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CONTINUED UK MEMBERSHIP OF THE EU ETS FOR PHASE IV

Summary of responses and UK Government
and Devolved Administrations' response to
consultation



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Executive Summary

This UK Government and Devolved Administrations' response will analyse all of the responses received to Chapter 4: Continued UK Membership of the EU ETS for Phase IV of the consultation on The Future of UK Carbon Pricing. The UK Government and Devolved Administrations will issue a separate response to Chapters 1, 2 and 3. The response to Chapter 4 has been published separately because the ETS Directive requires a transposition deadline of 9 October 2019. The statutory instrument, containing provisions meeting the transposition requirements, has been laid on 31 October 2019, coming into effect on 21 November 2019. The transposition of the proposed amendments in UK law has been postponed due to delays in the publication of the consultation on the Future of UK Carbon Pricing.

The consultation ran from 2 May to 12 July 2019 and received 149 responses. Responses not specifically relating to Chapter 4 of the consultation will be addressed as part of the broader response to chapters 1, 2 and 3.

Chapter 4 of the consultation proposed the UK Government and Devolved Administrations put in place plans to:

- transpose the mandatory elements of the revised ETS Directive into domestic legislation
- implement provisions arising from tertiary legislation
- implement discretionary Article 27 provisions for Phase IV
- implement discretionary Article 27a provision for Phase IV
- seek further changes to the 2012 GHG Regulations, to facilitate administrative simplicity and effectiveness for operators and regulators; ensure penalties are effective, dissuasive and proportionate; provide clarity; and close loopholes.

A majority of respondents were in favour of every proposal in Chapter 4 of the consultation, the key questions of the consultation that had significant input and response were questions 59 (proposed deadlines for the UK's simplified small emitter scheme (Article 27 scheme)), 60 (**not** allowing the banking of overachievement between allocation periods for the Article 27 scheme), 67 (the process for entry into UK's simplified ultra-small emitter scheme (Article 27a scheme)) and 71 (**not** implementing the Article 27a scheme provision on reserve backup generators).

After analysing responses to each question carefully, the UK Government and Devolved Administrations confirm that all of the policy proposals put forward for consultation, with the exception of regulatory responsibility for Carbon Capture and Storage across all devolved administrations, will be implemented into domestic legislation through two statutory instruments.

We are grateful for the time taken by all respondents to provide feedback to the consultation. All responses have been carefully considered but in cases where we think it is challenging to implement changes other than those outlined in the consultation proposals we have, where appropriate, addressed concerns.

Continued UK membership of the EU ETS for Phase IV: summary of responses, and UK Government and Devolved Administrations' response to consultation

There were a number of respondents who made requests to increase the thresholds of Article 27 and 27a schemes from 25,000 tonnes of CO₂ or equivalent (tCO₂eq) per annum and 2,500 tCO₂eq per annum respectively. In the context of continued UK Membership of the EU ETS for Phase IV, there is no scope for UK Government and Devolved Administrations to increase the thresholds. They are determined by the ETS Directive and the UK is legally bound to maintain them. However, it is possible to consider these suggestions further in the context of establishing a UK Emissions Trading System; this will therefore be covered in the Government response to Chapters 1, 2 and 3.

Introduction:

The revised European Union Emissions Trading System (EU ETS) Directive and Phase IV of the EU ETS

Directive 2003/87/EC of the European Parliament and of the Council established a system for greenhouse gas emission allowance trading within the Union, the EU ETS, in order to promote reductions of greenhouse gas emissions in a cost-effective and economically efficient manner. Phase I of the EU ETS ran from 2005 to 2007, Phase II from 2008 to 2012. We are currently in the penultimate year of Phase III which will run from 2013 to 2020.

In October 2014 the European Council made a commitment to reduce the overall greenhouse gas emissions of the Union by at least 40 % below 1990 levels by 2030. It was agreed that all sectors of the economy should contribute to achieving the emissions reduction and that should be done in the most cost-effective manner through various strategies, one of them being the EU ETS. To be in line with these adjustments, following negotiations between all Member States, amendments were made to the ETS Directive to reflect the ambition of these targets moving into Phase IV. Phase IV of the EU ETS will run from January 2021 to December 2030.

About the consultation

The Future of UK Carbon Pricing consultation sought views on the policy proposals for several possible future carbon pricing options following the UK's exit from the EU. The consultation noted the UK Government's and the Devolved Administrations' preference to establish a UK Emissions Trading System (ETS) that is linked to the EU ETS, but noted the need to consider alternative carbon pricing options in the event a linking agreement cannot be secured.

This document is the UK Government and Devolved Administrations' response to "Chapter 4: Continued UK Membership of the EU ETS for Phase IV" of that consultation.

The consultation was published by the Department for Business, Energy and Industrial Strategy; the Department of Agriculture, Environment and Rural Affairs in Northern Ireland; the Scottish Government and the Welsh Government on 2 May 2019. Alongside the consultation we published an impact assessment assessing the impact of the implementation of small emitter schemes in a Phase IV scenario.

In the absence of Northern Ireland Ministers, any future policy decisions to be made in respect of Northern Ireland may be taken by a senior officer of the Department of Agriculture, Environment and Rural Affairs in Northern Ireland, in accordance with the Northern Ireland (Executive Formation and Exercise of Functions) Act 2018 and the guidance published by the Secretary of State under section 3 of that Act.

We would like to thank all those who responded.

This document will outline, for each question asked in Chapter 4 of the consultation, a summary of the responses received and the UK Government and Devolved Administrations' response. Our questions were designed to allow for qualitative and quantitative analysis of responses, and we have included both in this response.

A separate response will be issued on Chapters 1, 2 and 3 of the consultation on the Future of UK Carbon Pricing, which cover domestic alternatives to the EU ETS. We are publishing an earlier response specifically addressing the areas consulted on in Chapter 4 because the ETS Directive requires a transposition deadline of 9 October 2019. The UK is legally obliged to transpose the revisions to the ETS Directive while it remains a member of the EU and a participant in the EU ETS. Transposing also ensures that the UK has the legislative framework in place to participate in the EU ETS post 2020 should this option be pursued.

This response will be published alongside the Statutory Instrument (SI) which transposes mandatory elements of the revised ETS Directive in the UK and implements tertiary legislation, discretionary provisions and further amendments to the Greenhouse Gas Emissions Trading Scheme Regulations 2012 (SI 2012/3038 – the '2012 GHG Regulations'). As outlined in the executive summary, these changes will be implemented through two statutory instruments.

Many of the changes we will make to the 2012 GHG Regulations are required by the revised ETS Directive and are non-discretionary for Member States. However, there are two main areas where Member States have discretion over implementation of the revised ETS Directive where the UK is proposing to make changes from Phase III. These are the schemes for small and ultra-small emitters outlined in Articles 27 and 27a of the revised ETS Directive. Proposals for these schemes received the majority of consultation feedback.

In the event where these provisions are not necessary as a result of the UK's exit from the EU without a withdrawal agreement the 2012 GHG Regulations will be amended to implement the UK's interim carbon pricing option. An interim Carbon Emissions Tax does not prejudice any decision on the UK's carbon pricing system in the long term.

Conducting the consultation exercise

The consultation ran for 10 weeks from 2 May to 12 July and received 149 responses. Responses were received from, members of the public, NGOs and academia. There were a large number of responses from industry from a variety of sectors. **Sectors have been broken down into the following categories: aviation, cement and minerals, ceramics, chemicals, food, fossil fuels, paper, power, steel and finally, other (all those not incorporated by the previous sectors).** Not all respondents responded to all questions. Stakeholders were generally supportive of the Government's approach towards the implementation of the proposed Phase IV provisions.

There were 40 respondents from the Citizens' Climate Lobby requesting the implementation of a carbon fee and dividend model; the Government response to chapters 1, 2 and 3 will provide a response to this.

In conjunction with the public consultation, joint stakeholder events were held in London, Hillsborough, Llandudno Junction, Swansea and Glasgow as well as sector roundtables in London, Sheffield, Stoke-on-Trent and Aberdeen. Many of the UK's operators of the EU ETS were present at these events. Valuable input was also taken on board and considered after the events.

Consultation response: Overall approach

There were 79 questions in this consultation, 26 of which were in Chapter 4. All input that was provided has been evaluated. Questions from other sections that clarified sectoral and geographical information from respondents have been included in the analysis underpinning this response. Most questions were designed to have an initial closed (yes/no) element followed by the opportunity to expand upon that answer, for example:

- a) Do you agree with the proposed changes to xxxx? (Y / N)
- b) Please expand on your answer and give evidence where possible

There was also an open ended question at the end of each sub-chapter, providing an opportunity for additional comments.

Each question of Chapter 4 has been evaluated using both quantitative and qualitative analysis. Quantitative analysis has been used to identify the approval rate of the proposed changes, and segment responses according to: geographical location (UK-wide, England, Wales, Scotland and Northern Ireland), participants and non-participants of the EU ETS sector (aviation, cement and minerals, ceramics, chemicals, food, fossil fuels, paper, power, steel) and finally, other (all those not incorporated by the previous sectors), members of the Article 27 scheme in Phase III, respondents eligible for the Article 27 scheme in Phase IV and finally, respondents eligible for the Article 27a scheme in Phase IV.

Qualitative analysis has been used to review responses to open ended questions, drawing out any core themes and highlighting significant comments.

In the analysis of each question, the UK Government and Devolved Administrations jointly respond to feedback, outlining our intent, offering further justification or an explanation of the policies where necessary.

UK Government and Devolved Administrations' Response:

How and when we intend to transpose Phase IV changes to domestic legislation and tertiary legislation

Consultation question:

52. Do you think the proposed timeline and method for the legal transposition of the Phase IV Directive and tertiary legislation are reasonable?

Summary of responses

There were 39 respondents to this question and 92% (36 respondents) were in favour of this proposal across most sectors apart from one respondent from ceramics and one from aviation. 100% of participants (26 respondents) of the EU ETS were in favour.

Three respondents did not agree with the proposal, two who provided further details felt that the timetable indicated remaining in the EU ETS for the whole of Phase IV and that UK Government and Devolved Administrations should be focused on implementing a UK ETS.

Our Response

Decision: UK Government and Devolved administrations have adjusted the proposed timeline for transposition as set out in the consultation document. The first statutory instrument has been laid on 31 October 2019, coming into force on 21 November 2019. The transposition of the proposed amendments in UK law has been postponed due to delays in the publication of the consultation on the future of UK carbon pricing.

Rationale: While we remain a member of the EU, the UK has a legal obligation to transpose the Phase IV Directive. A number of proposals may also be relevant to a UK ETS if implemented.

Any proposed changes to UK legislation outlined here are without prejudice to the future relationship with the EU and are designed to ensure that the UK has the legal basis in place for continued participation of the EU ETS from 2021, should this be necessary.

Consultation question:

53. Do you agree with the proposed approach to transposition of tertiary legislation outlined in the chapter?

Summary of responses

There were 34 respondents to this question and 91% (31 respondents) were in favour of this proposal across all sectors and geographical locations.

Two respondents who provided further details were concerned with this proposal on the grounds that tertiary legislation governing the rules of Phase IV has yet to be finalised and cannot therefore be implemented into UK law completely.

Our Response

Decision: UK Government and Devolved administrations have decided to maintain the proposed approach to the transposition of tertiary legislation.

Rationale: There was a high level of support for this proposal and while the UK Government and Devolved Administrations are aware of the issue outlined by respondents, we will be laying a second statutory instrument to cover further changes that have not been finalised yet at EU level or could not be included in the first SI. We have been actively engaged in European Union (EU) discussions shaping this tertiary legislation to ensure UK interests are represented and we will continue to engage stakeholders on future discussions. A range of relevant tertiary legislation is currently being discussed (or in some cases has been recently agreed) at EU level.

Some areas of tertiary legislation will require domestic implementation. Some of these areas are determined at the EU level, but others allow the UK to decide on how to best apply the legislation to UK installations. UK Government and Devolved Administrations have outlined areas of legislation likely to be affected and our planned approach in the consultation document, we intend to follow this process ([please view section B of Chapter 4 of the consultation for further details](#)). Where changes to domestic legislation are still required after the first Statutory Instrument (SI) has come into force, we intend to transpose these in a second SI in 2020; UK Government and Devolved Administrations will engage with industry on areas that will be in the second SI.

Consultation question:

54. Do you agree that the proposed penalty for non-compliance with a notification requirement is appropriate?

Summary of responses

There were 41 respondents to this question and 95% (39 respondents) were in favour of this proposal. Qualitative feedback supported the proposal to apply the penalty for non-compliance with the condition of a permit against operators who fail to maintain their Monitoring Methodology Plans (MMP) as long as UK Regulator discretion can still be applied before the penalty is issued.

Our Response

Decision: UK Government and Devolved administrations plan to implement the proposed penalty for non-compliance with a notification requirement.

Rationale: This is due to the support from a large majority of respondents. For further details on penalties please revisit Annex C of the Future of UK Carbon Pricing consultation and question 75 of the Government response. UK Government and Devolved Administrations can confirm that regulator discretion would still apply to the penalty before it is issued.

Article 27 Provisions

Consultation questions:

55. Are you responding on behalf of an installation that emits less than 25,000t CO₂eq annually and with a combustion threshold less than 35MW, or meets the 2012 GHG Regulations definition of a hospital installation? (Y/N)?

56. Are you responding on behalf of an installation that was a member of the UK's Small Emitter and Hospital Opt-out scheme in Phase III? (Y/N)

Summary of responses

There were 49 responses to question 55 and 18 respondents (34%) were eligible for the Article 27 Scheme.

There were 48 responses to question 56 and 14 respondents (29%) were previous operators participating in the Article 27 Scheme.

Our response

UK Government and Devolved Administrations were pleased to receive responses from participants of the UK Small Emitter and Hospitals Opt-Out Scheme in Phase III, and those that are eligible for the scheme moving into Phase IV.

Consultation questions:

57. Do you agree that these measures, including the risk-based approach to audit and inspection, are appropriate for these emitters?

Summary of responses

There were 27 respondents to this proposal and 81% (22 respondents) were in favour (including both Article 27 participants and non-participants). This preference for the proposal was echoed in the qualitative responses scheme as respondents felt it was simplified and cost effective.

Of the respondents who didn't agree one provided further detail stating that Article 27 scheme operators shouldn't have to face all the administrative burden of the EU ETS.

Our response

Decision: UK Government and Devolved administrations have decided to continue the proposals outlined in the consultation: an option for risk-based auditing of emissions instead of third-party verification, no requirement to hold an active registry operator holding account and the avoidance of needing to engage with the carbon market.

Rationale: This is due to the fact that we are keen to help minimise the administrative and financial burden for small emitters and recognise from responses to this consultation the value of the Article 27 scheme. The Article 27 scheme is designed to make sure operators don't face

all the requirements of the main scheme. It is clear it has been a success in Phase III, with 91% of respondents supporting its continuation (see question 58).

Members of the scheme will reduce their emissions according to their targets, which will reduce annually in line with the reduction of the emissions cap for Phase IV. From the responses it's clear that the risk-based auditing helps to ensure emissions reduction takes place whilst preventing a significant growth in emissions that are not accounted for.

Consultation question:

58. Do you support the continuation of the UK's Article 27 Scheme for Phase IV?

Summary of responses

There were 32 respondents to this question and 91% (29 respondents) were in favour of the UK's implementation of the Article 27 Scheme moving into Phase IV of the EU ETS. All respondents who were a participant of the EU ETS (18 respondents) were in favour, these participants stretched across all sectors. The majority of non-participants, 79% (11 respondents), were also in favour.

One respondent who was in favour felt that eligible installations did not join due to expansion plans and because re-joining the main scheme was too complex as there was a lack of clarity over the process.

Our response

Decision: UK Government and Devolved administrations have decided to continue the UK's Article 27 Scheme in Phase IV.

Rationale: This is due to the Article 27 Scheme being implemented in Phase III of the EU ETS and it being well-received by industry with 214 installations deciding to take part in the scheme. It is clear from quantitative analysis of responses that respondents and industry continue to support the scheme's benefits with 91% in favour.

However, analysis of responses indicates an ongoing lack of clarity over general EU ETS processes required from industry and concerns that the administrative burden could become very resource intensive. Please see the response to questions 63 and 64 on how UK Government and Devolved Administrations have been engaging with industry to clarify policy and administrative processes.

We acknowledge views from some operators that clarity on processes can be problematic; the UK Government will publish guidance on the Article 27 Scheme (along with guidance on the new Article 27a Scheme) and we will work with regulators to help ensure guidance is clear and concise.

We also acknowledge that the process of moving from the Article 27 Scheme to the main scheme can be administratively intense; while we are unable to avoid the necessary procedures as set out in the EU ETS Directive we will set out guidance to help ensure operators are fully aware of their obligations.

In terms of the concern that expansion plans dissuaded installations joining the Scheme, there are provisions to allow for increases to emissions target, which should encourage operators

with long-term expansion plans to still take advantage of the Scheme. Similarly to Phase III, operators will be eligible for an increase in emissions target only where it results in a net increase in capacity and where this is the result of installing a new source stream or increasing the capacity of an existing source stream through a physical change. This should encourage operators with long-term expansion plans to still take advantage of the Scheme.

If operators breach the 25,000 tCO₂eq threshold they are required to notify the regulator of this fact by 31 March the following year, they are then required to enter the main scheme from the beginning of the following calendar year. They must then comply in full with the requirements of the main scheme. Operators will have to update their monitoring plan, establish a monitoring methodology plan, report activity levels annually and open a registry account. Whilst these processes could be perceived as complex these are set out by the ETS Directive. The UK Government and Devolved Administrations have no scope for change but the operators will have benefited from the simplicity of the Article 27 Scheme up to this point. Operators may then apply for free allocation with their respective regulator, operators who wish to be eligible for free allocation on entry must have completed a full National Implementation Measures (NIMs) return before each allocation period (30 June 2019 and 30 May 2024). Allocation will then be adjusted on entry to the scheme.

Consultation question:

59. Do you agree with the proposed deadlines for operators to indicate to regulators their intent to enter the UK's Article 27 Scheme (30 June 2019 and 30 May 2024 notification of intent, 31 August confirmation)?

Summary of responses

There were 27 responses to this question and 52% (14 respondents) agreed with the proposed deadlines. Of those respondents who were eligible for the Scheme (14 respondents), 71% (10 respondents) did not agree with the proposal. There was a divided opinion across industries over the proposal.

Many responses highlighted that an informed decision was being requested with incomplete information. Many welcomed the extension to 30 June 2019 and felt this would allow sufficient time to submit the required information. However many respondents still felt that the 30 June deadline was too tight.

Our response

Decision: UK Government and Devolved administrations have decided to maintain the proposed deadlines.

Rationale: This is due to UK Government and Devolved Administrations keeping the general architecture of the scheme the same moving into Phase IV of the EU ETS, making it simpler where possible. Alongside this, in 2024 UK Government and Devolved Administrations expect no major changes to the policy because it will have already been established. We understand there may be challenges with this date but the deadlines are there to ensure we can supply all the correct information to the Commission on time, guaranteeing those eligible can participate.

The deadlines proposed (30 June 2019 and 30 May 2024 and 31 August (2019 and 2024)) have allowed sufficient time for UK regulators to check the eligibility of operators who have submitted data, and also provided operators with the flexibility to withdraw from the scheme by

31 August if the installation's status or long-term plans changed. UK Government and Devolved Administrations are aware that 30 June 2019 will have passed before the close of the consultation and by the time of publication of the Government response. We have still included this in our response to clarify that the date for the second allocation (30 May 2024) period will differ. Regulators require sufficient time to quality assure all data is correct from every installation that is a participant in the EU ETS. The deadline of 30 May 2024 is set out by the Free Allocation Regulation (FAR), while member states have one month discretion on this date, 30 May 2024 will guarantee that targets and free allocation (if operators were to enter the main scheme) are calculated correctly for all installations.

The UK must submit a full set of data, a methodology report and list of installations (inclusive of those on the Article 27 and 27a schemes) to the Commission by 30 September 2019 and 2024. The 30 May 2024 deadline allows UK Government and Devolved Administrations sufficient time to compile all the data and the 31 August deadlines ensures all eligible operators who have requested to join the scheme have sufficient time to withdraw from the scheme should they decide to enter the main scheme.

Consultation question:

60. Do you agree with the proposed approach to the 'banking' of overachievement against emissions targets?

Summary of responses

There were 36 respondents to this question and 56% (20 respondents) were in favour of the proposed approach to **not** allow the "banking" of overachievement against emissions target between allocation periods, representing a wide variety of sectors. There were 18 participants of the EU ETS who responded and 72% (15 respondents) were in favour of the proposal.

There were 12 respondents who were eligible for the Article 27 Scheme and 67% (8 respondents) were **not** in favour of the proposed approach. There was a general divide throughout the sectors of approval.

A respondent in favour of the proposed approach felt that a benefit of the Article 27 Scheme is the reduced administrative burden on operators and that the proposal means there is still pressure for Article 27 operators to account for their emissions. Of the respondents not in favour of the proposal, several were members of the EU ETS and felt there was a recurring concern that this could disincentivise emissions reductions. Respondents not in favour felt that operators may hold back on implementing technological investments, particularly long-term investments, to make sure they have a higher target for the next allocation period which would potentially allow for them to have surplus target.

Our response

Decision: UK Government and Devolved administrations have decided to implement the proposed approach to not allow the "banking" of overachievement against emissions target between allocation periods.

Rationale: This is due to a number of installations' production levels reducing in Phase III without their capacity changing resulting in a large surplus of emissions target. Even a small reduction in activity each year accumulates quickly; this weakens the impact of targets, particularly if these changes occurred early in the Phase. Targets have been designed to

ensure compliance with the emissions reductions required by the EU ETS. Not allowing the banking of target between allocation periods allows for UK Government and Devolved Administrations to be confident operators on the simplified scheme are complying with the emissions reduction requirement of the system.

In the main scheme of the EU ETS, banking between allocation periods and phases is allowed and rules regarding changes to activity levels will be introduced to Phase IV to address the problem of production level changes: a two-year rolling activity level average is taken from operators and their free allocation is updated accordingly. The Article 27 Scheme does not have a similar provision in place; the reason is because the Scheme is designed to be much simpler. Operators would be required to submit data each year to have a similar system in place to the main scheme and this would undermine the purpose and simplicity of the scheme.

Whilst we acknowledge the concerns raised, on balance we believe that at present banking of targets between allocation periods should not be adopted. The scheme is voluntary and if operators would like to gain the benefits of banking between allocation periods through e.g. long term technological investments they are encouraged to enter the main scheme of the EU ETS.

Consultation question:

61. Do you agree with the proposal to simplify the scheme, by offering one route to calculating Article 27 emissions targets for Phase IV – i.e. through the historical emissions methodology and not projected preliminary allocation methodology?*

***To note: this is a correction to the wording in the consultation which referenced NIMs.**

Summary of responses

There were 29 responses received, and 86% (25 respondents) were in favour of the proposal across all sectors, except paper (1 respondent). 88% (14 respondents) of participants of the EU ETS and 92% (12 respondents) of operators eligible for the Article 27 Scheme were in favour of the proposal.

Feedback from respondents confirmed that only allowing the historical emissions methodology will simplify the scheme for operators in line with the scheme's objective. Some respondents also felt that it provided a more accurate target for operators. One respondent felt more clarity was needed regarding the target-setting process for the Article 27 Scheme.

Of those not in favour of the proposal 14% (4 respondents), one respondent felt that it would increase the administrative burden as external consultants would be required, one felt that anomalies would not be accounted for, one respondent felt both methods should be valid until the full NIMs allocation is known and finally one respondent felt that NIMs does not reflect actual emissions of installations.

Our response

Decision: UK Government and Devolved administrations have decided to implement the proposal for the historical emissions methodology to be the sole route to calculating Article 27 emissions targets.

Rationale: This is due to supporting rationale from respondents that the projected preliminary allocation methodology is **not** favoured by operators. This was already apparent during Phase III where only 12 of 243 eligible operators utilised this method. The historical emissions methodology is favoured as it reduces administrative burden on operators as there is no requirement to undertake a full NIMs return. The proposed scheme is designed to be as simple as possible for operators and allowing one route to calculating Article 27 targets adds more simplicity to the scheme for operators and regulators and ensures consistency across the board. UK Government and Devolved Administrations can confirm that the historical emissions methodology does reflect the actual emissions of installations.

Operators may still wish to complete the full NIMs return using the historical emissions methodology if they would like to be eligible for free allocation should they re-enter the main scheme at any point. This was communicated to operators during the 2019 NIMs data collection.

Finally, more clarity was requested from operators over the calculation for targets for the opt-out schemes. Communications were sent out from UK regulators regarding this matter in the week commencing 19 August 2019. This was before operators had to state their intention to remain in the scheme on 31 August 2019 to allow sufficient time for their final decision.

Consultation question:

62. Do you agree with the proposal to simplify the scheme, by reducing the discretion for regulators in relation to the 'Regulation 55' penalty (for installations exceeding their emissions target)?

Summary of responses

Overall, there were 25 respondents and 67% (16 respondents) were in favour across a variety of sectors. Respondents not in favour (5 respondents) were from the cement and minerals (4 respondents) and ceramics (1 respondent) sectors. Of those eligible for the small emitter scheme (10 respondents), 50% (5 respondents) supported the proposal.

There was a variety of qualitative feedback from respondents. A few respondents supported the scheme as long as the right to appeal remained and provided that UK Government and Devolved Administrations could confirm regulator discretion would never be applied and the maximum penalty would always be issued.

Respondents who were not in favour of the proposal raised concerns with removing regulators' ability to apply discretion regarding penalties, for example in the event of errors in calculating targets or emissions, regulators would not be able to adjust the fines accordingly. Alongside this, it was stated that emissions produced are generally based on customer demand and not capacity. Respondents felt that operators of the scheme could end up being unfairly punished for an increase in production as they would be penalised for breaching their target, regulator discretion could account for this.

Our response

Decision: UK Government and Devolved administrations have decided to implement the proposal to remove regulator discretion in relation to Regulation 55 penalties.

Rationale: This is due to lessons learned from Phase III implementation, regulator's discretion was never exercised for penalties issued to Article 27 Scheme operators for exceeding their emissions target. By removing the discretion, it reduces the administrative burden and financial burden on regulators as they will not have to run an assessment of an operator's breach through their enforcement policies and operators will not have to respond to their assessment. This saving is passed on to the taxpayer as this element of work will no longer need funding.

Administrative burden is also reduced for operators as they will not need to respond to discretionary penalties being issued; it will always be the maximum penalty that was consistently issued during Phase III. As outlined in the consultation, operators do not lose the right to appeal if they believe the penalty is incorrect or disproportionate. UK Government and Devolved Administrations believe appeals will be unlikely because the penalty is designed to be a non-punitive measure to recover the costs of excess emissions only. The proposal in the consultation outlines that the penalty will be mandatory except in cases where there is an error in calculation of the target or the target is otherwise incorrect. In these cases discretion would still apply and regulators would apply an appropriate penalty.

Consultation questions:

63. Are there further simplifications that could be made for Phase IV Article 27 Scheme participants, respecting the provisions established by the ETS Directive?

64. Do you have any further general comments on the proposed UK Phase IV Article 27 Scheme not covered by the previous questions?

Summary of responses

There were 19 responses to question 63 and 67% (13 respondents) felt there were further simplifications that could be made to the Article 27 scheme. There were a variety of suggestions. Firstly, there were suggestions that more clarity could be provided concerning the NIMs submissions for installations which are close to the 25,000 tCO₂eq threshold. Linking to this theme, other operators believed that roundtable discussion between members of the scheme and regulators / government officials could help simplify the administrative aspects and that more could be done to assist operators in keeping up to date with published guidance and consultations.

There was support among respondents that there should be the option for new entrants to join the scheme and the option for operators who drop below the threshold in the main scheme to be able to join at the Article 27 scheme at any time.

There were several other requests not relevant to the Article 27 Scheme that have been addressed elsewhere in this response or will be addressed in the response to Chapters 1, 2, and 3 of the consultation.

Government response

Decision: UK Government and Devolved administrations will continue to work with regulators to issue communications to industry. Alongside this, it will remain as policy that new entrants are not able to enter the Article 27 Scheme.

Rationale: This is due to the feedback received to the consultation. UK Government and Devolved Administrations actively engaged with industry through regulators during the NIMs

process in the following ways: communications were issued throughout the process, a FAQ was published and a webinar was organised specifically for operators eligible for the Article 27 or 27a Scheme. Alongside this, regulators established helpdesks to assist with any further queries from operators. It is clear that more could be done from our perspective, particularly in making stakeholders aware of the opportunities for engagement and we will work with regulators to see if more communications can be issued or where clarity can be added. Once the consultation was published, Government officials were present at several locations throughout the UK (London, Solihull, Stoke-on-Trent, Hillsborough, Llandudno Junction, Swansea, Aberdeen and Glasgow) to answer any questions from industry, often through roundtable discussions.

From the responses to the consultation it's clear that more could be done to collaborate with industry. Working with DAs and regulators, HMG will explore further opportunities to engage industry to add general and legislative clarity to the Scheme.

Communications were issued in August (newsletter), February (newsletter) and April (Frequently asked questions (FAQ)) to industry advising that the decision to undertake a full NIMs return is primarily down to operators who are eligible for the Article 27 Scheme. UK Government and Devolved Administrations advised that any operators who felt they may enter the main scheme and require free allocation should undertake a full return, for instance, those who are close to the threshold.

According to the ETS Directive membership or re-entry is only possible at the start of each allocation period.

It is not possible for new entrants to enter the Article 27 Scheme. New entrants entering would be required to enter the main scheme but can join the Article 27 Scheme at the second allocation period in 2026. The ETS Directive states that Member States must submit a list confirming all installations who wish to be eligible for the scheme and ensure that installations have equivalent emissions reductions in place. These lists must be submitted on 30 September 2019 and 2024, with their eligibility confirmed in the NIMs returns on 30 June 2019 and 30 May 2024. As a result, they would not have sufficient data to prove they are eligible for the scheme in time and regulators would not be able to confirm the installations have equivalent measures in place.

Article 27a Provisions

Consultation questions:

65. Do you support the proposed implementation of an Article 27a exemption scheme, as a proportionate measure to simplify the scheme and reduce administrative burdens for installations with very low emissions?

66. Are you responding on behalf of an installation that emitted less than 2,500t CO₂eq annually in the years 2016, 2017 and 2018?

Summary of responses

There was support for question 65 and the implementation of the Article 27a exemption scheme with 79% (22 respondents) in favour of the total 28 respondents, across a variety of

sectors, participants / non-participants and across all geographical locations. Of those who were eligible for the scheme (6 respondents), all were in favour of its implementation.

There were 44 respondents to question 66 and 23 % (10 respondents) were eligible for the Article 27a scheme across all geographical locations and a variety of sectors.

Respondents were also in favour of UK Government and Devolved Administrations decision not to implement a thermal input capacity threshold. Respondents agreed that not having this threshold allows installations with a high capacity but low activity and who were not eligible under the Article 27 Scheme, to take advantage of a simplified scheme.

Of those not in favour, they felt there was a disparity between other parts of the scheme in terms of simplicity and that the objectives of the EU ETS could be undermined. There was also concern that only a handful of operators would be able to benefit from the scheme.

Our response

Decision: UK Government and Devolved administrations have decided to implement the Article 27a Scheme should the UK progress into Phase IV of the EU ETS.

Rationale: This is due to there being a large majority of support from respondents, particularly those who would be eligible for the scheme.

Many operators who meet the eligibility criteria of the Article 27a Scheme would not be eligible for the Article 27 Scheme (104 operators), this is because they have a thermal capacity of greater than 35MW but are below the emission thresholds. The EU ETS should be as beneficial as possible to UK industry. By not implementing a thermal input capacity, smaller industries who require a high capacity but have very little activity will gain the benefits of the simplified scheme (reduced financial and administrative burden).

Some respondents felt there was a disparity in complexity to other parts of the system. UK Government and Devolved Administrations believe the disparity is appropriate because eligible operators only contribute 0.1% of UK EU ETS emissions and so it does not seem appropriate for them to have the same financial and administrative burden of the main scheme.

Consultation questions:

67. Do you agree with the process outlined for an installation's entry onto the Article 27a scheme?

Summary of response

There were 19 responses to this question and 53% (10 respondents) were in favour of the proposal across a variety of sectors. Representatives from the paper and chemicals sectors were not in favour. Of those who were eligible for the scheme, 50% (3 respondents) agreed with the proposal.

In the qualitative feedback provided there was significant opposition from respondents to the requirement of three years of third-party verified data. Suggestions to avoid this requirement included random auditing to ensure operators are below the threshold and that UK Government and Devolved Administrations should do more to ensure that operators without complete data could enter the scheme.

Our response

Decision: UK Government and Devolved administrations intend to proceed with the proposal of requiring three years of third-party verified data.

Rationale: This is due to UK Government and Devolved Administrations being unable to accept incomplete data to enter the scheme. We recognise the administrative challenges for industry when complying with the EU ETS. The Article 27a Scheme has been designed to minimise administrative burden for operators. However, it is important that we have confidence that those operators taking advantage of Article 27a are eligible to do so. Although the emissions produced by eligible operators is low, their thermal capacity input is often quite high. Operators could potentially breach the 2,500 tCO₂eq threshold significantly. As outlined in the consultation, it will be up to Article 27a operators to maintain their monitoring plans: the only obligation on operators is to remain below the 2,500 tCO₂eq per annum threshold and report any breaches. The requirement for three years of verified data reduces the risk of non-compliance and allows for a light touch approach from regulators throughout the allocation period. UK Government and Devolved administrations will be publishing guidance to assist operators and have published communications throughout the NIMs process to add clarity for operators.

Consultation question:

68. Do you agree with the UK Government's and the Devolved Administrations proposed approach to penalising operators who exceed the emissions threshold and do not report, including the timelines for notification and other administrative issues?

Summary of responses

There were 20 responses in total to this question and 80% (16 respondents) were in favour of the proposal. There were 6 respondents who were eligible for the scheme and 50% (3 respondents) were in favour of the proposal. Respondents from across all sectors, with exception to the ceramics sector, were also in favour of the proposal.

Respondents who favoured the proposal, including those eligible for the scheme, felt the proposed penalty was proportionate to ensure compliance with the scheme.

Respondents who did not support the proposal felt a penalty should be proportional to operator's size and emissions level. Others felt that Regulator discretion should be applied.

Our response

Decision: UK Government and Devolved administrations intend to implement the proposed approach of operators being penalised for operating without a permit if they exceed the emissions threshold and do not report. We also plan to implement the suggested timelines of requiring operators to report a breach within three months of the end of a calendar year. If they fail to report the breach in time, operators will be fined for all emissions for that year and all subsequent years in line with the penalties outlined.

Rationale: This is due to the stakeholders agreeing with the requirements of the ETS Directive that all penalties issued to operators must be proportionate, and effective. UK Government and Devolved Administrations believe the suggested proposed penalties are in line with the ETS Directive for several reasons. Firstly, since operators taking part in the Article

27a Scheme have a simplified approach, there needs to be a sufficient deterrent for non-compliance. Secondly, regulator discretion would still be applied to the penalty for operating without a permit and regulators can make a judgement on the value of the penalty (up to the maximum amount). Similarly to Article 27, if operators exceed the threshold, the penalty is designed to ensure that operators account for all of their excess emissions.

It should be noted that UK Government and Devolved Administrations have allowed 3 months before the end of each calendar year for operators to report a breach of the threshold and alert regulators they have been carrying out a regulated activity without a necessary permit. This gives ample time to notice errors if they have occurred in monitoring or to report threshold breaches. This penalty is designed to ensure that an operator pays for all costs they have avoided up this point by not complying with other parts of the system.

Consultation question:

69. Do you agree that operators entering the Article 27a Scheme should declare a preference for what should happen should they exceed the emissions threshold, to enable them to enter the Article 27 Scheme if necessary?

Summary of responses

There were 19 respondents to this question and 84% (16 respondents) were in favour of the proposal from across all sectors, bar ceramics, and geographical locations. Of those eligible for the scheme (7 respondents), 71% (5 respondents) were in favour of the proposal.

Respondents generally favoured the proposal. A respondent raised again that emissions production is based on consumer demand and can be unpredictable. Another respondent also suggested that all respondents should automatically join the Article 27 Scheme should they exceed the threshold.

Our response

Decision: UK Government and Devolved Administrations will implement the proposal to allow operators the choice of which scheme to join should they exceed the emission threshold.

Rationale: This is due to high volume of positive responses in favour. UK Government and Devolved Administrations would also like to allow as much flexibility as possible for operators. Some operators may wish to be eligible for free allocation in the main scheme should they exceed the emissions threshold (operators wishing to be eligible must have completed a full NIMs return). The Article 27a Scheme also does not have a 35MW thermal capacity cap that the Article 27 Scheme does. This means that some operators may not be eligible to enter Article 27 Scheme upon breaching the 2,500 tCO₂eq threshold and will be required to enter the main scheme.

UK Government and Devolved Administrations expect that by requiring three years of data from operators at each NIMs return, it should be clear if an operator will remain eligible for the Article 27a Scheme for the duration of the allocation period taking into account the variation in production that can occur at installations. Installations closer to the 2,500 tCO₂eq threshold or installations that think it likely they may require reserve or back-up generator with a large potential thermal input capacity (>35MW) will need to consider more carefully whether they should submit a full NIMs return.

Consultation question:

70. Are there further simplifications that could be made for Phase IV Article 27a Scheme participants, respecting the provisions established by the ETS Directive?

Summary of responses

There were 16 respondents to this question and 56% (9 respondents) felt there were further simplifications to be made to the Article 27a Scheme in line with the ETS Directive.

There were several requests to increase the threshold of the scheme and similarly to the Article 27 Scheme feedback, respondents felt there should be the option to enter the Article 27a Scheme mid-allocation period should operators go below the 2,500 tCO₂eq threshold.

Finally, operators stated that they did not fully understand the distinction between the requirements imposed by the ETS Directive and UK legislation.

Our response

Decision: UK Government and Devolved Administrations have decided to maintain the provision to not allow operators to enter the Article 27a Scheme mid-allocation period. We will also make sure to issue communications when the guidance is published.

Rationale: This is due to the overall support for the scheme from respondents and the fact there will be two opportunities for operators to join the scheme before each allocation period (June 2019 and May 2024), this provides more flexibility from Phase III (where there was only one opportunity before the Phase started) and UK Government and Devolved Administrations hope that operators take advantage of this opportunity.

Similarly to the Article 27 Scheme, operators would not be allowed to enter the scheme for the first time mid-allocation period. Operators are only eligible for the schemes if they have been included as part of the list of installations which has been submitted with the NIMs return ahead of each allocation period. Operators would not be allowed to re-join the scheme either if they have breached the 2,500 tCO₂eq threshold previously during the same allocation period. It is an ETS Directive requirement for three years of verified data, this means there are minimal scenarios where an operator could legally re-join the scheme in an allocation period. Alongside this it would be administratively burdensome for regulators to allow operators to re-join the scheme mid-allocation period, regulators would have to revoke their permits and cancel registry accounts if operators had been in the main scheme.

In the coming months, guidance will be released around the implementation of the Article 27 and 27a Schemes. If operators are concerned about their interpretation of legislation and their requirements, UK Government and Devolved Administrations recommend they contact their Regulator.

Consultation question:

71. Do you agree with the proposed approach to not implement the Article 27a provision on reserve or backup generators?

Summary of responses

There were 23 respondents to this question and 57% (13 respondents) were in favour of the proposal. Respondents from the cement and minerals sector expressed reservations on the proposals. Respondents from across all other sectors were split equally between those in favour and those against the proposal. There was a divide amongst geographical locations as well, with respondents from Scotland (2 respondents) favouring the proposal but a respondent from Wales contesting it. Within England (4 respondents), there was a 50/50 split. There were no respondents from Northern Ireland. Respondents who represented UK-wide interest (17 respondents) were 59% (10 respondents) in favour of the proposal.

Several of the respondents agreed with UK Government and Devolved Administrations that reaching an agreement on the definition of a "reserve or backup unit" would be difficult and that the current proposal ensures that there is consistent treatment for small-scale installations. Several respondents supported UK Government and Devolved Administrations' justification but one respondent felt there should be specific situations where operators can exclude back-up generators that do not operate up to 300 hours. The respondent did not state the circumstances.

Of those who didn't agree, many respondents felt that Article 27a operators should be allowed to operate backup generators for up to 300 hours without having to account for their emissions as the proposal is in the main EU ETS scheme.

One respondent felt that it was possible to aggregate generator-run hours and report them in an auditable manner.

Our response

Decision: UK Government and Devolved Administrations have decided to not implement the provision to exclude reserve back-up units from the EU ETS for up to 300 hours for Article 27a operators.

Rationale: UK Government and Devolved Administrations appreciate the views raised by stakeholders and we have considered them carefully but the main concerns that were highlighted in the consultation still remain valid.

The main concerns outlined were:

Firstly, there are practical implementation challenges concerning how this would be monitored and verified. Measures for the robust and reliable monitoring and verification (MRV) of annual emissions are a tried and tested feature of the EU ETS. Operating time is not part of the current EU MRV framework and we would have concerns over how to reliably incorporate this aspect into existing domestic MRV provisions without imposing significant new administrative burdens.

Secondly, we can see how in some circumstances the implementation of this measure could lead to a large volume of emissions being removed from the EU ETS. For example:

- a. Individual large and energy intensive backup units can run for less than 300 hours and still generate a high volume of CO₂eq.
- b. An installation could operate several backup units, each operating for less than 300 hours per year, but collectively emitting a large volume of CO₂eq.

c. The removal of one or more of these units could lower the overall installed capacity of an installation to below 20MW, thereby taking the entire installation (and its emissions) out of the EU ETS.

Thirdly, there is no clear definition on exactly what constitutes a 'reserve or backup unit' and attempting to agree one would likely prove controversial. Lastly, we feel that setting a quantifiable de minimis emissions threshold for inclusion in the EU ETS is more in keeping with the overall objectives of the ETS Directive (i.e. a system to monitor and drive reductions in GHG emissions) than setting an operational duration threshold.

Finally, we would also like to clarify that there is not a similar proposal as part of the main scheme.

Consultation question:

72. Assuming you are in scope, would you choose to take advantage of the proposed Article 27a Scheme for Phase IV?

Summary of responses

There were 11 respondents to this question and 91% (10 respondents) were in favour of this proposal across all sectors and all geographical sectors. The one respondent who was not in favour was not a participant of the EU ETS.

Not all sectors responded to this question but of those who did (cement and minerals, ceramics, food, power and other) all were in favour of the scheme and felt that it would definitely reduce the administrative burden on operators.

Those who were not in favour requested an increase of the threshold. One respondent made the general comment that the scheme did not promote fairness across the EU ETS.

Our response

Decision: UK Government and Devolved Administrations have decided to implement the scheme should the UK participate in Phase IV of the EU ETS.

Rationale: This is due to the overall positive reception to the scheme from industry. Analysis also shows that the emissions produced by those eligible for the scheme make up 0.1% of emissions produced by UK EU ETS participants but the administrative and financial burden of the main scheme can be disproportionate for them. As a result, the simplified scheme is a fairer and more appropriate approach for the smaller installations.

Consultation question:

73. Do you agree to the proposed use of penalties for implementing Article 27a?

Summary of responses

There were 20 respondents to this question and 90% (18 respondents) were in favour of this proposal across all sectors, bar paper.

One respondent felt that it was important for penalties to be proportional to emissions produced.

One respondent felt that the measures for mistakes are unfair and may discourage other operators from declaring such errors and that judgement should be made on the culpability of the operator.

Our response

Decision: UK Government and Devolved administrations intend to implement the proposals of a penalty for exceeding the emissions threshold for an excluded installation for a breach of the 2,500 tCO₂e_q threshold or the operating without a permit penalty if they fail to report a breach and apply for the relevant permit.

Rationale: This is due to the positive response from respondents. These are in line with the Article 27 Scheme and UK Government and Devolved Administrations feel the penalties are a proportionate measure. All penalties can be appealed if operators believe the penalties have not been effective, proportionate or dissuasive.

Regulators can apply discretion to both penalties; operators who have believe they may have an uncovered error are encouraged to notify regulators immediately. This will allow regulators sufficient time to assess the culpability of the operator.

Consultation question:

74. Do you have any general comments on the proposed UK Phase IV Article 27a Scheme, not captured by the previous questions?

Summary of responses

Respondents outlined requests for reserve or backup generators to be included in the scheme.

Our response

Requests around reserve backup generators have been outlined in the response to question 71.

Further changes for Phase IV, not mandated by EU legislation

Consultation question:

75. Do you agree with each of the proposed penalty increases outlined in Annex C?

Summary of responses

There were 25 respondents to this question and 63% (16 respondents) were in favour of this proposal across a variety of sectors. Representatives of the steel (2 respondents) and chemicals (4 respondents) sectors were not in favour and fossil fuels (2 respondents) had an even split. Respondents from Scotland (2 respondents) were also not in favour of this proposal.

Some respondents felt that the penalties were still too low, others were in agreement with the changes and some felt the penalties in Phase III were sufficient.

Several respondents who were against the increase in penalties felt that they would not be an active deterrent and that the reasons for non-compliance generally relate to the complexity of the EU ETS.

Small emitters were singled out as having disproportionate administrative burden and that the penalties were unfair.

Others felt that the Regulator discretion should be removed from the penalties. Finally, there was a comment that the penalties should remain as they are and should be the responsibility of the Devolved Administrations.

Our response

Decision: UK Government and Devolved administrations intend to implement the proposed penalty increases.

Rationale: This is due to supporting rationale put forwarded by the Environment Agency (EA), in consultation with all other regulators. The Regulator updated their Enforcement and Sanctions Policy (ESP) and now use a stepped approach based on the Sentencing Guidelines in applying their discretion. When applying these steps to the existing EU ETS penalties, the EA concluded many of the **maximum** penalties are too low to be considered dissuasive compared to the seriousness of the breach. It's important to note that the EA only represents England and whilst the maximum penalty will increase for all the UK and DAs, devolved regulators will maintain their own competence regarding their own ESP's. As outlined above, input was received from the all regulators in developing the EA's new ESP so divergence will be minor comparatively. Regulators do not have to issue the maximum penalty and Regulator discretion will still apply to all penalties except for Regulation 55 (Exceeding an emissions target for an excluded installation). All penalties will still be open to appeal.

One respondent felt small emitter (Article 27 Scheme) operators had disproportionate penalties and administrative burden. UK Government and Devolved Administrations designed the scheme to reduce burden for operators and generally the reception has been very positive. The penalty for Article 27 Scheme operators exceeding their emissions target is designed to be non-punitive and works out as the equivalent of the carbon price.

Throughout the responses to the Phase IV chapter it was clear that respondents felt there was a lot of administrative complexity in the scheme and more could be done to improve clarity for operators. UK Government, Devolved Administrations and regulators have measures in place to actively engage with industry and offer support through FAQs, guidance, events, roundtable discussions and webinars. We will be updating guidance documents and will engage with affected stakeholders to ensure a smooth transition.

Consultation question:

76. Do you agree with the proposed changes outlined in this section?*

***Regarding technical changes proposed in section E of the consultation designed to reduce administrative burden for operators.**

Summary of responses

There were 24 responses to this question and 88% (21 respondents) were in favour of the proposals from across all sectors, bar chemicals (2 respondents) who were divided. One respondent from Scotland did not agree with the proposals, however, it was clear the concern was mainly around the Regulatory responsibility for Carbon Capture Storage (CCS) Pipeline.

Most of the other qualitative comments were around the Regulatory responsibility of CCS. Most respondents were appreciative of the added clarity. One respondent stated that technologies are being developed around CCS and a high carbon price would prevent further investment and make the projects untenable.

Finally, one respondent said that the legislation does not allow for operator re-verification if they notice an error in emissions but the transparency of the scheme could be improved if this was allowed.

Our response

Decision: UK Government and Devolved administrations intend to implement all proposals, with the exception that the proposals for BEIS-OPRED to be directed to relevant Ministers to act as the Regulator for CCS pipelines requires further consideration.

Rationale: This is due to the concerns raised by respondents of the CCS pipelines proposal in Devolved Administrations. All the other proposals had positive feedback.

In relation to other responses, UK Government and Devolved Administrations would like to clarify that the legislation does allow for operators to report errors in their emissions and allow for re-verification. As outlined in Annex C, UK Government and Devolved Administrations propose to amend the legislation (Regulation 54 of the 2012 GHG Regulations) to reflect a judgment of the CJEU¹. The judgement clarified that the mandatory €100 per tCO₂eq penalty in the ETS Directive (Article 16(3)) does not apply in circumstances where an operator or aircraft operator initially surrendered enough allowances to cover their verified emissions, but it is subsequently discovered that there has been an error in original verified emissions. The mandatory penalty of €100 would apply only to a failure to surrender allowances equal to verified annual reportable emissions by the relevant deadline. A separate penalty would be applied where subsequent errors in verified emissions reports are discovered by the regulator or operator/aircraft operator. The penalty will remain at the sterling equivalent of €20 per allowance. These subsequent errors could be reported by either the Operator or Regulator.

Article 13 of the Monitoring and Reporting Regulation

Consultation questions:

77. Do you think the implementation of Article 13 would be beneficial? (Y / N)

If implementing this derogation, what should be the UK's priorities, and what would you like to see from such a measure? What are the possible risks that you can identify from undertaking this approach?

¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62014CJ0148&from=EN>

78. Would you be happy to work with government and regulators to further explore these options on Article 13 of the MRR in advance of Phase IV?

Summary of responses

There were 29 respondents to question 77 and 93% (27 respondents) were in favour of the proposal from across all sectors. Wales had one respondent to this question, and they were not in favour of the proposal. Respondents from all other nations were in favour of the proposal.

There were 37 respondents to question 78 and 86% (32 respondents) were happy to work with UKG, DAs and regulators to further explore the implementation of Article 13 of the MRR.

Of those respondents that were in favour of the proposal, it was clear that any measures to reduce the administrative burden for operators would be welcome. One respondent said there should also be consistency across the main scheme and the Article 27 and 27a schemes.

Many of the respondents in favour of the scheme had further comments. Several respondents felt the proposed measures would be beneficial but designing a template for refineries would be resource intensive for operators due to the complex nature of their monitoring plans. It was felt that other areas of Phase IV implementation should be prioritised first.

Finally, a mixture of those in favour and not in favour of the proposal felt better guidance for the requirements would be more beneficial, particularly sites that were particularly complex.

One respondent felt that the scheme was already simple enough.

Our response

Decision: UK Government and Devolved administrations intend to implement Article 13 into domestic legislation and work with industry to further explore the options of simplified monitoring plans.

Rationale: This is due to there being large support from across all sectors and respondents. UK Government and Devolved Administrations also welcomed that a large majority of respondents and industry would be happy to work with government and regulators to implement this provision. As outlined previously, UK Government and Devolved Administrations have implementation plans to lay two Phase IV SIs. This is to ensure that all essential transposition requirements are met, time will then be available to put further thought into other areas of Phase IV. UK Government and Devolved Administrations' priority is to ensure a smooth transition for industry and that any policy decisions made are well-considered and consulted on. Stakeholder feedback will be essential to ensure the policy is as beneficial as possible for UK industry. It has been noted that specific simplified monitoring plans may take more time to complete than others, UK Government and Devolved Administrations will work with regulators and industry to ensure the more complex plans are adequately designed. To maximise benefits for industry there may be scenarios where simplified monitoring plans are introduced after the start of Phase IV.

The priorities stated by respondents aligns with UK Government and Devolved Administrations, to reduce the administrative burden of compliance and increase the effectiveness of the system through this proposal. Operators should be aware that Article 13 of the Monitoring and Reporting Regulation (MRR) does not guarantee simplified monitoring

plans for everyone, the ability to utilise said plan would subject to the outcome of a risk assessment.

There have been more general comments about the need to provide operators with more clarity on the administrative processes of EU ETS. As outlined previously in this response UKG, DAs and regulators have been actively engaging with industry but will look into ways to improve clarity across the scheme.

Final comments

Consultation questions:

79. Do you have any further comments or questions on the content of this consultation chapter?

Summary of responses

There was a selection of comments put forward for this section. Several respondents expressed preferences for the other future approaches to carbon pricing noted in the consultation document.

Our response

Please see the response to chapters 1, 2 and 3 for further details on these approaches.

Next steps:

- The first associated SI will be laid at the time of this publication.
- Stakeholders will be informed of plans for the second SI in due course.
- We will work with all necessary stakeholders to implement any suggested actions in this document.

Contact details:

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Annex 1

Aldersgate Group

Association for Decentralised Energy

Avocet Risk Management Limited

BP

British Ceramics Federation

British Energy Efficiency Federation

British Glass

British Helicopters Association

British Sugar

Carbon Capture and Storage Association

CBI

Cemex UK

Centrica

Chemical Industries Association

Christian Aid

Confederation of Paper Industries

Diary UK

Drax

E.on

EDF Energy

Emissions Trading Group

Energy Catapults System

Energy Intensive Users Group

Energy UK

Environment Agency

Europex

FABRA UK

Food and Drink Federation

Gatwick Airport

Greenhouse Think Tank

Heathrow

IATA

International Emissions Trading Association

Law Society of Scotland

London Underground

LSE and Oxford

Make UK & UK Steel

Manufactures Climate Change Group

Mineral Products Association

Net Zero

nPower

Orsted

Project Developer Forum

REA

Renewable Energy Association

Rockwool

RWE Supply and Trading

Sandbag

Scottish Power

SMMT

Solar Trade Association

SSE

Tech UK

Tees Valley Combined Authority

Continued UK membership of the EU ETS for Phase IV: summary of responses, and UK Government and Devolved Administrations' response to consultation

The Coefficient Company

The Scottish Whisky Association

Transport & Environment

Triton Power

UKPIA

Uniper

Vattenfall

Veolia

Wood Panel Industries Federation

Citizens' Climate Lobby UK (40 Respondents)

46 confidential responses were also received

This publication is available from: www.gov.uk/government/consultations/the-future-of-uk-carbon-pricing

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