

# Frequently Asked Questions on the Small Emitter and Hospital Opt-out Scheme



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## Eligibility

### **Q. Is there a deadline for the submission of verified data to the Environment Agency?**

Operators are encouraged to provide verified data to the Environment Agency as soon as possible.

If verified data is provided by 11 July then the Environment Agency will process it and provide targets by 17 July at the latest. If the data is supplied after 11 July the Agency will process that data and calculate targets but there is no guarantee that this will be able to be completed in time to allow operators to apply for the Opt-out Scheme by the 18 July 2012 deadline.

If there are specific difficulties in submitting verified data by 11 July please contact the Environment Agency at [euetsphase3help@environment-agency.gov.uk](mailto:euetsphase3help@environment-agency.gov.uk) so that they can take steps, where possible, to prepare for and manage the issue.

### **Q. Does eligibility data need to be verified and is there a simplified process?**

Data required to establish eligibility and set targets must be verified and will be subject to scrutiny by the European Commission.

As with the data collected and submitted as part of the 2011 baseline data collection exercise, verification must be carried out in accordance with Guidance Note 4, which is available on the Environment Agency's website at:

<http://www.environment-agency.gov.uk/business/topics/pollution/32244.aspx>

Installation-specific questions related to verification of additional data should be submitted to their respective regulator.

### **Q. What if my installation was emitting in 2008-2010 and had emissions below 25,000tCO<sub>2</sub> but the installation did not exceed EU ETS Annex I thresholds until after 30 June 2011?**

Only installations that are incumbent to phase III are eligible to opt out. Incumbent installations are those installations that obtained a permit before 30 June 2011 or were carrying out Annex I activities before 30 June 2011 and had all other relevant permits.

### **Q. What if my emissions will be below 25000tCO<sub>2</sub> by phase III?**

The period for determining eligibility for the opt out is 2008 – 2010, in accordance with Article 27 of the EU ETS Directive. An installations emissions must also remain below this threshold in subsequent years, including 2011 and 2012, to remain eligible for the opt out.

**Q. Is an installation that was not included in the UK's National Implementation Measures (NIMs) still able to opt out?**

An installation may still apply to opt out if it meets the eligibility criteria (i.e. as an incumbent small emitter or hospital) even if it was not included in the UK's NIMs, as submitted to the European Commission in 2011. The installation must be an incumbent – an installation that was carrying out an Annex I activity before 30 June 2011 – and therefore have been eligible to be included in the NIMs.

We have notified the Commission of our intention to include installations not already in the NIMs in our opt out list, where eligible, and they have not objected to this approach. However, inclusion in the UK's opt out list does not guarantee that Commission approval will be given for the installation to participate in the Opt-out scheme.

**Q. Will an installation that began operation during 2011 but before 30 June be eligible?**

Small emitter installations that started operation in early 2011 present a special case in terms of determining eligibility under the Directive. As these installations do not have emission data for 2008, 2009, 2010 it is less certain whether the Commission will accept that they meet the requirements of the EU ETS Directive that emissions are below 25,000tCO<sub>2</sub> in each of these three years.

The European Commission must approve each installation opting out. We are pressing the Commission for clarity on whether they will approve otherwise eligible installations which started operation in early 2011. Unless the Commission is clear that these installations will not be accepted we will include them in the UK's opt out list for approval by the Commission on the following basis:

A completed application form must be submitted by 18 July.

We will include installations that meet the eligibility criteria as a hospital<sup>1</sup>. These installations must supply verified 2011 emission data to the Environment Agency, where not already reported, before they submit an application form. This is to provide the basis for setting the installations historic emission targets.

We will include small emitter installations where verified emissions for 2011 are below 25,000tCO<sub>2</sub> (and the 35MW criteria will also need to be applied in the case of combustion installations). These installations must supply verified 2011 emission data to the Environment Agency, where not already reported, before they submit an application form. Emissions must remain below 25,000tCO<sub>2</sub> in all subsequent years, as for all other small emitters .

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<sup>1</sup> Hospital installations must primarily provide services to a hospital. The specific criteria a hospital installation must meet are set out in the draft 2012 Greenhouse Gas Emission Regulations, which are currently under consultation. [http://www.decc.gov.uk/en/content/cms/consultations/trans\\_eu\\_dir/trans\\_eu\\_dir.aspx](http://www.decc.gov.uk/en/content/cms/consultations/trans_eu_dir/trans_eu_dir.aspx)

**Q. Can physical restrictions be taken into account when determining whether a small emitter combustion installation had a thermal capacity under 35MW?**

In general, the thermal capacities of all combustion units in the installation must be added together to provide the total thermal capacity of the installation.

If parts of the installation do not usually operate at the same time, this is not per se a reason to not count all of the capacities together to determine total thermal capacity.

However, where there are physical restrictions which prevent the simultaneous operation of these units then this may be taken into consideration. The thermal capacity threshold applies to the period 2008-2010 and therefore the physical restriction would need to have applied during this period.

**Q. Does the thermal capacity of an opted out small emitter combustion installation need to remain below 35MW after 2010?**

No. Increases in thermal capacity after 2010 will not lead to installations being re-entered into the EU ETS. However, annual emissions must remain below 25,000tCO<sub>2</sub>.

**Q. For hospital installations, how is the 15% threshold for transfer of heat to facilities that are not hospitals determined?**

This criterion is applied to ensure that opting out hospital installations are in fact installations that primarily provide services to hospitals.

Hospitals are defined in the draft Greenhouse Gas Emissions Regulations 2012 (which are currently subject to consultation<sup>2</sup>) as an institution that either:

- treats people with an illness or who are convalescing or require medical rehabilitation, or
- is a maternity home

and the clinics, dispensaries and outpatient facilities associated with these institutions.<sup>3</sup>

The 15% threshold will be applied to heat consumption by facilities that are not hospitals as a proportion of total heat production at the installation. Heat flows to facilities that form part of a hospital, for example, associated clinic or dispensary activities, do not count toward the 15% threshold.

Operators are responsible for ensuring that they remain within this threshold or that they notify the regulator if they are likely to breach the threshold. Operators will be

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<sup>2</sup> [http://www.decc.gov.uk/en/content/cms/consultations/trans\\_eu\\_dir/trans\\_eu\\_dir.aspx](http://www.decc.gov.uk/en/content/cms/consultations/trans_eu_dir/trans_eu_dir.aspx)

<sup>3</sup> "hospital" means— (i) any institution for the reception and treatment of persons suffering from illness, (ii) any maternity home, or (iii) any institution for the reception and treatment of persons during convalescence or persons requiring medical rehabilitation, and includes clinics, dispensaries and out-patient departments maintained in connection with any such home or institution;

expected to provide evidence to the regulator of the level of heat consumed by facilities other than a hospital when requested, for example, during auditing.

**Q. What happens if a hospital installation exceeds the 15% threshold for heat transfers to a facility other than a hospital?**

The hospital will be re-entered into the EU ETS from the beginning of the following compliance year. Operators are obligated to inform the regulator if it is likely that they will breach the eligibility criteria for the Opt-out scheme.

If a hospital has plans such that it is likely that heat transfers to a facility other than a hospital are likely to exceed the 15% threshold the operator could consider whether they meet the criteria to apply to opt out as a small emitter – where there is no restriction on cross boundary heat flows but overall emissions must remain below 25,000tCO<sub>2</sub>.

## Targets

**Q. Can historic emission targets be adjusted to take into account partial closure or other out of the ordinary operation or production during the baseline period?**

Baseline emissions cannot be adjusted in the target setting process.

The methodology for setting targets has been agreed with the Commission and is now being implemented. The methodology does not include ability to amend targets to take into account unusual events during the baseline period.

Using the agreed methodology for setting targets is key to ensuring that the Commission will continue to accept the UK opt-out scheme as fulfilling the requirement in the EU ETS Directive to deliver an equivalent level of emission reductions. Within this methodology, the average level of baseline emissions (2008-2010) of eligible installations and the emission reduction trajectory this forms with average 2005 emissions and 2020 targets, were key factors in demonstrating that the opt out targets provide equivalence.

**Q. Will banking be done on a rolling basis?**

Yes. Where emissions are below the target in any one year the unused portion of the target will be banked. This means it will be added to the target for the next year.

Where a banked target amount remains unused in that next year then this target amount will be banked forward again.

For small emitters, no annual target may exceed 25,000tCO<sub>2</sub> and this limit applies when banked target amounts are added to existing targets.

**Q. Will targets be tradable?**

There is no free allocation in the Opt-out scheme.

Opt out targets may be banked for use in compliance in future years but there is no ability to trade targets between installations.

**Q. What will be the impact of the 2014 carbon leakage review on opt out targets?**

Targets may be adjusted to address the requirement for equivalence between the Opt-out scheme and the EU ETS. It is not possible at this stage to confirm the target adjustment or give details of how the adjustment will be carried out. As historic emission targets are set the same way for both carbon leakage and non-carbon leakage installations it is less likely that these targets will be adjusted following the carbon leakage review.

## Penalties

**Q. Will operators need to pay penalties or purchase allowances for emissions below the emission reduction target?**

No. Penalties are only applied to emissions above the target.

There is no obligation or option to surrender emission allowances under the Opt-out scheme.

**Q. Will penalties notices be issued electronically?**

Yes, penalty notices will be issued through ETSWAP.

**Q. What penalties will apply if auditing shows that emission reports are inaccurate?**

It is intended that a penalty will be applied for misreporting. Penalties are currently under consultation as part of the consultation on the UK's draft 2012 Greenhouse Gas Emission regulations.<sup>4</sup>

If emissions are above the target and the amount of emissions is adjusted upward as a result of auditing then operators will also be liable for further excess emission penalties.

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<sup>4</sup> [http://www.decc.gov.uk/en/content/cms/consultations/trans\\_eu\\_dir/trans\\_eu\\_dir.aspx](http://www.decc.gov.uk/en/content/cms/consultations/trans_eu_dir/trans_eu_dir.aspx)

## Capacity extensions

### **Q. When can I apply for a target increase for a capacity extension and can targets be adjusted as part of the opt out application process to take into account capacity extensions?**

Operators may apply for an increase in target for eligible increase in capacity from 1 January 2013.

### **Q. What if my increase in capacity took place before 2013?**

Operators will be able to apply during 2013 for an increase in target to take into account an eligible capacity increase installed before 2013.

### **Q. What if I installed new equipment or replaced equipment in 2011?**

Where the installation has an historic emission target and the change resulted in a net increase in capacity, it may be eligible for an increase in target.

Where the installation has a preliminary allocation target and the change resulted in a net increase in capacity, the change will only be eligible for an increase in target where it took place after 30 June 2011 or where the operator can provide evidence that the increase in capacity could not be determined in time to be taken into account in setting the preliminary level of free allocation.

### **Q. Will an increase in target be available for installations undertaking new types of activities, such as manufacturing a new product, using existing equipment?**

No, where there is no net capacity increase a change in production to a different product type will not be eligible for a target increase.

### **Q. How does the requirement that a capacity extension must be the result of a physical change to be eligible for a target increase compare to requirements for applications to the New Entrant Reserve under the EU ETS?**

Increases in capacity under the opt out and the EU ETS must in both cases increase the maximum capacity of the installation through:

- installing a new source stream;
- a physical change that increases the capacity of an existing source stream; or
- a physical change that alters the technical configuration and functioning of the installation.

An increase in capacity in the EU ETS must additionally meet the significant increase threshold – i.e. 10% increase in capacity or a 5% increase in allocation of allowances that results in an allocation of over 50,000 allowances per year.



**Q. Is an increase in usage of a glasshouse or a hospital building extension eligible for a target increase?**

Not on its own. Increases in demand or production do not, in of themselves, qualify for a target increase where they are not accompanied by other changes that constitute an eligible increase in capacity.

**Q. How will rationalisations between two installations be taken into account in targets?**

Where the rationalisation results in an eligible increase in capacity the operator may apply for an increase in target.

## **Monitoring, Reporting and Auditing**

**Q. Will auditing look at previous years emissions?**

Auditing may examine emissions in previous years.

**Q. Can operators swap between verification and auditing during the opt out?**

Yes, but following notification to the regulator the change will only apply to emissions from the beginning of the next compliance year.

If operators switch to third party verification then the installation is still subject to periodic audit by the regulator, as under the EU ETS, and emissions data from years which have not been externally verified may be scrutinised.

**Q. When will site visits take place, will they be on a ‘surprise’ basis?**

Site visits will take place as determined on a risk basis or as a result of initial desk based auditing. However, operators will be informed that a site visit will take place and a date for the visit will be agreed with the operator.

Permit conditions will require that operators cooperate with reasonable requests from the Regulator in carrying out its auditing functions.

**Q. Will site visits for the opt out be co-ordinated with auditing under the CRC/CCAs to avoid overlaps?**

Yes, regulators are already considering how best to coordinate the separate auditing activities under each of the schemes.

**Q. Will group verification possible?**

Reporting and auditing or verification of emissions must be carried out on an individual installation basis.

However, participation in the regulator scheme for risk based auditing offers some of the benefits of group verification – including that not every installations will be required to undergo a site visit and full auditing each year.

## Other

### **Q. Can allowances be banked into phase III if I opt out?**

Any surplus EUAs, after meeting Phase II surrender obligations, can be banked into Phase III – there is no limit on the volume that can be banked. This process will be managed by the European Commission and should occur by the end of June 2013 once any Phase II surrender obligations have been met.

The Environment Agency will be providing regular updates on this and other Union Registry matters through their newsletters to operators.

### **Q Can I still trade or sell allowances during the opt out?**

Yes. Operators will be provided with an opportunity to indicate whether they wish to hold a registry account from which trading will be possible.

It is up to operators how they manage any allowances retained in registry accounts.

Retained allowances may not be surrendered to meet emission reduction targets under the Opt-out Scheme.

### **Q. What is the timeline for state aids approval – and what will be the impact of any delays?**

We have sought assurances from the European Commission that the clearance process will take place in a timely manner and in time for the Opt-out Scheme to begin on 1 January 2013.

The Commission has released guidelines stating that should opt out schemes constitute aid, they will be considered compatible the internal market if they comply with Article 27 of the EU ETS Directive. This means that gaining approval of the UK's opt out scheme from the European Commission under the EU ETS Directive ensures that the state aids clearance process is principally a matter of formality.

State aids clearance for the opt out is being managed by the Department of Business, Innovation and Skills.

### **Q. Will the Opt-out Scheme create more overlaps between climate change policies?**

The UK's proposal will not lead to any new overlaps between schemes. Opted out installations will not be subject to the EU ETS but when they are participants of the CRC or CCAs the same provisions and exemptions will apply as if they were in the core EU ETS.

We have reviewed the operation of the CRC and CCA have concluded that we should retain separate schemes targeting different sectors. However we are proposing to greatly reduce/remove the overlaps between the key instruments in the

industrial energy efficiency area (EU ETS, CRC and CCA) in order to simplify the landscape and ensure that each scheme is appropriately targeted. As part of our simplification proposals we are proposing to remove all CRC compliance requirements from CCA target units and EU ETS installations (and hence EU ETS small emitters that opt out).

**Q. What are the impacts of opting out if my organisation is a participant in the CRC or might have access to exemptions as a result of EU ETS participation?**

If small emitters have opted out they will be treated the same as other EU ETS installations in CRC.

We are currently consulting on proposals to simplify the CRC and as part of this work we are proposing to amend the CRC legislation so that EU ETS small emitters are treated the same as other EU ETS installations.

The proposal in the current consultation on simplifying the CRC Scheme is to remove all energy supplies to EU ETS installations or to installations that are participating in the Opt-out Scheme from the CRC scheme. This would be irrespective of whether self-supplied (e.g. electricity generated on site) or supplied via a third party. There would no longer be any CRC obligations in respect of the energy supplies to such facilities/installations. This means that participants will no longer need to consider electricity supplied to EU ETS installation as part of qualification or surrender CRC allowances in respect of electricity supplied to EU ETS installations. However supplies that are to non-EU ETS parts of the site will be in scope of the scheme.