

Response from the to DECC's EU ETS Consultation on  
Amendments to Greenhouse Gas Regulations 2012

Initial Remarks

The [redacted] welcomes the opportunity to comment on the proposed amendments to the Greenhouse Gas Emissions Trading Scheme Regulations 2012. Whilst the consultation is relevant to all companies in EU ETS, given the nature of the main consultative points, it is of particular interest to operators in the UK Small Emitter and Hospital Opt-out Scheme.

Consultation Response

Please find below the comments from the [redacted]

on the questions posed:

**DECC 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?

[redacted] offers no objection to the proposed rules for free allowance allocation for installations which have to move from the small emitter opt-out scheme into full EU ETS.

The proposed methodology mirrors that applied for determining free allocation to other installations already in full EU ETS. This would mean that an installation's level of free allocation will be that set out in the UK's final National Implementation Measures (NIM) correspondingly adjusted to take into account any relevant changes in capacity / activity levels that have occurred between the NIM deadline and the date of return into the main EU ETS scheme, plus the required adjustment associated with the European Commission's Cross-sectoral Correction Factor (CSCF). The approach is therefore equitable both to installation operators in the small emitter opt-out scheme and those already incumbent in full EU ETS.

The proposal is also consistent with the intent first outlined in the small emitter opt-out scheme policy paper published by DECC in May 2012; on which eligible installation operators made their decision of whether to opt-out of full EU ETS or not:

4.48 If an installation is required to re-enter the EU ETS it will do so at the beginning of the next calendar year and will be required to comply in full with the requirements of the EU ETS from that point onward. The installation will be given a free allocation drawn from the pool of allowances available for auctioning in the UK. The level will be that which is set out in the UK's final National Implementation Measures (NIMs) adjusted according to Commission procedures on free allocation to take into account relevant changes in capacity or operations.

However, we note that the proposal would place a new requirement on installation operators to notify the Regulator of any changes to their capacity or activity levels which have occurred in the intervening years. To facilitate compliance, we believe the need to notify the Regulator of such changes must be clear and explicit within the online greenhouse gas emissions planning, reporting and management tool (ETSWAP). Furthermore, we believe this requirement should be reinforced by email notification to the designated contacts at the installation. It is essential that this notification requirement is distinct since operators will be transitioning from the administratively less burdensome small emitter scheme where such changes do not need to be notified.

2 Do you consider that these proposed penalties and the appeals process are appropriate, proportionate and fair?

Whilst acknowledging that the use of civil penalties may be required as a tool to deter or punish; we believe these should only be used as a last resort. The intricacy of complying with a confusing and overlapping set of regulatory regimes has the potential for company error, not from trying to circumvent the system but from a genuine misunderstanding of legal requirements and obligations. Understanding and complying with the various schemes can be time consuming and the reality is that company resources can be thinly stretched, particularly in SMEs. Furthermore, the direct environmental impacts associated with such misdemeanours are likely to be limited since the sites in question, in all likelihood, will still be the smaller emitting category A installations (annual emissions < 50,000 tCO<sub>2</sub>e). Enforcement approaches and penalties must therefore be scaled accordingly.

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?

Having engaged extensively with DECC and the Environment Agency on this issue during EU ETS phase 2, we acknowledge the interpretation of time periods previously applied has been from the cessation of regulated activities, including any temporary periods of closure. Therefore, our interpretation of the situation in phase 3 is in accordance with proposal. Clarification both in legislation and guidance would therefore be welcome.

Nonetheless, we strongly believe the preferred approach overall should be to allow a degree of regulatory discretion in determining the start of cessation. This would allow each situation to be judged on merit, rather than applying a blanket approach, which may not be appropriate in all circumstances.

We welcome continued dialogue on this and all aspects of EU ETS policy development. Please feel free to contact me if you require clarification on any of the above information.

Response to Consultation on Proposed Amendments to the Greenhouse Gas Trading Scheme Regulations 2012

**Consultation Questions:**

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?

Answer: **Yes**

2. Do you consider that these proposed penalties and the appeals process are appropriate, proportionate and fair?

Answer: **Yes**

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?

Answer: **Yes**

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**Proposed Amendments to the Greenhouse Gas Emissions Trading Scheme Regulations 2012**

- 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?**

Yes, we believe that operators moving into the full EU ETS scheme are treated more fairly, and fully support the decision to enable their allocation of free allowances under the proposed new schedule 6A. We also support the proposal for operators to notify the regulator of any changes, which will enable fair adjustments to be made to allocations.

- 2. Do you consider that these proposed penalties and the appeals process are appropriate, proportionate and fair?**

We do believe that the proposed penalties are fair and appropriate where there has been a failure to notify the regulator of a capacity reduction or partial cessation. We also support the additional proposed penalty for providing false or misleading information to changes in capacity; we believe this is necessary for effective implementation of the scheme.

- 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?**

Yes, we feel the proposed change clarifies the start date of a permanent cessation of regulated activity.