change legislation in NI. The Minister at the time published a [consultation](#) on the introduction of a Climate Change Bill in December 2015. However, nothing has been further progressed yet.

Despite announcements for NI climate change legislation in the New Decade, New Approach agreement on the 9 January 2020 (see below for more detail), DAERA Minister, Mr. Edwin Poots MLA stated in response to an [Assembly Question](#) at the end of January 2020:

*I have not yet considered plans to bring forward climate change legislation or other approaches outlined in 'New Decade, New Approach'.*

*It is important that NI contributes equitably to the UK net zero target. I will write to the Committee on Climate Change to advise on what would be our contribution to the UK's net zero emissions target. On receipt of their recommendation I will bring their findings to the NI Executive to agree a way forward.*

*It will require the support of the NI Executive to introduce any new cross cutting approaches on climate change<sup>25</sup>.*

While NI does not have any specific climate change legislation, priorities to addressing the issue and reducing greenhouse gas emissions have been laid out in:

- [The Draft Programme for Government Framework](#) – while there is no specific reduction target, *Indicator 29: Increase environmental sustainability*, stresses the importance of reducing emissions in NI in order to tackle climate change globally.
- [New Decade, New Approach](#) – published in January 2020, the new restoration deal states a number of measures and actions to be taken by the NI Executive in relation to addressing climate change and emissions, these include:
  - The Executive's strategies to reduce carbon emissions will be reviewed in light of the Paris Climate Change Accord and the climate crisis.
  - A new Energy Strategy will set ambitious targets and actions for a fair and just transition to a zero carbon society.
  - The Executive should bring forward a Climate Change Act to give environmental targets a strong legal underpinning.
  - The Executive will establish an Independent Environmental Protection Agency to oversee this work and ensure targets are met.
- [NI Climate Change Adaptation Programme](#) was published in 2014 as a response to the UK Climate Change Act 2008. It sets out the actions to be taken by the

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<sup>25</sup> AQW 308/17-22 <http://aims.niassembly.gov.uk/questions/printquestionssummary.aspx?docid=291006>

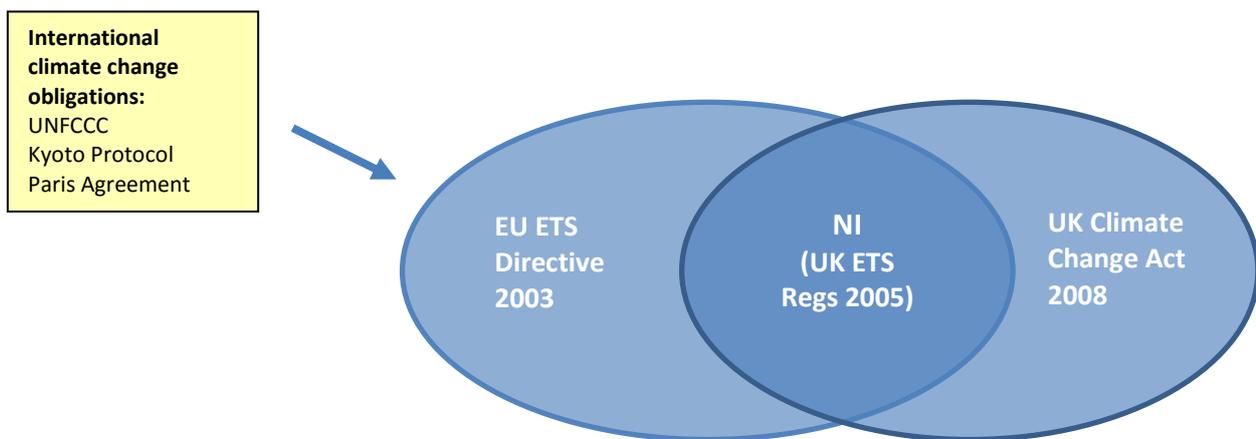
Executive departments in preparing for climate change. It provides a framework to address challenges and respond to the risks identified in the Climate Change Risk Assessment for NI.<sup>26</sup>

- [NI Greenhouse Gas Reduction Strategy and Action Plan 2011](#) – this sets out measures and actions to reduce emissions from agriculture and farm practices.

### 3.3.3 Current domestic ETS framework

The following figure broadly illustrates what influences the ETS in NI.

**Figure 3: Influence of the ETS in NI**



The UK [2008 Climate Change Act](#) also gives the government power to introduce emissions trading schemes by secondary legislation. In doing so, the EU ETS directive (2003/87/EC) was transposed into UK law through the Greenhouse Gas Emissions Trading Scheme Regulations 2005 (as amended). This was extended to include the aviation directive (2008/101/EC 113) through the 2010 Aviation Greenhouse Gas Emissions Trading Scheme Regulations.<sup>27</sup> Together, these apply to NI and provide the legislative framework for the domestic implementation of the EU ETS.

The regulator in NI is the Chief Inspector (DAERA); in England it is the Environment Agency; in Scotland it is SEPA; and in Wales it is Natural Resources Wales.

The Chief Inspector is responsible for<sup>28</sup>:

- Granting and maintaining the permits of EU ETS participants,
- Managing emissions monitoring,
- Assessing emissions reports,

<sup>26</sup> Climate Change Adaptation Programme p.7 <https://www.daera-ni.gov.uk/publications/northern-ireland-climate-change-adaptation-programme>

<sup>27</sup> Gov.uk (DBEIS) [online] EU ETS Guidance <https://www.gov.uk/guidance/participating-in-the-eu-ets>

<sup>28</sup> UK Government. (2013, December 23). EU ETS Phase III: guidance for installations. <https://www.gov.uk/government/publications/how-to-comply-with-the-eu-etsand-small-emitter-and-hospital-opt-out-scheme>

- Assessing applications to the new entrant reserve (NER),
- Determining allocation reductions for installations as a result of capacity changes.

## 4 The EU ETS

### 4.1 Context

Under the terms of the Withdrawal Agreement, the UK will remain a participant in the EU ETS until the end of the Transition Period, and UK participants must fulfil their obligations to surrender allowances by 30 April 2021. As stated in the consultation, The Future of UK Carbon Pricing, (May 2019):

*As we leave the European Union, the UK Government and the Devolved Administrations are firmly committed to carbon pricing as an effective tool for achieving our carbon emissions reductions targets<sup>29</sup>.*

#### 4.1.1 What is carbon pricing?

Carbon pricing is a form of [polluter pays](#) where the cost of pollution prevention, control and reduction is paid by the polluter<sup>30</sup>. According to a [Scottish Parliament research \(SPICe\) briefing paper](#) (April 2019), it is a means of discouraging activities that release greenhouse gases by putting a cost on emissions.<sup>31</sup>

There are two main forms of carbon pricing: a carbon tax, and emissions trading or 'cap and trade'. See the following blue text boxes for more detail.

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<sup>29</sup> UK Gov The Future of Carbon Pricing in the UK consultation (May 2019). Available at <https://www.gov.uk/government/consultations/the-future-of-uk-carbon-pricing>

<sup>30</sup> OSPAR <https://www.ospar.org/about/principles/polluter-pays-principle>

<sup>31</sup> For more information see: Grantham Research Institute on Climate Change and the Environment. (2018, May 17). What is a Carbon Price and Why Do We Need One?. Available from <http://www.lse.ac.uk/GranthamInstitute/faqs/what-is-a-carbon-price-and-why-do-we-need-one/>

### Carbon tax

A carbon tax defines a set price for the distribution, sale or use of fossil fuels, and is usually calculated as a price per tonne of carbon dioxide (/tCO<sub>2</sub>). A carbon tax does not set an overall emissions limit, only a price on emissions. Companies or industries subject to a carbon tax can therefore choose to pay the additional tax or invest in reducing fossil fuel consumption. This means that while the carbon price may be stable, the overall quantity of emissions can be uncertain.

### Emissions Trading 'Cap and Trade' schemes

These provide more flexibility in how participants reduce their emissions compared to a carbon tax. The government sets an overall limit on the level of emissions of a gas or pollutant. Within the limit, allowances are created, corresponding to one unit of emissions. Participants in the scheme must obtain allowances either directly from the government or from other participants, and surrender sufficient allowances to cover their emissions over a given period. Cap and trade schemes allow participants to decide whether to invest in emissions reduction, or to purchase additional allowances to cover their needs. Conversely, if a participant has a surplus of allowances, they are able to sell them on to others.

Source: [SPICe \(April 2019\)](#)

#### 4.1.2 UK was the first to try it

The UK was in fact the first country to introduce a greenhouse gas emissions trading scheme. In 2002, prior to the EU ETS, the UK established a voluntary ETS regulating six greenhouse gases covered by the Kyoto Protocol. It was introduced alongside the Climate Change Levy (an energy tax). Participants could trade allowances, provided they were given access to the scheme by Defra (through Climate Change Agreements), and in return received an 80% discount on the Climate Change Levy<sup>32</sup>.

According to the UK ETS consultation, the UK ETS served as a pilot for the EU ETS.<sup>33</sup>

<sup>32</sup> SPICe (April 2019) EU Emission Trading System. Available at <https://digitalpublications.parliament.scot/ResearchBriefings/Report/2019/4/5/EU-Emissions-Trading-System#Executive-Summary>

<sup>33</sup> UK Gov The Future of Carbon Pricing in the UK consultation (May 2019). Available at <https://www.gov.uk/government/consultations/the-future-of-uk-carbon-pricing>

## 4.2 What is the EU ETS?

The [EU Emissions Trading System](#) (EU ETS) is the cornerstone of the EU's policy to mitigate climate change and the fundamental tool for reducing its greenhouse gas emissions across power, industrial and aviation sectors. It is the world's first and largest emissions trading system, covering around 45% of the EU's greenhouse gas emissions.<sup>34</sup> According to a [SPICE briefing](#), others exist in [New Zealand](#), [South Korea](#), [California](#), [Quebec](#), with developments ongoing in [China](#).<sup>35</sup>

It was introduced in 2005 as a mandatory 'cap and trade scheme' regulating greenhouse gas emissions from over 11,000 installations across 31 countries (across Europe and including Liechtenstein, Iceland and Norway). There are around 1,000 installations in the UK<sup>36</sup>, with currently 21 in NI (see Table 1).

### 4.2.1 How it works

It uses a 'cap and trade principle'. A cap is set on the total amount of greenhouse gases that can be emitted by installations under the system. Over time, the cap is reduced so that total emissions fall.

**Emission allowances** - within the cap, companies [receive](#) (free allocation) or [buy](#) (auction) emission allowances, which they can trade with one another as needed. Each allowance grants the participant the right to emit one tonne of CO<sub>2</sub> (tCO<sub>2</sub>e). There is a limit on the number of allowances available to ensure they keep value.

After each year a company must surrender enough allowances to cover all its emissions, otherwise heavy fines are imposed. If a company reduces its emissions, it can keep the spare allowances to cover its future needs or else sell them to another company that is short of allowances. Participants likely to emit more than their allocation have a choice between taking measures to reduce their emissions or buying additional allowances; either from the secondary market – for example companies who hold allowances they do not need – or from Member State held auctions.<sup>37</sup>

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<sup>34</sup> European Commission [online] EU Emissions Trading System (EU ETS). [https://ec.europa.eu/clima/policies/ets\\_en](https://ec.europa.eu/clima/policies/ets_en)

<sup>35</sup> SPICe (April 2019) EU Emission Trading System. Available at <https://digitalpublications.parliament.scot/ResearchBriefings/Report/2019/4/5/EU-Emissions-Trading-System#Executive-Summary>

<sup>36</sup> UK Government. (December 2018,). Participating in the EU Emissions Trading System (EU ETS). <https://www.gov.uk/guidance/participating-in-the-eu-ets>

<sup>37</sup> Ibid

### Hypothetical example

Installation A and installation B both emit 210 tonnes of CO<sub>2</sub> per year. Under the EU's allocation process they are given 200 allowances each.

At the end of the first year:

- Installation A emits 180Mt as it installed an energy efficient boiler at the beginning of the year which reduced its CO<sub>2</sub> emissions. It is now free to sell its surplus allowances on the carbon market.
- Installation B emitted 220Mt CO<sub>2</sub> because it needed to increase its production capacity and it was too expensive for it to invest in energy efficiency technology.

Therefore, installation B bought allowances from the market, which had been made available because installation A has been able to sell its additional allowances.

The net effect is that the investment in carbon reduction occurs where it is best afforded, and CO<sub>2</sub> emissions are limited to the 400 allowances issued between both installations.

For more detail see UK guidance: [Participating in the EU Emissions Trading System](#)

Currently fines are imposed at a rate of €100 /tCO<sub>2</sub>e, which greatly exceeds the current allowance price of ~€20/ tCO<sub>2</sub>e.

### For example

Shell's Fife natural gas liquids plant was fined £40,056 by the Scottish Environment Protection Agency (SEPA), for failing to surrender sufficient allowances in 2013, 2014 and 2015.

For more detail see [SEPA](#) and [SPICe](#) (p.12)

An ETS was the chosen method by the EU because it was of the opinion that

*Trading brings flexibility that ensures emissions are cut where it costs least to do so. A robust carbon price also promotes investment in clean, low-carbon technologies.<sup>38</sup>*

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<sup>38</sup> EC [online] EU ETS – Climate Action [https://ec.europa.eu/clima/policies/ets\\_en](https://ec.europa.eu/clima/policies/ets_en)

## 4.2.2 Delivered in phases

The EU ETS has been delivered in four phases<sup>39</sup>:

### Phase I (1 January 2005 to 31 December 2007)

This phase is complete. Further details around this phase can be viewed on the [National Archives version of the DECC: EU ETS Phase I](#).

### Phase II (1 January 2008 to 31 December 2012)

Phase II broadened the scope of the ETS to include CO2 emissions from glass, offshore oil and gas petrochemicals etc. Further details around this phase can be viewed on the [National Archives version of the DECC: EU ETS Phase 2](#)

### Phase III (1 January 2013 to 31 December 2020)

This built on the other phases by introducing:

- an EU-wide cap on the number of available allowances - to be reduced by 1.74%/yr up to 2020;
- the UK's scheme to lower compliance costs for small emitters and hospitals;
- the phase out of free allocation (see box) to be replaced by auctioning (see box);
- free allocation to industrial installations (other than power generation) deemed at risk of 'carbon leakage', (see box) defined as 'an increase of emissions outside the EU because of EU climate policies.

#### Free allocation

All sectors covered by the EU ETS (except most of the EU power sector), are provided with a free allocation of allowances. These are calculated based on the installation's output/input. Installations received 80% of their allowances, reduced to 30% in 2020, with the aim of 0% (full auctioning) by 2027. Additional allowances needed are to be obtained by trading/auctioning.

Industrial sectors at significant risk of competition from countries without similar carbon costs are eligible to receive a higher proportion of allowances for free.

For more information, see UK guidance: [Participating in the EU Emissions Trading System](#) and [SPICe](#)

<sup>39</sup> For more information, see UK guidance: [Participating in the EU Emissions Trading System](#) and SPICe (April 2019) EU Emission Trading System. Available at <https://digitalpublications.parliament.scot/ResearchBriefings/Report/2019/4/5/EU-Emissions-Trading-System#Executive-Summary>

### Carbon leakage

Carbon leakage is the situation where there is increased overall emissions due to strict national climate policies resulting in:

- companies outsourcing production to countries with more relaxed policies and reduced production costs- resulting in increased global emissions
- companies (such as those under the EU ETS) being less competitive compared to their less regulated international competitors who can increase their global production share, without the same limitation, and add to overall emissions.

To combat this, under Phase III, certain sectors deemed at risk of 'carbon leakage' receive 100% of their allowances by free allocation.

For more information, see UK guidance: [Participating in the EU Emissions Trading System](#) and [SPICe](#)

### Allowance Auctioning

Auctions have become the default method of allowance distribution since the start of phase 3. Each year the auctioned portion of allowances will increase as the free allocations decreases (0% by 2027).

Of the auctionable allowances, over 80% are shared out amongst Member States based on their share of greenhouse gases during phase I. The remaining (+20%) are set aside for new entrants to the scheme and low income states etc. Member states are responsible for auctioning their share of allowances.

While Member States are entitled to auction revenues, at least 50% must be used for climate change mitigation. Over the period 2013-2015, around €11.8 billion in auction revenue was generated by Member States. Of these revenues approximately 82% was used for climate and energy purposes. (See EC, [Analysis of the use of Auction Revenues by the Member States](#)).

Auctions primarily take place on a common auction platform. The European Energy Exchange EG (EEX) acts as the auctioning platform for 25 EU Member States and the three EEA countries: Norway, Liechtenstein and Iceland. However, the UK (similar to Poland and Germany) use a separate 'opt out' platform. In the UK, ICE Futures Europe acts as the UK's auctioning platform as it decided to continue with the platform it set up prior to the EU ETS.

See [EU ETS Handbook](#) and [SPICe](#) (p.22) for more detail

### Phase IV (1 January 2021 to 31 December 2030)

The [European Commission has information on Phase IV](#) of the EU ETS. The EU ETS Phase IV text has been published in the [Official Journal of the European Union](#).

In order to meet the 2030 Climate and Energy Framework target of 40% reduction in greenhouse gases, the EU ETS would have to produce emissions reductions of 43% in sectors covered by the scheme. To achieve this, significant revisions to the EU ETS for phase 4 were proposed, which finally entered into force in April 2018, with a commencement date of 1st January 2021<sup>40</sup>.

The revisions include<sup>41</sup>:

- An increase to the allowance reduction amount from 1.74% to 2.2%,
- Revised carbon leakage rules,
- Expansion and development of low carbon technology and power sector modernisation funds.

However, it is expected that the phase 4 framework will be reviewed before 2030 due to the EU's 2050 energy targets, new Paris Agreement commitments beyond 2030 and Brexit.<sup>42</sup>

## 4.3 EU ETS and the Ireland/Northern Ireland Protocol

The Ireland/Northern Ireland [Protocol](#) is a key component of the [Withdrawal Agreement](#) negotiated between the UK and EU in October 2019. In effect, the Ireland/Northern Ireland Protocol is the means by which the free movement of goods on the island of Ireland has been secured regardless of whether the UK and EU successfully negotiate a free trade deal.

Amongst other things, the Protocol effectively binds Northern Ireland to a series of EU regulations as they relate to a range of standards including human rights, movement of people and goods and trade etc. Adherence to these regulations is how Northern Ireland will be able to access the EU single market.

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<sup>40</sup> SPICe (April 2019) EU Emission Trading System. Available at <https://digitalpublications.parliament.scot/ResearchBriefings/Report/2019/4/5/EU-Emissions-Trading-System#Executive-Summary>

<sup>41</sup> European Commission. (n.d.) Revision for phase 4 (2021-2030). [https://ec.europa.eu/clima/policies/ets/revision\\_en](https://ec.europa.eu/clima/policies/ets/revision_en)

<sup>42</sup> The Oxford Institute for Energy Studies. (2018, September). The EU ETS phase IV reform: implications for system functioning and for the carbon price signal. <https://www.oxfordenergy.org/wpcms/wp-content/uploads/2018/09/The-EU-ETS-phase-IV-reform-implications-for-system-functioning-and-for-the-carbon-price-signal-Insight-38.pdf> in SPICe (April 2019) EU Emission Trading System. Available at <https://digitalpublications.parliament.scot/ResearchBriefings/Report/2019/4/5/EU-Emissions-Trading-System#Executive-Summary>

The following table illustrates where the High Priority Common Frameworks (as identified by DAERA) overlap with the Ireland/Northern Ireland Protocol.

**Table 3: High priority common frameworks and the Protocol**

High Priority Common Framework	Related obligations within the Ireland/Northern Ireland Protocol
Agricultural Support	Article 10 and Annex 5 within Protocol on state aid rules as they relate to Agricultural Support
Animal Health and Welfare	Annex 2 Sections 20,26,37,38,40 and 43
Chemicals and pesticides	Annex 2 Section 24
Fisheries management and support	Possible state aid impacts Article 10 Annex 2 Section 46
Plant health seeds and propagating materials	Annex 2 Section 41 and 42
Emissions Trading Scheme (ETS)	Annex 4 allows power generators in NI to continue to participate in the <a href="#">EU ETS</a> post transition under <a href="#">Directive 2003/87/EC</a>
Pollution prevention and control (PPC)	<a href="#">Directive 2010/75/EU</a> in relation to industrial emissions (integrated pollution prevention and control).
Waste and resources	Annex 2 Section 25 - shipments of waste and radioactive waste, packaging and packaging waste.  Annex 2 <a href="#">addition</a> (15 May 2020): reduction of impact of certain plastic products on the environment.  Section 26 – eco and energy labelling

It should be noted that under the UK ETS ‘Relevant NI power generators’ are exempt under Annex 4 of the Ireland/NI Protocol. This means that NI power generators will remain under the EU ETS, and all other installations (>20 MWs) will be under the new UK ETS. See sections 5.3.1 and 5.3.2 for more detail.

***Further consideration may be needed in relation to how the other common frameworks will accommodate the dynamic alignment that NI will be subject to in relation to particular EU legislation as set out in the Protocol.***

## 5 New UK ETS

### 5.1 Background

At the end of the Transition Period (on 31st December 2020), the UK will no longer be part of the EU ETS. The UK Government and devolved nations have agreed that a replacement carbon pricing policy is required to stimulate emissions reduction from large emitters within the industrial, power and aviation sectors that currently participate in the EU ETS.

The Political Declaration published alongside the 2019 New Withdrawal Agreement stated that

*The Parties should consider cooperation on carbon pricing by linking a United Kingdom national greenhouse gas emissions trading system with the Union's Emissions Trading System.*

However, in a 2019 consultation document, a number of options were presented:

- Establishing a domestic ETS linked to the EU ETS,
- In the event that a linked UK ETS cannot be secured, alternatives must be considered:
  - unlinked 'standalone' domestic ETS;
  - a broad-scope, UK-wide carbon tax; or
  - participating in Phase IV of the EU ETS.

#### **The UK's preferred option:**

In 2019 the four Governments of the UK nations consulted collectively on the '[Future of Carbon Pricing](#)'. Following this consultation the four Governments agreed a joint policy position setting out their proposal to establish a UK Emissions Trading System, which could operate either as a standalone system or be linked to the EU ETS.

***Whether the UK ETS will function as a 'standalone' system or 'linked', very much depends on the outcomes of UK/EU negotiations.***

## 5.2 The UK ETS Common Framework

A legislative Order, accompanied by a Framework Outline Agreement (FOA), and a 'public facing concordat' will form the overall common framework for the new UK emissions trading scheme (UK ETS).

The FOA Summary document was made available on 25<sup>th</sup> August 2020. It gives a brief overview of the expected FOA and concordat as follows:

### FOA

This will set out, in more detail, the approach to the common framework and proposed decision-making and dispute resolution processes. It has been used as a policy development tool. It is to be cleared by the UK Government and DA Ministers and will be presented to the UK and Devolved Parliaments alongside the concordat.

### The concordat

This is a non-legislative agreement that will set out the governance arrangements for the UK ETS. This includes decision making processes and dispute resolution. It will be formed based on UK ETS governance principles and arrangements that the UK Government and DAs have agreed to adhere to. These include:

- All UK ETS proposals and decisions will be taken jointly by all four administrations. If one administration has exclusive competence over a specific matter, "*that administration will not exercise that competence to take a decision unilaterally without first having **discussed it with all other administrations***".
- Reserved matters (such as those under the Finance Act detailed in section 5.4) require 'two-way exchange' with Devolved Administration (DA) Ministers, who may raise challenges. However, final sign off will be by The Chancellor, with respect to reserved matters under the Finance Act. Dispute resolution for DAs on any reserved matters are to be taken to the JMC (Joint Ministerial Council) secretariat.
- Planned review points are to be used to ensure market and legislative stability throughout the ETS phases.

More details on the governance principles can be found in the FOA Summary document. However, it is expected that more detail will be provided in the final FOA and concordat which are to be made available late October/early November. Until these documents are produced, it is difficult to fully analyse the governance arrangements for the UK ETS at this stage.

However, the draft legislative Order has been laid, and for this reason, the next section will explore it in more detail.

## 5.3 UK ETS legislative Order

Part 3 of the Climate Change Act 2008 provides for a UK ETS to be established through legislative approval of an Order in Council procedure, where it is laid in all four legislatures for approval.

The Greenhouse Gas Emissions Trading Scheme Order 2020 Draft Statutory Instrument was laid before the UK Parliament, the Northern Ireland Assembly, the Scottish Parliament and Senedd Cymru. The Order seeks to establish a UK-wide ETS which will be operational from 1st January 2021.

### 5.3.1 Scope

The UK ETS will apply to energy intensive industries, the power generation sector and aviation. It covers installations where the total combustion of fuels exceeds 20 megawatts (MW).

The proposed aviation routes include UK domestic flights, flights between the UK and Gibraltar, flights from the UK to EEA states, and flights from the UK to Switzerland once an agreement is reached.<sup>43</sup>

### 5.3.2 Exemptions/Derogations

- 'Relevant NI power generators' are exempt under Annex 4 of the Ireland/NI Protocol.
- Installations for the incineration of hazardous or municipal waste are exempt.
- Hospitals or small emitters that emit less than 25,000 tonnes of carbon dioxide equivalent (t CO<sub>2</sub>e) per annum and a thermal capacity below 35MW can **opt out**. These installations are still required to decrease emissions through a series of emissions targets (but do not need to surrender allowances).
- 'Ultra-small emitters' – installations with emissions lower than 2,500t CO<sub>2</sub>e per annum will be exempt.

The exemption of NI power generators means that they will remain under the EU ETS. While all other installations (where their total combustion of fuels is greater than 20MW) will be under the new UK ETS.

### 5.3.3 Cap

The proposed cap on the number of allowances that can be emitted will be set 5% below the UK's theoretical share of the EU ETS cap for Phase IV (2021-2030) of the EU ETS. The cap will be set to decline over time.

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<sup>43</sup> Scottish Parliament Environment Climate Change and Land Reform Committee - *Papers for Tuesday 11 August 2020* p.7  
<https://www.parliament.scot/parliamentarybusiness/CurrentCommittees/99753.aspx>

However, a further consultation is planned on the trajectory for the UK ETS cap after the Committee on Climate Change (CCC) have published their advice on the Sixth Carbon Budget (to determine the volume of greenhouse gases the UK can emit over the period 2033-2037). The advice is due December 2020.<sup>44</sup>

#### **5.3.4 Allowances**

One allowance is equivalent to one tonne of carbon dioxide equivalent. Allowances will be made available through auctioning. Alongside this, a proportion of allowances will be allocated for free. This is with a view to safeguard competitiveness in the UK ETS and reduce the risk of carbon leakage (as explained in the information box in section 4.2.2).

An Auction Reserve Price (ARP) of £15 (nominal) will be introduced to ensure a minimum level of ambition and price continuity during the initial years of UK ETS.

#### **5.3.5 Review/monitoring**

The Order requires that the operation of the UK ETS is reviewed and a report published setting out the conclusions of this review before 31st December 2023 and similarly 31st December 2028.

#### **5.3.6 Enforcement**

The Order sets out where a regulator may impose an enforcement notice or a civil penalty on a person (e.g. failing to comply with conditions of a permit, carrying out regulated activity without a permit) and where a regulator must impose a civil penalty (e.g. failure to surrender allowances).

### **5.4 Subsequent legislation**

The UK ETS Order is one of a series of Statutory Instruments (SIs) that will be required to implement the UK ETS. These include:

- A further SI later this year to set out the free allocation of emissions allowances and establish an associated registry for these emissions allowances.
- A further SI to tighten the emissions cap and (if agreed) link the UK ETS to the EU ETS.
- Financial aspects (auctioning) are reserved and the UK Government plan to legislate for these aspects under the Finance Act.

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<sup>44</sup> ibid

The following table sets out the legislation and timeframes:

**Table 4: UK ETS legislation and timeframes**

UK ETS Legislation		
Instrument	Laying date	In force date
The Greenhouse Gas Emissions Trading Scheme Order 2020	13 <sup>th</sup> July (UK Parliament, Scottish Parliament), w/c 15 <sup>th</sup> July, (Welsh Parliament) 15 <sup>th</sup> July (NI Assembly)	Mid-November
The Greenhouse Gas Emissions Trading Scheme Order (Amendment) 2020	Mid-November	Mid-November
Finance Act 2020 (charging clause)	17 <sup>th</sup> March 2020	22 <sup>nd</sup> July 2020 (Royal Assent)
Auctioning and market stability mechanisms SI	October/November 2020 (TBC)	December 2020 – January 2021
Recognised Auction Platforms (Amendment) Regulations 2020	TBC	TBC

Source: FOA Summary document

## 5.5 Key similarities/differences

The accompanying Scottish Policy Note to the legislative Order states that:

*The UK ETS...does not impose any significant new burdens on participants (other than reforms that would have come into effect from 2021 had we remained in the EU ETS).*<sup>45</sup>

However, key similarities between the UK ETS and EU ETS are presented in the following table.

<sup>45</sup>Policy Note. See Annex C OF Scottish Parliament Environment Climate Change and Land Reform Committee - *Papers for Tuesday 11 August 2020* (P.12) <https://www.parliament.scot/parliamentarybusiness/CurrentCommittees/99753.aspx>

**Table 5: Key similarities between the UK ETS and EU ETS<sup>46</sup>**

Similarities	Differences
<ul style="list-style-type: none"> <li>• Applies to the same traded sectors</li> <li>• Includes the same obligations on participants to monitor and report emissions and surrender equivalent number of allowances</li> <li>• includes provision for both auctioning and a free allocation of allowances. This includes provision for free allowances to be made available to new entrants.</li> <li>• Maintains a regulatory compliance and enforcement role for DAERA.</li> </ul>	<ul style="list-style-type: none"> <li>• Initial UK ETS cap (annual number of allowances) will be set at 5% less than what the UK's share of the EU ETS cap would have been.</li> <li>• An allowance auction reserve price (ARP) will be introduced</li> </ul>

### 5.5.1 International credits

Under the EU ETS, these encourage participants to help fight carbon emissions at a global scale. They allow participants to invest in (or pay for) emission reduction projects in developing countries as an alternative to more expensive reduction measures in their own countries<sup>47</sup>. However, these will not be continued post 2020 under the EU ETS and as such have not been carried across to the UK ETS. However, alternative measures are to be introduced in the EU ETS post 2020 under the Paris Agreement<sup>48</sup>.

**It is not known exactly how mechanisms under the Paris Agreement will be included in the UK ETS in this regard. Or, whether there will be continued support for developing countries, as there has been with the EU ETS,<sup>49</sup> through links with the international carbon market.<sup>50</sup>**

## 5.6 Considerations

The following section lists a number of considerations, some of which may become more apparent once more detail is made available on the overall framework. The considerations both relate to the specific UK ETS Order and the overall framework.

### 5.6.1 General

- The framework appears to be a combination of an FOA, concordat and a legislative Order (SI). Can we expect a similar format for the other priority areas identified by DAERA?

<sup>46</sup> Informed by Scottish Parliament Environment Climate Change and Land Reform Committee - *Papers for Tuesday 11 August 2020* <https://www.parliament.scot/parliamentarybusiness/CurrentCommittees/99753.aspx>

<sup>47</sup> EC [online] Use of International Credits. Available [https://ec.europa.eu/clima/policies/ets/credits\\_en](https://ec.europa.eu/clima/policies/ets/credits_en)

<sup>48</sup> *ibid*

<sup>49</sup> EC [online] International Climate Finance. Available [https://ec.europa.eu/clima/policies/international/finance\\_en](https://ec.europa.eu/clima/policies/international/finance_en)

<sup>50</sup> EC [online] International Carbon Market. Available [https://ec.europa.eu/clima/policies/ets/markets\\_en](https://ec.europa.eu/clima/policies/ets/markets_en)

- Is the common framework essentially GB wide, with NI opting in or out on Protocol areas – similar to the exemptions used in the ETS Order?
- Will this have an impact on the practical operation of common frameworks in general?
- Will there be an impact analysis of the Protocol on individual frameworks and the programme as a whole? If so, when and by whom?
- Has DAERA considered the recently published [Internal Market Bill](#) (published 9<sup>th</sup> September 2020) and the impacts on the Protocol and therefore common frameworks<sup>51</sup>?
- Is it likely that the UK ETS will be the only finalised framework by the end of transition? If so, what will happen with the other frameworks?
- What level of consultation will be given to all other frameworks should time be constrained?

## 5.6.2 UK ETS

### Governance

- It is apparent that common frameworks will be fluid in nature with dynamic alignment to allow for changes down the line. However, under the UK ETS Common Framework, regulatory review and dispute resolution appears to be under the non-legislative concordat, rather than legislation. Does this give enough ‘teeth’ to dispute resolution and regulatory review?
- Will the regulatory review and dispute resolution take the same form with the other frameworks, under a non-legislative concordat?
- Does DAERA see this as an issue down the line with potential future regulatory divergence between the UK and areas under the Protocol?
- Section 5.2 explains the governance arrangements for the UK ETS under the concordat. Where one administration has exclusive competence over a specific matter, it must not take a decision without **discussing** it with the other administrations.
- Does discussion, coupled with a non- legislative regulatory review, or dispute resolution, give NI sufficient right of reply?

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<sup>51</sup> More detail available at <https://www.gov.uk/government/news/uk-internal-market-bill-introduced-today> and the Internal Market [White Paper](#).

## Operation

- Out of the current 1000 UK installations under the EU ETS, 21 are from NI. Five of these will remain under the EU ETS and the rest will come under the new UK ETS, (or whatever form resulting after the UK/EU negotiations). While the number of installations affected appears small, NI installations will still have to operate under two different systems:
  - Will this still create complications for DAERA in terms of enforcement, administration and resource pressures?
  - What contribution do these installations make to the NI economy and does DAERA envisage potential impacts on local food producers?
  - Could this potentially affect product prices of those installations under the new UK ETS, and as a result make them less competitive against ROI counterparts facing less stringent carbon allowance caps?
  - Has there been any issue expressed by UK power generators who will have to comply with a potentially tighter UK ETS, compared to their NI counterparts?
- With the 'opt out' option- how many installations are likely to stay under the UK ETS? For those that opt out, is there an alternative to control their emissions, or will this just be complying with emission targets?
- The Impact Assessment accompanying the Order does not appear to mention the Protocol. Will a full assessment on the impacts be conducted by DAERA? The impact on NI businesses may be especially relevant, and whether they could potentially face higher carbon costs and/or electricity prices compared to the Republic of Ireland.
- Could we see issues of carbon leakage, as discussed in section 4.2.2?
- Is a UK wide cap suitable given the range of emission reduction ambitions across the UK (e.g. UK and NI – net zero by 2050, Scotland net zero by 2045. Scotland also has different and tighter carbon budgets under the Climate Change (Scotland) Act 2009, compared to the UK Climate Change Act).
- Will there be flexibility for devolved regions legislating for their own targets?
- A lot is dependent on the UK/EU negotiations. Does DAERA have the resources and time to make last minute changes to have whatever system in place by 1 January 2021, be it a 'standalone' UK ETS, a linked UK ETS, or a CET?
- Will adequate time be given to effectively scrutinise the option going forward?
- If there is a no deal scenario, does this mean a carbon tax may be the option used, as suggested in the recent [consultation](#)?
- If a tax is considered a reserved matter, does this essentially give devolved regions fewer scrutiny powers?
- Will there be measures to help support emission reductions in developing countries, similar to those to be used by the EU ETS post 2020 under the Paris Agreement, and its links with the international carbon market?