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Climate Change



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Proposed Amendments to the Greenhouse Gas Emissions Trading Scheme Regulations 2012

15D/364 17 July 2015



The consultation can be found on DECC's website:

<https://www.gov.uk/government/consultations/eu-ets-consultation-on-amendments-to-greenhouse-gas-regulations-2012>

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Introduction

This consultation seeks views on proposed changes to the implementation of the EU Emissions Trading System (EU ETS) in the UK. These changes are intended to:

- introduce rules for the allocation of free allowances to installations in the UK's small emitters and hospital opt-out scheme that must return to the full EU ETS because they have reached the upper emissions threshold for the opt out scheme; and
- clarify the existing rules on the start date of a permanent cessation of regulated activities by an operator in the EU ETS in the circumstances where a temporary cessation becomes permanent.

The consultation runs for six weeks until 28 August 2015 and is being conducted by DECC in England for the UK Government, and on behalf of the Northern Ireland Executive, the Scottish Government and the Welsh Government

We welcome responses from any organisation or individual but this consultation will be of particular interest to operators of installations in the EU ETS small emitters and hospital opt-out scheme.

Following the consultation we propose to lay legislation before Parliament with the intention that the changes take effect by early 2016.

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General information

Purpose of this consultation:

The purpose of this consultation is to seek views on proposed amendments to the 2012 Regulations that will:

- introduce rules for the allocation of free allowances to installations which have exceeded the emissions threshold and must therefore move from the opt-out scheme to the full EU ETS; and
- clarify the existing rules on the start date of a permanent cessation of regulated activities by an operator in the EU ETS in the circumstances where a temporary cessation becomes permanent.

The proposed amendments are in the draft Statutory Instrument attached as an Annex to this document.

The consultation runs for six weeks until 28 August 2015. Please note that any responses received after the closing date may not be considered.

Following the consultation the UK Government proposes to lay the amending Regulations before Parliament with the intention that they take effect by early 2016.

Who will this consultation be of interest to?

This consultation will be of particular interest to operators of installations in the EU ETS small emitter and hospital opt-out scheme. This consultation is not limited to these stakeholders; we welcome responses from any organisation or individual.

Issued: 17 July 2015

Respond by: 28 August 2015

Enquiries

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Consultation reference: URN **15D/364**– Proposed Amendments to the Greenhouse Gas Emissions Trading Scheme Regulations 2012

Territorial extent:

Policy responsibility for the EU ETS sits with DECC in England, and the Northern Ireland Executive, the Scottish Government and the Welsh Government in their respective countries. References to the Government in this consultation document should be read in that context. The proposed Regulations that are the subject of this consultation will apply throughout the UK.

The EU ETS regulators across the UK are:

- England: the Environment Agency (EA)
- Scotland: the Scottish Environment Protection Agency (SEPA)

- Wales: Natural Resources Wales (NRW)
- Northern Ireland: the Chief Inspector¹ for Northern Ireland
- Offshore industry: DECC

How to respond:

Your response will most useful if it is framed in direct response to the questions posed, though further comments and evidence are also welcome.

Additional copies:

You may make copies of this document without seeking permission. An electronic version can be found at <https://www.gov.uk/government/consultations/eu-ets-consultation-on-amendments-to-greenhouse-gas-regulations-2012>

Other versions of the document in hard copy, Braille, large print or audio-cassette are available on request. This includes a Welsh version. Please contact us under the above details to request alternative versions.

Confidentiality and data protection:

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information legislation (primarily the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004).

If you want information that you provide to be treated as confidential please say so clearly in writing when you send your response to the consultation. It would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded by us as a confidentiality request.

We will summarise all responses and place this summary on the [GOV.UK website](#). This summary will include a list of names or organisations that responded but not people's personal names, addresses or other contact details.

Quality assurance:

This consultation has been carried out in accordance with the [Government's Consultation Principles](#).

If you have any complaints about the consultation process (as opposed to comments about the issues which are the subject of the consultation) please address them to:

DECC Consultation Co-ordinator
3 Whitehall Place
London SW1A 2AW
Email: consultation.coordinator@decc.gsi.gov.uk

¹ "Chief inspector" means the chief inspector constituted under regulation 8(3) of the Pollution Prevention and Control Regulations (Northern Ireland) 2003

Executive Summary

Introduction

The EU Emissions Trading System

1. The EU Emissions Trading System (EU ETS) is the cornerstone of the EU's climate policy. The EU ETS is a 'cap and trade' scheme that limits emissions of greenhouse gases (GHG) in the power and industrial sectors. Participants in the EU ETS are required to monitor and report their emissions and surrender sufficient allowances (EUAs) to cover their emissions in each year. EUAs can be traded and abatement therefore occurs where it is most cost-effective and the overall cost of tackling climate change is lowered.

Implementation of the EU ETS in the UK

2. The Greenhouse Gas Emissions Trading Scheme Regulations 2012 ("the 2012 Regulations"²) implement the EU ETS in the UK by transposition of the ETS Directive³ ("the Directive").

Small Emitter and Hospital Opt Out Scheme

3. Article 27 of the Directive contains provisions for Member States to choose to create an opt out for hospitals and small emitters, being those with annual GHG emissions less than 25,000 tCO₂e⁴ and, where the installation undertakes combustion activities, thermal input below 35 MW. The UK took advantage of this option in order to reduce the burden of the EU ETS on eligible installations, consistent with the UK Government's broader agenda on better regulation. The opt-out scheme was introduced in 2013; further information can be found on the DECC website⁵.

Proposed Amendments to the Greenhouse Gas Emissions Trading Scheme Regulations 2012

Free allocation of allowances for installations leaving the small emitter and hospital opt-out scheme

² S.I. 2012/3038, as amended by Schedule 4 to W.S.I. 2013/755 (W.90), S.I. 2013/1037, S.I. 2013/3135 and S.I. 2014/3125

³ Directive 2003/87/EC, as amended by Directive 2004/101/EC, Directive 2008/101/EC, Regulation (EC) No 219/2009, and Directive 2009/29/EC
<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02003L0087-20140430>

⁴ Tonnes of CO₂ equivalent

⁵ <https://www.gov.uk/participating-in-the-eu-ets#small-emitter-and-hospital-opt-out-scheme>

4. The small emitter and hospital opt-out scheme has a maximum threshold for small emitters of 25,000 tCO₂e and a combustion, thermal capacity below 35MW per annum. The scheme also applies to installations primarily providing services to a hospital, provided no more than 15% of heat produced by the installation is exported to an establishment other than a hospital.. Where an installation emits above this threshold or it is no longer primarily providing services to a hospital it is moved back into the full EU ETS. Due to the timings of the monitoring and reporting cycle this occurs in the January following the end of March date at which the emissions are reported. For instance, a small emitter going over the threshold for the calendar year 2013 would have reported these emissions in March 2014 and then returned to the full EU ETS in January 2015 – see schedule 5, paragraph 8 of the 2012 Regulations⁶.
5. One of the key differences between the full EU ETS and the opt out scheme is that the latter does not make use of allowances and trading; installations are instead given a tightening emissions target to follow. As such, installations in the opt-out scheme were not allocated free allowances in the same way as installations in the full EU ETS. On return to the full scheme, installations will be eligible to receive free allowances in accordance with Article 27(3) of the Directive. The Government proposes to amend the 2012 Regulations to provide the legislative basis and rules to enable this to happen.
6. In accordance with the EU's Free Allocation Decision⁷, Member States that chose to implement a small emitter opt out must provide allowances for any operator in the opt out scheme that re-joins the full EU ETS and is eligible for free allowances. As such these allowances will be taken from the UK's auctioning pot.
7. The Free Allocation Decision sets out the measures for determining how many free allowances those installations in the full EU ETS should receive. It also sets out that if the installation undergoes changes in capacity or activity, they can apply for an increased allocation (in the case of an increase in capacity), or the allocation must be reduced (in the case of a reduction in capacity or activity). However, the Free Allocation Decision makes no special provision for operators of small emitters. The Government therefore intends to apply the same or as similar as possible provisions for free allocation to these installations as exist for other EU ETS operators.
8. We propose to amend the 2012 Regulations as per the draft Statutory Instrument attached as an Annex to this document and this consultation seeks views on the approach set out therein.
9. In summary, the proposed amendments mirror as closely as possible the methodology applied for determining and issuing free allowances to other installations. Using the National Implementation Measures ("NIMs"), under which a provisional free allocation of allowances was calculated for all EU ETS installations, the new rules will:

⁶ <https://www.gov.uk/government/consultations/eu-ets-consultation-on-amendments-to-greenhouse-gas-regulations-2012>

⁷ <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32011D0278>

- require an installation returning to the full EU ETS to notify the regulator of any changes to their activity which have occurred in the period of time between the NIMs deadline and the start of the scheme year in which the installation enters the main EU ETS; and
- require the regulator to calculate any necessary changes to allocations and make any amendments as a result of these changes.

10. The UK submitted its [NIMs](#) to the European Commission on 12 December 2011, and subsequently submitted [modified NIMs](#) in April 2012.

11. The following sections set out in more detail how these amendments are intended to work.

New Schedule 6A

12. A proposed new schedule 6A will be added to the 2012 Regulations setting out how an installation's level of free allocation will be determined as it transitions from the small emitter and hospital opt-out scheme to the full EU ETS.

Notification of end of excluded installation status

13. Proposed paragraph 3 of schedule 6A requires the regulator to notify an operator that an installation will be required to enter the main scheme, in respect of which the regulator has not been told that:

- the installation has had a capacity reduction;
- the installation has had a partial cessation; or
- the installation has permanently ceased regulated activities.

Application for an allocation from the New Entrant Reserve

14. To ensure that the NIMs baseline is updated to reflect any capacity increases that have occurred in the intervening time since, the proposed new paragraph 4, schedule 6A allows an operator to apply for an additional allocation from the New Entrant Reserve ("NER") in respect of any capacity extensions in the period of time between the NIMs deadline and the day on which they enter the main scheme.

15. Proposed paragraph 5, schedule 6A then provides that the regulator must notify the European Commission of the preliminary annual amount insofar as the extension is concerned and proposed paragraph 6, Schedule 6A provides that if this is approved, the regulator must notify the final annual amount to the operator and to the administrator of the EU ETS registry.

Significant capacity reductions, suspension of regulated activities, and partial cessations

16. Paragraphs 7(1) and (2) of new Schedule 6A implement Article 21 of the Free Allocation Decision and mirror schedule 6, paragraph 6 of the 2012 Regulations. They require an installation to notify the regulator of any significant capacity reduction at any time since the NIMs deadline (or before that date, but where the change was only capable of determination after that date) and before 1st January in the entry year.

17. Paragraph 7(4) requires the regulator to calculate the necessary reduction in free allowances in accordance with the Free Allocation Decision.
18. Paragraph 7(8) provides that the new capacity should be treated as the initial installed capacity for any subsequent changes under schedule 6.
19. Paragraph 8 of Schedule 6A applies where the permanent cessation occurs while the installation is an excluded installation, and it provides that no allocation may be given for any year following the year in which an installation permanently ceases. This is mirrored from Schedule 6, paragraph 7 as amended (see paragraphs 35 and 36 below).
20. Paragraph 9 of Schedule 6A puts a duty on operators to notify the regulator if activity levels have reduced by more than 50% compared to initial activity levels, including if the suspension of regulated activities continues after the installation ceases to be an excluded installation.
21. Paragraphs 10 and 11 of schedule 6A provide that the relevant people must be notified of the change, and then, when the European Commission has approved the preliminary total amount, the final amount must be calculated and notified.
22. Paragraph 12 of Schedule 6A provides for the recovery of allowances.

Special provisions for 2015

23. In order to take into account the fact that the proposed amendments will take effect after some operators will have moved from the opt-out scheme to the full EU ETS, special provisions will apply where the entry year is 2015.
24. This is reflected in the proposed amendment to regulation 13, and in the provisions contained in Schedule 6A, paragraphs 3, 4, 7, 8 and 9.

Consultation Question

- | | |
|----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. | Do the proposed provisions allow those operators that must move from the opt-out scheme to the full EU ETS to be treated fairly and in a manner consistent with incumbent operators in the full EU ETS? |
|----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

Enforcement

25. We propose that there should be a penalty regime for operators moving from the opt-out scheme that is consistent with the existing one for other operators.

26. The proposed new penalties will apply for a failure to notify a capacity reduction or a partial cessation under schedule 6A. This has been included in new regulation 58A and 58B. This penalty is the same as the penalty under regulation 53(3) and 53(4), which applies where incumbents fail to notify these changes.
27. We have also included a proposed new penalty for providing false or misleading information on significant capacity reductions or partial cessations (new regulation 70(h)), and again, this mirrors the penalty which applies for incumbents. The penalty notice provisions in regulation 50 and the provision on discretion in regulation 51 will apply to these new penalties.

Appeals

28. The appeals process will be the same as for other operators. The appeals bodies are therefore the First-tier Tribunal in England and Wales (and for offshore installations), the Scottish Ministers in Scotland and the Planning Appeals Commission in Northern Ireland. We have included new rights of appeal in respect of decisions of the regulator under Schedule 6A, which mirror those which apply for incumbents under Schedule 6. They cover:
- a. a decision to withhold allowances where the regulator is investigating whether there has been a capacity reduction at an excluded installation, or where inadequate information has been submitted;
 - b. a decision to withhold allowances where the regulator is investigating whether there has been a permanent cessation, or where activities have been suspended by the 6 month period has not expired;
 - c. a decision to permanently reduce an allocation where there has been a permanent cessation while the installation was excluded;
 - d. a decision to withhold allowances where the regulator is investigating whether there has been a partial cessation, or if the information on a partial cessation is insufficient;
 - e. a decision to use the power to recover allowances, in respect of a failure or error while the installation was excluded

Consultation Question

2.	Do you consider that these proposed penalties and the appeals process are appropriate, proportionate and fair?
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Clarification of start-date of permanent cessation for incumbents where a temporary cessation becomes a permanent cessation

29. Additionally, we have identified that the current drafting of the legislation is potentially unclear on the issue of when a permanent cessation is deemed to begin where it follows

a temporary cessation of activity. This lack of clarity is unhelpful for operators and we therefore propose to clarify the legislation to make it clear that the start date of a permanent cessation is the date on which regulated activity ceased, even where the permanent cessation follows a period of temporary cessation. This was the way that the EU ETS worked under Phase II and it continues to be the case in the current Phase III.

30. Proposed new paragraph 7 sub-paragraph 4(A) in Schedule 6 will implement this clarification.

Consultation Question

- | | |
|----|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 3. | Do you agree that proposed paragraph 7 sub-paragraph 4(A) of Schedule 6 clarifies any ambiguity around the start date of permanent cessation of regulated activity where it follows a temporary cessation? |
|----|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

Correction of minor discrepancies in the current legislation

31. We are also taking the opportunity to carry out some minor corrections required to the 2012 Regulations, including typographical errors and erroneous references. We are not specifically consulting on these minor amendments but would welcome any comments.

Annex A: Consultation questions

Consultation Question	
1.	Do the proposed provisions allow those operators that must move from the opt-out scheme to the full EU ETS to be treated fairly and in a manner consistent with incumbent operators in the full EU ETS?
2.	Do you consider that these proposed penalties and the appeals process are appropriate, proportionate and fair?
3.	Do you agree that proposed paragraph 7 sub-paragraph 4(A) of Schedule 6 clarifies any ambiguity around the start date of permanent cessation of regulated activity where it follows a temporary cessation?

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