



Department for  
Business, Energy  
& Industrial Strategy

# ENERGY INTENSIVE INDUSTRIES (EII)

Compensation for the indirect costs of the EU  
Emissions Trading System and the Carbon  
Price Support mechanism

Guidance for applicants



**OGL**

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# Introduction

1. The UK Government is committed to reducing greenhouse gas emissions and in June 2019 became the first major economy in the world to pass laws to end its contribution to global warming by 2050<sup>1</sup>. This net zero emissions target requires a transformation of the UK economy, including the energy market, while keeping energy costs down for businesses and consumers, and maintaining competitiveness.
2. A key driver for investment in low carbon technologies, including electricity generation, is carbon pricing. The EU Emissions Trading System (EU ETS) has created a Europe wide market for carbon, meaning that businesses and investors factor in the price of carbon when making production and investment decisions. To further improve the functioning of the carbon market, the UK has introduced a Carbon Price Support (CPS) mechanism.
3. The Government recognises that carbon pricing through the EU ETS and CPS will have a knock-on effect on the wholesale electricity price and increase retail electricity prices in the short to medium term. Rising electricity costs can pose a risk to the UK's most electricity-intensive businesses, particularly those which operate in internationally competitive markets and are unable to pass these costs through to consumers.
4. In recognition of this, the Government has sought and obtained approval from the European Commission to compensate those electricity intensive industries whose competitiveness may be most at risk. This guidance sets out how businesses can claim compensation for the indirect costs of the EU ETS and CPS.
5. The Government's current commitment is to provide compensation until 2020.

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<sup>1</sup> <https://www.gov.uk/government/news/uk-becomes-first-major-economy-to-pass-net-zero-emissions-law>

# 1. Eligibility

6. There are two steps to assessing whether a business is eligible to claim compensation for the indirect costs of the EU ETS/CPS:
  - The business must manufacture an eligible product in the UK within an eligible sector (determined by reference to the 4-digit NACE code<sup>2</sup>).
  - The business must pass a 5% filter test.
7. In this guidance the “applicant” refers to the legal entity manufacturing a product in the UK. This will typically be a business registered at Companies House.
8. Please note that these schemes have been approved under a separate State aid notification to the compensation/exemption schemes for renewable energy policy costs and therefore use an earlier version of NACE Codes (2007 version) and have a different business level test.

## 1.1 Eligible Sectors

9. The European Commission provided guidance to EU Member States on the compatibility criteria it will apply to State aid measures in this area through the “Guidelines on certain State aid measures in the context of the greenhouse gas emission allowance trading scheme post 2012” (hereafter referred to as the Commission’s Guidance)<sup>3</sup>. This sets out the list of eligible sectors and products.
10. In drawing up this list, the Commission used a test set out in the Commission’s Guidance. According to this test, sectors and sub-sectors are deemed to be exposed to a significant risk of carbon leakage if the intensity of trade with third countries is above 10% and the sum of indirect additional costs induced by the implementation of the ETS Directive would lead to an increase in production costs amounting to at least 5% of Gross Value Added (GVA)<sup>4</sup>.
11. The list of eligible sectors applies to compensation for the indirect costs of both the EU ETS and CPS<sup>5</sup>. Applicants will need to establish that they manufacture a product which falls within one of the eligible 4-digit NACE codes in Table 1 below<sup>6</sup> or in the case of NACE Codes 2111 and 2416 the products specified in Table 1. If a business does not manufacture a product in Table 1 it will not be eligible. Businesses that sell or resell eligible products without having manufactured them are not eligible.

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<sup>2</sup> NACE refers to the industry standard classification system used in the European Union and is used to classify economic activities.

<sup>3</sup> [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52012XC0605\(01\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52012XC0605(01)&from=EN)

<sup>4</sup> GVA is defined as earnings before interest, taxes, depreciation and amortisation and staff costs (including employer’s pension and national insurance contributions) (averaged over either the period 2005-11 or, if that is not available, the most recent period of at least six months).

<sup>5</sup> Indirect ETS and CPS costs – the ETS and CPS costs faced by electricity generators and passed through to the industrial consumer through their electricity bill.

<sup>6</sup> The first 4 digits of an 8-digit Prodcom code represent the sector of a product.

**Table 1: The list of eligible sectors**

<b>NACE code</b>	<b>Description</b>
1310	Mining of Iron Ore
1430	Mining of chemical and fertiliser minerals
1711	Preparation and spinning of cotton-type fibres
1810	Manufacture of leather clothes
2111	Only the following sub-sector within manufacture of pulp: 21111400 – Mechanical Pulp
2112	Manufacture of paper and paperboard
2413	Manufacture of other inorganic basic chemicals
2414	Manufacture of other organic basic chemicals
2415	Manufacture of fertilisers and nitrogen compounds
2416	Only the following products within NACE 2416 (manufacture of plastics in primary forms):  24161035 – Linear low-density polyethylene 24161039 – Low-density polyethylene 24161050 – High-density polyethylene 24163010 – Polyvinyl chloride 24164040 – Polycarbonate 24165130 – Polypropylene
2470	Manufacture of man-made fibres
2710	Manufacture of basic iron and steel and of ferro-alloys
2742	Aluminium production
2743	Lead, zinc and tin production
2744	Copper production

## 1.2 The 5% test

12. To ensure that compensation is appropriately targeted, businesses will also need to pass the '5% test'. To do this they will need to show that their indirect carbon costs (the combined costs of EU ETS and CPS) will amount to 5% or more of their GVA. Annex A sets out a worked example of how the 5% test is calculated.
13. The '5% test' is based on the quantitative test which the European Commission applied when developing the list of eligible sectors and sub-sectors. In order to pass the 5% test a business must:
  - Meet the test on a mean average basis over the historic years concerned – 2005-11 (the reference period); and
  - Be above the 5% line for at least 3 business financial years during those 7 years.
14. In calculating the indirect cost for eligibility for compensation, a business will need to apply the following carbon price and GVA data:
  - A carbon price of £19/MWh, real 2007 prices.
  - Average GVA data over the reference period (2005-11) in 2007 prices. GVA is calculated as EBITDA plus staff costs. GVA is in real terms and calculated by adjusting nominal GVA using HMT's GDP deflator<sup>7</sup>. To support applications the least favourable year can be excluded from this average.
15. For the purposes of the 5% test, electricity costs and GVA should be calculated at the aggregate "business" level – "business" meaning the legal entity which is manufacturing the eligible product.
16. To ensure that we do not compensate businesses that only pass this test because over the reference period they have negative GVA, any years with negative GVA will be treated as having a value of zero.
17. If available, businesses must use data for the period 2005-11 (the reference period). For a business which did not operate for all years in this reference period, eligibility will be calculated using the latest data available, with a minimum of two quarters of data required, up to the last three years of production. Once a business has four years of historic production on record, eligibility will be recalculated using the average of the last three years on record.
18. We recognise that there is a risk that some businesses which manufacture eligible electricity intensive products may fail the 5% test by virtue of their structure – for example a business may manufacture other non-intensive product(s) which lowers its overall aggregate level of electricity intensity. A business may therefore be treated as passing the 5% test if it can demonstrate to the satisfaction of the Secretary of State that:

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<sup>7</sup> <https://www.gov.uk/government/statistics/gdp-deflators-at-market-prices-and-money-gdp-june-2017-quarterly-national-accounts-june-2017>

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- The business only fails the 5% test because of the inclusion of business activity which does not relate to the manufacture of the eligible product(s); or
  - A business operating in the market and which manufactures the same product in the UK has passed the 5% test and is eligible for compensation.
19. There are State aid requirements in relation to ‘undertakings in difficulty’ (UIDs). As set out in the European Commission’s Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (the UID Guidelines)<sup>8</sup> “an undertaking is considered to be in difficulty when, without intervention by the State, it will almost certainly be condemned to going out of business in the short or medium term.” To implement the State aid requirements, an applicant is not eligible for the schemes if it is a UID at the point when its eligibility is assessed against the 5 % test.
20. We consider that a business is not a UID (and therefore can be eligible for the schemes) if any of the following apply:
- a) The applicant is not in any of the UID circumstances in paragraph 20 of the UID Guidelines (set out in Annex B).
  - b) The applicant is part of a larger group and the parent company is not in any of the UID circumstances in paragraph 20 of the UID Guidelines, as long as (i) the parent company has a controlling shareholding in the applicant and (ii) the parent company involves itself directly or indirectly in the management of the applicant and the two companies act in practice as a single economic unit.
  - c) The applicant is only in one of the UID circumstances in paragraph 20 of the UID Guidelines because of the policy costs that the schemes are designed to mitigate.
  - d) The applicant is an SME that has been in existence for less than three years, is not subject to collective insolvency proceedings and does not fulfil the criteria for being placed in collective insolvency proceedings at the request of its creditors.
21. The relevant business context may be taken into account when determining whether a business is a UID.
22. When applicants submit the information necessary to assess whether they meet the 5 % test, they must confirm that they are not a UID. BEIS will also carry out checks to determine whether an applicant is a UID and, where necessary, BEIS may require additional information from the applicant and/or its parent company to satisfy us on this point.

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<sup>8</sup> [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C\\_.2014.249.01.0001.01.ENG](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2014.249.01.0001.01.ENG)



## 2. How Compensation Is Calculated

23. Whilst the 5% test requires a calculation at the aggregate 'business-level', the amount of compensation due is calculated using installation level data. Businesses with multiple installations will therefore need to provide the information required for each installation in order to receive payments under the scheme. In this scheme an installation is defined as a stationary technical unit where one or more activities associated with the manufacture of the eligible product are carried out. This includes any other directly associated activities on that site.

### 2.1 Efficiency Benchmarks

24. As required in the Commission Guidance, we will use European Commission efficiency benchmarks when calculating compensation, if they are available. These benchmarks are at the PRODCOM level and are for specific electricity intensive products within the eligible sectors. These benchmarks are intended to compensate businesses for electricity usage, based on the most efficient process for the manufacture of that specific product and can be accessed at:

<http://eur-lex.europa.eu/LexUri/LexUriServ.do?uri=OJ:C:2012:387:0005:0013:EN:PDF>

25. Some eligible products do not have specific benchmarks (usually due to data limitations) and the Commission has therefore set a 'fall back' value that can be used. The fall back benchmark is 0.8 meaning 80% of electricity used for the manufacture of the product is taken into account in the calculation formula. Where there is no specific benchmark, the Government will apply this fall back benchmark.

### 2.2 Aid intensity

26. The Commission Guidance states that the aid intensity must not exceed 80% in 2017 and 2018; and 75% in 2019 and 2020. We currently apply this maximum aid intensity level. However, we have set an overall budget limit for these schemes and if there is a risk of budget overspend we may choose to reduce the aid intensity. If we do this, we will update this guidance and notify businesses in receipt of EU ETS / CPS compensation first.

### 2.3 CO<sub>2</sub> emissions factor

27. The cost of the EU ETS faced by electricity generators is based on the amount of carbon consumed and emitted. For each Member State, the European Commission assessed the average carbon content of electricity supplied by fossil fuel plants. This is then used to establish a CO<sub>2</sub> emissions factor. For the UK this is a maximum of 0.58 tCO<sub>2</sub>/MWh. In line with the Commission's Guidance, we will use this figure in calculating compensation. The same factor will be applied to all sources of electricity supply whether it is eligible auto generation, electricity supply contracts or grid supply.

## 2.4 EUA forward price

28. 'EUA forward price' will be calculated using the mean average of the daily one-year forward EUA prices (closing offer prices) for delivery in December of the year for which the aid is granted, as observed in the carbon exchange, Intercontinental Exchange, from 1 January to 31 December of the year preceding the year for which the aid is granted. For example, for aid granted for 2019, it is the simple average of the December 2019 EUA closing offer prices observed from 1 January 2018 to 31 December 2018 in that carbon exchange.

## 2.5 Accounting for products with an efficiency benchmark

29. For products with an efficiency benchmark, compensation will be determined using 'baseline output' of the product. For installations operating every year from 2005 to 2011, this will be the average production of the eligible product in tonnes per year at the installation over the reference period 2005- 2011. The least favourable calendar year may be excluded from this seven-year reference period.
30. For installations which did not operate for all of the reference period or for new installations, the baseline output will be defined as the previous calendar year's data (which should be at least six months) scaled up to reflect expected yearly production at the installation until there are four years of operation on record. Once there are four years of production on record 'baseline output' will be calculated as the average of the latest three years and this baseline will be fixed for subsequent years.

## 2.6 Accounting for products without an efficiency benchmark

31. Where a product does not have an efficiency benchmark we will use 'baseline electricity consumption' and the fall-back benchmark to calculate the amount of compensation due. For installations operating every year from 2005 to 2011, 'baseline electricity consumption' is the average electricity consumption in MWh associated with the manufacture of the eligible product at the installation over the reference period 2005-2011. The least favourable calendar year may be excluded from this seven-year reference period.
32. For installations which did not operate for all of the reference period or for new installations, the baseline electricity consumption will be defined as the previous calendar year's data (which should be at least six months) scaled up to reflect expected yearly electricity consumption at the installation until there are four years of operation on record. Once there are four years of production on record 'baseline electricity consumption' will be calculated as the average of the latest three years and this baseline will be fixed for subsequent years.

## 2.7 Calculating EU ETS compensation

33. Where efficiency benchmarks are available for the products in question the amount of compensation payable in calendar year 't' will equal:

### Box 1 – Maximum compensation amount calculation

$$\text{Maximum Aid in Year } t = A_i t \times C t \times P_{t-1} \times E \times BO \times G_{t-1}$$

In this formula,  $A_i t$  is the aid intensity at year t, expressed as a fraction (e.g. 0.8);  $C t$  is the applicable CO<sub>2</sub> emission factor (0.58 tCO<sub>2</sub>/MWh) at calendar year t;  $P_{t-1}$  is the EUA forward price at calendar year t-1 (£/tCO<sub>2</sub>); E is the applicable product-specific electricity consumption efficiency benchmark; BO is the baseline output; and G is the percentage of electricity consumption which is liable for EU ETS rates in t-1<sup>9</sup>.

34. Where there is no published benchmark available for the product in question the amount of compensation payable in calendar year 't' will equal:

### Box 2 – Maximum compensation amount calculation

$$\text{Maximum Aid in Year } t = A_i t \times C t \times P_{t-1} \times EF \times BEC \times G_{t-1}$$

In this formula,  $A_i t$  is the aid intensity at year t, expressed as a fraction (e.g. 0.8);  $C t$  is the applicable CO<sub>2</sub> emission factor (0.58 tCO<sub>2</sub>/MWh) at calendar year t;  $P_{t-1}$  is the EUA forward price at calendar year t-1 (£/tCO<sub>2</sub>); EF is the fall-back electricity consumption efficiency benchmark; BEC is the baseline electricity consumption (MWh); and G is the percentage of electricity consumption which is liable for EU ETS rates in t-1.

## 2.8 Calculating CPS compensation

35. Where efficiency benchmarks are available for the products in question the amount of compensation payable in financial year 't' will equal:

### Box 3 – Maximum compensation amount calculation

$$\text{Maximum Aid in Year } t = A_i t \times C t \times R t \times E \times BO \times G_{t-1}$$

In this formula,  $A_i t$  is the aid intensity at year t, expressed as a fraction (e.g. 0.8);  $C t$  is the applicable CO<sub>2</sub> emission factor (0.58 tCO<sub>2</sub>/MWh) at financial year t;  $R t$  is the Carbon Price Support rate at financial year t<sup>10</sup> (£/tCO<sub>2</sub>); E is the applicable product-specific electricity consumption efficiency benchmark; BO is the baseline output; and G is the percentage of electricity consumption which is liable for CPS rates in t-1.

<sup>9</sup> See section 2.12 on which forms of electricity generation are eligible for indirect ETS and CPS compensation.

<sup>10</sup> [Agreed rates up to 2020-21](#)

36. Where there is no published benchmark available for the product in question the amount of compensation payable in financial year 't' will equal:

### Box 4 – Maximum compensation amount calculation

$$\text{Maximum Aid in Year } t = A_i t \times C t \times R t \times EF \times BEC \times G t-1$$

In this formula,  $A_i t$  is the aid intensity at year  $t$ , expressed as a fraction (e.g. 0.8);  $C t$  is the applicable CO<sub>2</sub> emission factor (0.58 tCO<sub>2</sub>/MWh) at financial year  $t$ ;  $R t$  is the Carbon Price Support rate at financial year  $t$  (£/tCO<sub>2</sub>); EF is the fall-back electricity consumption efficiency benchmark; BEC is the baseline electricity consumption (MWh); and  $G$  is the percentage of electricity consumption which is liable for CPS rates in  $t-1$ .

37. Although the CPS rates are given on a financial year basis, the production reference period will remain on a calendar year basis so that the data can be used consistently for both the EU ETS and CPS compensation schemes.

## 2.9 Installations that increase or reduce their production

38. Businesses must inform us if they significantly increase their capacity or reduce their production to enable us to ensure that they receive the correct level of compensation. Businesses should inform us of any significant changes through their quarterly declaration. This requirement applies to all applicants.
39. If, over the aid granting period, **an installation significantly extends its capacity for production of eligible products** then baseline output or baseline electricity consumption can be increased in proportion to this significant capacity (production) extension.
40. For the purposes of the EU ETS and CPS compensation schemes, a significant capacity extension means a significant increase in an installation's initial installed capacity whereby all of the following occur:
- one or more identifiable physical changes relating to the installation's technical configuration and functioning takes place other than the mere replacement of an existing production line; and
  - the installation can be operated at a capacity that is at least 10% higher compared to the installation's initial installed capacity before the change and it results from a physical capital investment (or a series of incremental physical capital investments).
41. In these examples, the business must submit evidence demonstrating that these criteria have been met and that the significant capacity extension has been verified as such by an independent verifier.
42. If **an installation significantly reduces its production of eligible products in eligible sectors** in a given calendar year, aid will be reduced corresponding to the baseline output/electricity consumption as follows:
- if less than 50% there will no reduction in the aid amount.

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- if between 50% and 75% an installation will only receive 50% of the aid amount.
  - if between 75% and 90% an installation will only receive 25% of the aid amount.
  - if by 90% or more an installation will not receive any compensation.
43. If an installation has a significant capacity reduction in one calendar year this will also apply to the next year's compensation. A business can submit production forecasts to prevent this output reduction from being applied to the next year's compensation calculations. These will only be taken into account if the Secretary of State is satisfied that the forecasts are sufficiently reliable to constitute evidence.

## 2.10 Changes to ownership of installations

44. In many cases, a change in ownership of an installation will be largely irrelevant and there should be no break in compensation. We will need to receive information on this including the date in change of ownership to ensure payment can continue uninterrupted. This could be submitted as part of a quarterly return. We will not need to reassess eligibility. We will pay the existing owner until the day before the date of transfer and will backdate compensation for the new owner to the date of the transfer of the installation.
45. In cases where businesses have sold an installation but still have other installations eligible for compensation, we will need to remove the sold installation from the baseline.
46. Where a business closes an installation but still has other installations we will remove the installation concerned from the baseline and re-baseline.

## 2.11 Installations making several products or a mixture of products with or without benchmarks

47. Compensation will only be due for the electricity associated with the manufacture of eligible products. Where an installation is manufacturing **both eligible and ineligible products** the business will need to isolate the electricity usage associated with the eligible product using one of the following methods:
- Provide evidence which clearly demonstrates the proportion of their electricity usage associated with the manufacture of the product in question – preferably, in the form of metered records; or
  - Base the electricity usage associated with the manufacture of an eligible product on the amount of that product being made (in tonnage) as a proportion of total production of all products.

## 2.12 Installations with on-site electricity production

48. For those applicants with non-grid electricity consumption, we will use data on the grid/non-grid split from the most recent calendar year to calculate compensation. For

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example, for compensation in 2020 we will use 2019 data. This split will then be used for the next calendar year. This offer will be amended at the end of 2020, on receipt of the annual return, to reflect the actual split in 2020. This process is designed to increase the accuracy of compensation payments.

49. We would encourage any business that expects a significant change in grid/non-grid consumption during the year to inform us as part of the regular quarterly declaration process.
50. Where businesses use auto generation, compensation will be due as follows:

### **For EU ETS and CPS:**

- Renewable auto-generation: no compensation will be due.
- Biomass co-firing: compensation will be due according to the percentage of fossil fuels used. In these cases, businesses should provide information which is consistent with that which is provided to HMRC for the purposes of the Carbon Price Support calculation. The calculation of compensation of eligible electricity will be based on the % of the previous year's fossil fuel use (for example compensation for 2019 will be based on the percentage of fossil fuel used in 2018 and reported in the end of year report in early 2019).

### **For EU ETS only:**

- Non-renewable Combined Heat and Power (CHP): compensation will be due for the electricity generated and used for production purposes only and not for any electricity which is exported to the grid.

### **For CPS only:**

- Non-renewable CHP: electricity generated through good quality CHP (the GQCHP Programme) is exempt from the CPS and will therefore not be compensated.
- Electricity generated from waste gases: this does not result in CPS costs and does not therefore warrant compensation.
- Other generation deemed not liable to [pay CPS rates as set out by HMRC](#) will not be compensated. This notice also provides guidance on how CHP is treated in the context of the CPS and includes information on the GQCHP Programme.

## 3. Scheme Administration

51. The compensation schemes for the indirect costs of the EU ETS/CPS are administered by the Department for Business, Energy and Industrial Strategy (BEIS) with payments being made quarterly and in arrears.

### 3.1 The process

52. There will be three administrative processes which will need to be undertaken by applicants:
1. **The initial application form:** completed at the outset of the claim. This forms the basis of the decision on eligibility and the calculation of compensation.
  2. **The quarterly declaration:** confirming that circumstances are largely unchanged, or notifying significant changes in levels of production, site closures or new installations. A satisfactory declaration will prompt the quarterly payment and should avoid unnecessary under/overpayments.
  3. **Annual Return:** setting out annual totals for tonnage produced and auto-generation at installation level for eligible products only, if possible.

### 3.2 The initial application form

53. The application form consists of three documents. The application form asks for information to help manage the schemes and the excel spreadsheets (forms B03 and B04) asks for electricity consumption and financial data. These forms are available on the GOV.UK website and should be completed by all businesses wishing to apply for relief from the indirect costs of EU ETS/CPS. They should be submitted via email to [energyintensiveindustries@beis.gov.uk](mailto:energyintensiveindustries@beis.gov.uk). The application form will require businesses to submit the following information:

**For eligibility purposes:**

- Business's name and evidence of its legal status (e.g. Companies House registration number).
- Contact name and details including role in the business.
- Business's overall electricity usage over the reference period (or over an alternative period outlined in this guidance if applicable).
- The aggregated GVA over the reference period.
- The product(s) produced by the applicant as defined at the 8-digit 'Prodcom' level, which falls within one of the eligible 4-digit NACE codes.

### **For compensation calculation purposes:**

- Details of installations being claimed for.
  - The output of eligible product (tonnage, from 2005-11, or over an alternative period outlined in this guidance, if applicable) for each installation being claimed for.
  - The electricity usage associated with the output of other (non-eligible) manufactured products at the relevant installations, if applicable.
  - Details of any electricity from auto-generation or other non-grid sources – the nature of the generation and how much is used for the manufacture of eligible product.
  - Bank account details.
54. Following receipt of the initial application form with satisfactory supporting information, BEIS will assess the applicant's eligibility and issue a letter to the business which will confirm whether or not the business is eligible for compensation, for which product(s) compensation will be payable, the quarterly payment rate, and when quarterly declarations will be due
55. Successful applicants will be compensated from the start of the month in which their application is received. There is no facility for the backdating of claims.

### 3.3 Quarterly Declaration

56. Quarterly declarations should also be submitted via email to [energyintensiveindustries@beis.gov.uk](mailto:energyintensiveindustries@beis.gov.uk). The form will require businesses to submit the following information:
- Confirmation that the business is still in operation.
  - Confirmation that no significant changes have occurred.
  - If significant changes have occurred, or are predicted to occur, details of these changes e.g. changes in production or details of any closed, opened or purchased installations.
57. The quarterly declaration should be submitted immediately following the three month period in question – i.e. from the first day after the period in question. If the quarterly declaration has not been submitted after a month has passed following the period in question, BEIS will issue a reminder to the business via email. If the declaration has not been returned by the business by the time the next quarterly declaration is due (i.e. by the first day after the subsequent three month period), the business's compensation claim will be stopped. Non-receipt of the email reminder cannot be used as a reason for non-return of the declaration form.
58. Where changes occur which significantly affect the levels of annual production (changes to levels of production as set out in the baseline output and baseline electricity consumption sections) and therefore the amount of annual compensation due, BEIS will recalculate the annual amount of compensation due, considering the new information. Adjustments will be made to the level of quarterly payments due for the remainder of the calendar year, and a letter issued to the business accordingly.



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59. Following receipt of the quarterly declaration and provided everything is as expected, BEIS will make a payment directly into the business's bank account.

### 3.4 Annual Return

60. Businesses will be required to submit an end of year return which will require a breakdown of production for the calendar year broken down by PRODCOM codes in tonnes and by installation. Where the annual return indicates under or overpayment, adjustments will be made to future payments. The correction will be made as quickly as possible and will apply to historic, as well as prospective, compensation payments.

### 3.5 Appeals

61. Businesses can appeal against decisions made regarding their eligibility or level of compensation if they consider that a decision is incorrect.

Appeals should be made in writing and can be sent via email to [energyintensiveindustries@beis.gov.uk](mailto:energyintensiveindustries@beis.gov.uk). They should clearly state that an appeal is being made, set out the grounds for appeal and be accompanied by any supporting evidence/documents that are to be relied on. Appeals will be determined on paper not via any oral hearing.

62. Appeals must be made within 20 working days of the date of the original decision (i.e. the date of the decision letter). Following receipt of an appeal BEIS will send an acknowledgement of receipt within two weeks and will seek to make a decision on the appeal within eight weeks of receipt of appeal.

### 3.6 Change of details

63. Any change of business details – e.g. names, addresses, and bank account details - should be provided to BEIS as soon as possible in writing.

### 3.7 Value Added Tax

64. Compensation payments for the EU ETS/CPS schemes are not subject to Value Added Tax.
65. When reporting electricity costs in the initial application, Value Added Tax should be excluded.

### 3.8 Data Protection and Transparency

66. We recognise that businesses will be required to provide commercially sensitive data to BEIS and, unless we consider that we are legally required to do so (for example, by the Freedom of Information Act 2000, the European Environmental Information

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Regulations 2004 or the approved terms of our State aid notification to the European Commission), we do not intend to make public commercially sensitive business data.

67. The Government is required to submit an annual report to the European Commission. This report will contain detailed information on the compensation paid out and the management of the scheme. It will not be published as it will contain commercially confidential information.
68. In addition, for CPS, in respect of businesses receiving compensation of €500,000 or more we must, for transparency purposes, specify their name, the total amount of aid received (within bounded ranges), the date the aid was awarded, the relevant region of operation (NUTS 2), NACE code(s) and the type of business (i.e. small or medium-sized enterprises (SME) or large company)<sup>11</sup>. This information will be published within six months of the 31<sup>st</sup> December of the year during which the aid reached the €500,000 threshold.
69. Otherwise, unless BEIS considers that it is legally required to make further information available, BEIS will only publish the names of businesses receiving compensation and will not publish details of unsuccessful applicants.
70. For Data Protection enquiries, your contact is The Data Protection Officer, Department for Business, Energy and Industrial Strategy, 1 Victoria Street, London SW1H 0ET. Telephone number 020 7215 6635.

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<sup>11</sup> An SME is defined as an “enterprise which employs fewer than 250 persons and has an annual turnover not exceeding €50 million, and/or an annual balance sheet total not exceeding €43 million”.

## 4. Monitoring and Assurance

71. The information provided by businesses, including the nature of the product businesses are making, the scale of production and the costs being faced must be accurate. We will undertake additional validation and checks if we feel they are necessary.
72. BEIS will monitor applications and compensation paid and will from time to time undertake further validation or investigation. This will include but is not limited to –
- Where a business is claiming a significant amount of compensation.
  - Where a case is complex – for example, a restructured business or an installation manufacturing several products.
  - Where the information being provided is significantly different from that declared with Companies House.
  - A random check of a sample of cases, by a BEIS official. In some cases, an independent verifier may also be used.

# Annex A – The 5% Test Calculation

## An example calculation of the 5% test

$$\text{COST IMPACT} = \frac{\text{CONSUMPTION (MWh)} \times \text{PRICE IMPACT (£/MWh)}}{\text{GVA (£)}}$$

CONSUMPTION and GVA are averages over the reference period, excluding the least favourable year from this average. The terms are defined as:

**CONSUMPTION** is average electricity consumption (MWh) by the business over the period 2005 to 2011, excluding the least favourable year.

**PRICE IMPACT** is impact of the EU ETS and CPS in 2020, assumed to increase electricity prices by £19/MWh in real 2007 prices.

**GVA** = Average real gross value added (GVA) (£) over the period 2005 to 2011 in 2007 prices, excluding the least favourable year. GVA is calculated as “Earnings before interest, taxes, depreciation and amortisation (EBITDA) plus staff costs (including directors’ remuneration, employers’ pension and national insurance contributions)”. GVA is in real terms and calculated by adjusting nominal GVA using HMT’s GDP deflator. Adjustment factors are shown in the following worked example.

## Worked Example

A firm has the following figures for electricity consumption, EBITDA, and staff costs:

	2005	2006	2007	2008	2009	2010	2011	Average (exc. 2006)
<b>Electricity (MWh)</b>	50	50	60	60	40	40	50	<b>50</b>
<b>EBITDA (a)</b>	2,500	3,000	3,500	3,000	(100)	0	500	
<b>Staff costs (b)</b>	5,000	5,500	6,000	5,500	4,000	3,000	4,000	
<b>GVA (a + b)</b>	7,500	8,500	9,500	8,500	3,900	3,000	4,500	
<b>Deflator</b>	1.06	1.03	1	0.97	0.96	0.94	0.92	
<b>Real GVA</b>	7,950	8,755	9,500	8,245	3,744	2,820	4,140	<b>6,067</b>

**Step 1** – GVA in each year is calculated by summing EBITDA and staff costs. For example, in 2005 the business made £2,500 profit with staff costs of £5,000 and had GVA of £7,500 (2,500 + 5,000)

**Step 2** – real GVA is calculated by multiplying GVA by the deflator. For example, in 2005 nominal GVA of 7,500 is multiplied by 1.06 to give a real GVA (in 2007 prices) of £7,950

**Step 3** – electricity consumption and real GVA is averaged over the period. Excluding 2006 from this average maximises the cost impact, so we exclude this year. For example, electricity consumption in each year is summed and divided by the number of years –  $(50 + 60 + 60 + 40 + 40 + 50) / 6 = 50\text{MWh}$

**Step 4** – cost impact is calculated by multiplying average electricity consumption by the price impact of £19/MWh. For example, average electricity consumption of  $50 \times 19 = \text{£}950$

**Step 5** – cost impact as a proportion of GVA is calculated by dividing the average cost impact (950) by average real GVA (6,067) = 16%

In the example above the business has cost impact as a proportion of GVA of 16%.

## Annex B – Extract from the European Commission Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (UID Guidelines)

Paragraph 20 of the UID Guidelines<sup>12</sup> says:

‘For the purposes of these guidelines, an undertaking is considered to be in difficulty when, without intervention by the State, it will almost certainly be condemned to going out of business in the short or medium term. Therefore, an undertaking is considered to be in difficulty if at least one of the following circumstances occurs:

- (a) In the case of a limited liability company, where more than half of its subscribed share capital has disappeared as a result of accumulated losses. This is the case when deduction of accumulated losses from reserves (and all other elements generally considered as part of the own funds of the company) leads to a negative cumulative amount that exceeds half of the subscribed share capital.
- (b) In the case of a company where at least some members have unlimited liability for the debt of the company, where more than half of its capital as shown in the company accounts has disappeared as a result of accumulated losses.
- (c) Where the undertaking is subject to collective insolvency proceedings or fulfils the criteria under its domestic law for being placed in collective insolvency proceedings at the request of its creditors.
- (d) In the case of an undertaking that is not an SME, where, for the past two years:
  - i. the undertaking's book debt to equity ratio has been greater than 7.5 and
  - ii. the undertaking's EBITDA interest coverage ratio has been below 1.0.’

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<sup>12</sup> [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C\\_.2014.249.01.0001.01.ENG](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2014.249.01.0001.01.ENG)

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