



Department for
Business, Energy
& Industrial Strategy

BRINGING FORWARD EU EMISSIONS TRADING SYSTEM 2018 COMPLIANCE DEADLINES IN THE UK

Government Response

March 2018



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General Information

Purpose of this document

This document sets out the UK Government response to the consultation on amending the UK Greenhouse Gas Emissions Trading Scheme Regulations 2012, to bring forward EU Emissions Trading System 2018 compliance deadlines for UK-regulated participants to a date before 29 March 2019, the date the UK will leave the EU.

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Territorial extent:

Emissions trading within the UK is a devolved matter. The Regulations consulted on extend to the whole of the United Kingdom, however policy responsibility for implementation of the EU ETS sits with the Department for Business, Energy and Industrial Strategy (BEIS) in England, and the Northern Ireland Executive, the Scottish Government and the Welsh Government in their respective jurisdictions. References to the Government in this consultation response should be read in that context.

Introduction

- 1.1. In October 2017, through a negotiation on the future of aviation in the EU Emissions Trading System (ETS), the European Parliament and Council agreed an amendment to the EU ETS Directive to protect the environmental integrity of the EU ETS against a UK departure from the System in March 2019. This measure was prompted by concerns amongst the EU institutions that, in the event of an abrupt UK exit from the EU ETS in March 2019, there would be no requirement in EU law for UK-regulated operators and aviation operators to fulfil compliance obligations after EU Exit; in particular those relating to 2018 emissions, where the obligations to comply would fall shortly after the day of exit.
- 1.2. On 24 October 2017, the European Commission proposed an amendment to the EU ETS Registry Regulation¹, to implement the agreed amendment to the Directive. This proposal would have meant that UK-issued allowances from 1 January 2018 would have been identified with a country code and it would not have been possible to use these allowances for compliance purposes. This would have had negative and disruptive effects on the smooth operation of the carbon market by creating two tiers of allowances (UK and other) with different values, and would have significantly impacted UK-regulated aviation operators and stationary installations (“operators”) who would have been unable to use 2018 issued allowances for their 2017 compliance obligations.
- 1.3. This consultation sought views on a proposal to bring forward the 2018 compliance deadlines for UK-regulated operators to report emissions and surrender allowances for those emissions from 31 March 2019 and 30 April 2019 respectively, to 28 February 2019 and 22 March 2019. These changes were intended to:
 - Provide clarity to EU ETS participants on the UK’s 2018 compliance obligations during the UK’s withdrawal from the EU.
 - Achieve the objective of protecting the environmental integrity of the EU ETS by requiring that UK-regulated operators fulfil their 2018 compliance obligations before EU Exit, while avoiding the negative effects of the proposed measure which would have made UK-issued allowances invalid for compliance.
- 1.4. The measures proposed in the consultation were without prejudice to future decisions on the UK’s future relationship with the EU on the EU ETS.
- 1.5. Following the consultation, on 30 November 2017 the proposal to amend the EU ETS Registry Regulation was discussed and voted on by Member State officials at the EU Climate Change Committee. It was agreed that if the UK amended its domestic legislation so that UK-regulated operators would be required to surrender allowances for 2018 compliance by 15 March 2019, then UK-issued 2018 allowances would be valid for compliance.

¹ https://ec.europa.eu/clima/news/commission-proposes-safeguard-measures-eu-emissions-trading-system_en

- 1.6. As there was strong support during the consultation to bring forward the 2018 compliance deadlines, and considering the agreement at the EU Climate Change Committee that 2018 allowances would be valid for compliance if there was an obligation for UK-regulated operators to fulfil their 2018 compliance obligations by 15 March 2019, on 6 December 2017 the Government laid legislation to require operators to fulfil 2018 compliance by 15 March 2019. This legislation entered into force on 27 December 2017; the European Commission has confirmed that this means that UK-Issued 2018 allowances can be used for compliance. This is a successful outcome, which delivers the consultation objectives to provide clarity on 2018 compliance obligations and to protect the environmental integrity of the EU ETS, while avoiding the negative effects of the proposed EU Exit measure.

Conducting the Consultation

- 2.1. On 6 November 2017, the Government published the consultation document containing the details of our proposals and a draft Statutory Instrument: “The Greenhouse Gas Emissions Trading Scheme (Amendment) Regulations 2017” (“The 2017 Amending Regulations”). The consultation specified that subject to responses, the Government proposed to lay The 2017 Amending Regulations before Parliament, with the intention that the changes take effect from 1 January 2018.
- 2.2. Links to the consultation were sent to key stakeholders and a Citizenspace page was created for written responses. The Department for Business, Energy & Industrial Strategy held a stakeholder event on 17 November 2017. Sixty one stakeholders called in to the meeting and twelve attended in person.
- 2.3. The consultation closed on 24 November 2017. There were ninety four written responses from organisations including UK-regulated operators in the industry, power and aviation sectors, “umbrella groups” such as the CBI, EnergyUK and the Emissions Trading Group (ETG), and EU ETS accredited verifiers. The Government found the responses to the consultation constructive and helpful, and would like to thank all organisations that responded.

Consultation Responses

The consultation asked three questions:

1. Consultation Questions

1.	Do you agree that bringing forward the 2018 compliance deadlines is a proportionate response to the issues identified and preferable to the proposal to make UK allowances invalid for compliance from 1 January 2018?
2.	Do you agree with the proposed deadlines for 2018 compliance of 28 February 2019 to report emissions and 22 March 2019 to surrender allowances?
3.	Would there be any impacts or administrative burdens that could result from bringing forward the 2018 compliance deadlines, for instance for contracts to deliver allowances or from the fact that the surrender deadline would fall at the end of the 2018-2019 financial year, rather than the beginning of the 2019-2020 financial year?

- 3.1. Question 1. There was near unanimous support that the proposal to bring forward the 2018 compliance deadlines was a proportionate and necessary response to seek to avoid UK-issued 2018 allowances not being able to be used for compliance. A few respondents questioned whether bringing forward the 2018 compliance deadlines in UK domestic regulations, without a corresponding amendment to EU law, would be sufficient to avoid the proposed EU measure applying.
- 3.2 While there was support for the proposed approach to address the more immediate issue of 2018 compliance, clarity was sought on the Government's position on compliance obligations for the first three months of 2019 while the UK is still a member of the EU, and possible longer term participation in the EU ETS. Obligations for 2019 and beyond were mentioned in respect of the Single Electricity Market (SEM) on the island of Ireland, where electricity capacity under the Capacity Remuneration Mechanism has been secured until September 2019. Two respondents expressed concerns that diverging carbon pricing regimes between Ireland and Northern Ireland would have negative effects on the SEM.

- 3.3. Question 2. A number of respondents, including organisations that verify operators' emissions, expressed concerns that a date of 28 February 2019 to report 2018 emissions would be difficult to meet. There was significant support to move the deadline to report 2018 emissions back to a date in March 2019. To provide more time for operators to report emissions, there was support to reduce the proposed period of three weeks between reporting emissions and surrendering allowances. While the majority of respondents agreed with the proposed surrender deadline of 22 March 2019, one respondent suggested that the Government should consider an earlier surrender deadline if this would align with a date specified in the amendment to the EU ETS Registry Regulation and would ensure that 2018 allowances could be used for compliance.
- 3.4. Question 3. Responses highlighted that there would be some additional administrative burden for operators to monitor and report their emissions, and surrender allowances for those emissions, earlier than usual. There was concern about the risk of penalties if verifiers were unable to verify operators' emissions by the reporting deadline, and requests for regulators to consider this in their approach to enforcement. There was support for earlier access to IT systems which are used by operators, verifiers and regulators for compliance purposes. A few respondents suggested that companies could incur additional financial costs from having to fulfil EU ETS compliance obligations twice during the 2018-2019 financial year (in April 2018 for 2017 emissions and March 2019 for 2018 emissions).

Government Response

- 4.1. On 30 November 2017, the European Commission's proposal to amend the EU ETS Registry Regulation was discussed and voted on by Member State officials at the EU Climate Change Committee. It was agreed that if the UK amended its domestic legislation so that operators would be required to surrender allowances for their 2018 emissions by 15 March 2019, then UK-issued 2018 allowances would not be identified with a country code and could be used for compliance.
- 4.2. The Government laid The 2017 Amending Regulations before Parliament on 6 December 2017. A full regulatory impact assessment was not produced as no significant impact on the private or voluntary sectors was foreseen. As there were only two weeks between the consultation closing on 24 November 2017 and the legislation being laid before Parliament (which was necessary so that the legislation could enter into force before the start of 2018, to avoid the proposed EU measures applying) the Government was not able to publish the consultation response alongside laying the legislation.
- 4.3. The 2017 Amending Regulations brought forward the 2018 deadlines for UK-regulated operators to report their 2018 emissions and surrender allowances for those emissions from 30 March 2019 and 30 April 2019, to 11 March 2019 and 15 March 2019 respectively. The 11 March 2019 reporting deadline considered the strong support during the consultation to provide more time for operators to report their emissions than originally proposed with a 28 February 2019 deadline. To align with the agreed amendment to the EU ETS Registry Regulation, the deadline for operators to surrender allowances for their 2018 emissions was brought forward from 22 March 2019 to 15 March 2019.
- 4.4. The 2017 Amending Regulations entered into force on 27 December 2017; the European Commission has confirmed that this means that UK-issued 2018 allowances can be used for compliance². On 7 February 2018 the first UK auction for the year was held, and 2018 free allowances were allocated as normal to UK operators at the end of February.
- 4.5. The strong support during the consultation to amend UK domestic legislation to bring forward the 2018 compliance deadlines was crucial to providing the necessary assurance to the EU institutions that UK-regulated operators will fulfil 2018 compliance

² https://ec.europa.eu/clima/news/update-safeguard-measures-eu-emissions-trading-system-due-uks-withdrawal-european-union_en

obligations before EU Exit. Bringing forward the 2018 compliance deadlines has delivered the objectives set out in the consultation:

- To provide clarity on 2018 compliance obligations for UK-regulated operators.
- Protecting the environmental integrity of the EU ETS, while avoiding the negative effects of the proposed measure which would have made UK-issued 2018 allowances invalid for compliance.

4.6. The purpose of the consultation was to address the more immediate issue of UK 2018 compliance obligations; comments that the proposed approach did not address compliance obligations for 2019 and beyond were therefore outside of the scope of the consultation. EU Exit negotiations between the UK and the EU have now progressed to their second phase, which will include discussions on an implementation period of around two years. The Government has been clear that this period will be based on the existing structure of EU rules and regulations. Should this be agreed, it will provide clarity for UK-regulated EU ETS participants that they will continue to participate as normal for the remainder of Phase III of the EU ETS, covering the calendar years 2019 and 2020.

4.7. As the Clean Growth Strategy sets out, the UK Government is considering the UK's future participation in the EU ETS after our exit from the EU and we remain firmly committed to carbon pricing as an emissions reduction tool, whilst ensuring energy and trade intensive businesses are appropriately protected from any detrimental impacts on competitiveness. Whatever our future relationship with the EU, we will seek to ensure that our future approach is at least as ambitious as the existing scheme and provide a smooth transition for the relevant sectors.

Next Steps

- 5.1. The Government recognises that bringing forward the 2018 compliance deadlines to before the date of EU Exit will result in some additional administrative burden to operators and verifiers. The Department for Business, Energy & Industrial Strategy will work with UK regulators and Devolved Administrations to communicate the changes to the 2018 compliance deadlines clearly to stakeholders and to operators. This will include specific communications directly to each operator in May 2018 after operators have completed their 2017 compliance obligations. Additional communications through stakeholder forums and trade associations will take place periodically. Where appropriate, other communications with operators and stakeholders will include information on the compliance obligations for UK operators in 2018.

