



Department for
Business, Energy
& Industrial Strategy

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



November 2017

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

The consultation can be found on the BEIS section of GOV.UK:

<https://www.gov.uk/government/consultations/bringing-forward-eu-emissions-trading-system-2018-compliance-deadlines-in-the-uk>

Consultation on Bringing forward EU Emissions trading system 2018 compliance deadlines IN the UK

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Any enquiries regarding this publication should be sent to us at eu.ets@beis.gov.uk

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General Information

Purpose of this consultation

The purpose of this consultation is to seek views on a proposed amendment to the UK Greenhouse Gas Emissions Trading Scheme Regulations 2012 that will bring forward the reporting and surrender compliance deadlines for UK regulated EU Emissions Trading System (EU ETS) participants for the 2018 compliance year to before 29 March 2019, the date the UK will leave the EU.

Issued: 6 November 2017

Respond by: 24 November 2017

Enquiries to:

EU Emissions Trading System Team
Department for Business, Energy & Industrial Strategy,
6th Floor, 1 Victoria Street,
London, Postcode: SW1H 0ET

Email: eu.ets@beis.gov.uk

Consultation reference: Consultation on bringing forward EU Emissions Trading System 2018 compliance deadlines in the UK

Territorial extent:

This consultation runs for three weeks until 24 November and is being conducted by the UK Government in its responsibility, as the Member State, for negotiating on the EU ETS with the EU. Policy responsibility for emissions trading within the UK is a devolved matter, and the UK Government will work with the Northern Ireland Executive, the Scottish Government and the Welsh Government to inform them of stakeholders' views on this consultation, and consider our collective response.

How to respond

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

Online (all locations)

Citizenspace consultation response form: <https://beisgovuk.citizenspace.com/heat/eu-ets>

United Kingdom

By email: eu.ets@beis.gov.uk

EU ETS Team
Department for Business, Energy and Industrial Strategy
1 Victoria Street
London
SW1H 0ET

For consultees in Northern Ireland, Scotland and Wales please copy responses to:

Northern Ireland

By email: Climate.Change@daera-ni.gov.uk

By post: Department of Agriculture, Environment and Rural Affairs
2nd Floor, Klondyke Building
1 Cromac Avenue
Gasworks Business Park
Belfast
BT7 2JA

Scotland

By email: eu.ets@scotland.gsi.gov.uk

By post: Climate Change Division
Scottish Government
1G Dockside
Victoria Quay
Edinburgh, EH6 6QQ

Wales

By email: decarbonisationmailbox@gov.wales

By post: Carbon Trading and Climate Risk Branch
PDepartment for Environment and Rural Affairs
Welsh Government
Floor 1 Cathays Park
Cardiff, CF10 3NQ

Additional copies:

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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:

Email: beis.bru@beis.gov.uk

Executive Summary

This consultation seeks views on a proposal to bring forward the 2018 compliance deadlines for UK regulated operators in the EU Emissions Trading System (EU ETS) to before the date of EU Exit on 29 March 2019. These changes are intended to:

- Provide clarity to EU ETS participants on the UK's 2018 compliance obligations during the UK's withdrawal from the EU.
- Alleviate the negative impacts of an amendment to the EU ETS Directive, recently agreed by the European Parliament and Council, which stipulates that aviation and stationary operators will not be able to use allowances issued by a Member State in respect of which there are obligations lapsing. The stated objective of the amendment to the Directive is to protect the environmental integrity of the EU ETS in the event of a UK departure from the System in March 2019. This would mean that allowances issued by the UK in 2018 could not be used for compliance. However, bringing forward the 2018 compliance deadlines would mean that obligations for 2018 compliance would not be lapsing and it would therefore not be necessary to implement a measure which would have negative and disruptive effects on the smooth operation of the carbon market and on EU ETS participants.

We welcome responses from any organisation or individual but this consultation will be of particular interest to all UK regulated EU ETS operators with obligations to comply in the power, aviation and industrial sectors.

Subject to responses to the consultation, we propose to lay legislation before Parliament in December 2017 with the intention that the changes take effect from 1 January 2018.

The measures proposed in this consultation are without prejudice to future decisions on the UK's future relationship with the EU on the EU ETS.

Catalogue of consultation questions

Consultation Questions

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1. Do you agree that bringing forward the 2018 compliance deadlines is a proportionate response to the issues identified and preferable to the proposal to make UK allowances invalid for compliance from 1 January 2018?

 2. Do you agree with the proposed deadlines for 2018 compliance of 28 February 2019 to report emissions and 22 March 2019 to surrender allowances?

 3. Would there be any impacts or administrative burdens that could result from bringing forward the 2018 compliance deadlines, for instance for contracts to deliver allowances or from the fact that the surrender deadline would fall at the end of the 2018-2019 financial year, rather than the beginning of the 2019-2020 financial year?

Chapter 1: Introduction

- 1.1. The EU ETS is the largest cap-and-trade system for carbon emissions in the world and limits emissions of greenhouse gases (GHG) in the power, aviation and industrial sectors. The EU ETS is a market-based measure where participants are required to monitor and report their emissions and surrender sufficient EU ETS allowances (EUAs) to cover their reported emissions in each year. EUAs can be traded to enable abatement to occur where it is most cost effective to do, thereby lowering the overall cost of tackling climate change.
- 1.2. As the Clean Growth Strategy sets out, the Government is considering the UK's future participation in the EU ETS after our exit from the EU. We remain firmly committed to carbon pricing as an emissions reduction tool whilst ensuring energy and trade intensive businesses are appropriately protected from any detrimental impacts on competitiveness.
- 1.3. Whatever our future relationship with the EU, the UK's commitment to and leadership role in tackling climate change remains undimmed and working closely with the EU on this global challenge will remain important. Leaving the EU will not change any of our statutory commitments to reduce our emissions according to our Climate Change Act – indeed those targets are more ambitious and challenging than those set by EU legislation.
- 1.4. We recognise that early clarity is needed on how UK regulated participants will meet their EU ETS obligations during the UK's withdrawal from the EU, in particular for the 2018 compliance year. While emissions during this period will occur while the UK remains a member of the EU, the deadlines for operators to report emissions and surrender allowances fall after the UK will have left.
- 1.5. In relation to the 2018 compliance year, this consultation therefore proposes bringing forward the deadlines for compliance by UK regulated EU ETS participants from the usual dates of 31 March for reporting emissions and 30 April for surrendering allowances to before the date of EU Exit on 29 March 2019 (see Figure 1 for a diagram of the EU ETS compliance cycle). This would provide certainty to UK participants regarding their compliance obligations, regardless of the outcome of negotiations on the UK's exit from the EU. It also provides assurance to the wider market and to the rest of the EU that these compliance obligations will be met, and protects the integrity of the EU ETS.
- 1.6. In relation to 2019, if necessary in the event that arrangements after the date of withdrawal are not sufficiently clear by the start of 2019, the Government also proposes to accept suspending issuing UK allowances (both auctioning and free allocation) between January and March 2019.
- 1.7. The European Parliament and Council have agreed an amendment to the EU ETS Directive which would mean that aviation operators and other operators would not be able to use EU ETS allowances issued by a Member State with "obligations lapsing". The objective of this amendment is to protect the environmental integrity of the EU ETS in the event of a UK departure from the System in March 2019. Bringing forward the compliance deadlines for 2018 emissions is an alternative proposal which would mean

that obligations would not be lapsing and would therefore achieve the objective to protect the environmental integrity of the EU ETS in respect of 2018 emissions, while avoiding the negative impacts of a measure which would invalidate UK issued allowances for compliance. Further details on the amendment to the EU ETS Directive, how the European Commission intends to implement it and our assessment of the impacts are provided in paragraphs 2.5 to 2.7.

- 1.8. The measures proposed in this consultation are without prejudice to future decisions on the UK's future relationship with the EU on the EU ETS.

Implementation of the EU ETS in the UK

- 1.9. The Greenhouse Gas Emissions Trading Scheme Regulations 2012 ("the 2012 Regulations"¹) implement the EU ETS in the UK by transposition of the ETS Directive² ("the Directive").
- 1.10. Policy responsibility for implementation of the EU ETS sits with the Department for Business, Energy and Industrial Strategy (BEIS) in England, and the Northern Ireland Executive, the Scottish Government and the Welsh Government in their respective jurisdictions. References to the Government in this consultation document should be read in that context. The proposed Regulations that are the subject of this consultation will apply throughout the UK.
- 1.11. The EU ETS regulators across the UK for operators of stationary installations ("stationary operators") and aircraft operators are:
 - *England: the Environment Agency (EA)*
 - *Scotland: the Scottish Environment Protection Agency (SEPA)*
 - *Wales: Natural Resources Wales (NRW)*
 - *Northern Ireland: the Chief Inspector³ for Northern Ireland*

The EU ETS regulator for offshore installations is: the Secretary of State for Business, Energy and Industrial Strategy

Consultation

- 1.12. The purpose of this consultation is to seek views on a proposed amendment to the 2012 Regulations that will bring forward the reporting and surrender compliance
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¹ 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

² 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>

³ "Chief inspector" means the chief inspector constituted under regulation 8(3) of the Pollution Prevention and Control Regulations (Northern Ireland) 2013

deadlines for UK regulated EU ETS participants for the 2018 compliance year to before 29 March 2019.

- 1.13. The proposed amendments are in the draft Statutory Instrument attached as an accompanying document to this consultation document.
- 1.14. The consultation runs for three weeks until 24 November 2017. Please note that any responses received after the closing date may not be considered.
- 1.15. Following the consultation the UK Government proposes to lay the amending Regulations before Parliament with the intention that they take effect from 1 January 2018.
- 1.16. This consultation will be of particular interest to all UK regulated EU ETS operators with obligations to comply in the power, aviation and industrial sectors. This consultation is not limited to these stakeholders; we welcome responses from any organisation or individual.

Chapter 2: Bringing forward the 2018 compliance deadlines

UK 2018 compliance

- 2.1 To ensure a smooth transition and avoid a cliff edge on withdrawal, the UK has proposed to the EU an implementation period of about two years where we would continue to have access to each other's markets on current terms. We are calling for this to be agreed as early as possible to provide clarity.
- 2.2 We recognise that there have been calls for clarity, ahead of 2018, from UK EU ETS participants about their compliance obligations for the 2018 compliance year. For the 2018 compliance year auctioning of UK allowances begins on 1 January 2018 and eligible participants receive their free allocation by 28 February 2018.
- 2.3 We are also alert to the concerns of the European Commission, Member States and other EU ETS participants, such as traders, that clarity is needed about 2018 compliance by the end of 2017, before allowances for 2018 begin to be issued, and that uncertainty could impact market confidence. The concern amongst EU institutions is that, if the UK leaves the EU ETS in March 2019 , there would be no requirement in EU law for UK stationary operators and aviation operators to comply with their EU ETS obligations for the 2018 calendar year, as the deadlines to submit a verified emissions report and surrender allowances will be after EU Exit. In this scenario there is a concern that UK operators would not be obliged to comply, and could therefore sell their allowances, adding to the current market surplus, further depressing the carbon price and negatively impacting the entire system.
- 2.4 The EU Withdrawal Bill, which is currently passing through UK Parliament, is expected to incorporate direct EU law (so far as operative) and save EU-derived domestic legislation. It is expected that the domestic EU ETS requirements to monitor emissions and surrender allowances will remain in place on UK exit of the EU. The requirement to comply with the legislation preserved by this Bill (once in force) will not be contingent on any particular deal or outcome from the Article 50 negotiations – it will apply in all circumstances. However the parties mentioned above remained concerned that this expectation does not provide sufficient clarity.

EU position on UK compliance

- 2.5 In order to address these risks, the European Parliament and Council have agreed an amendment to the EU ETS Directive, through the negotiation on the future of aviation in the EU ETS. This would mean that allowances for a Member State where obligations for aviation operators and other operators are lapsing would not be able to be used for compliance. This amendment specifies:

"Where necessary and for as long as is necessary to protect the environmental integrity of the EU emission trading system, aviation operators and other operators in the EU ETS may not use allowances that are issued by a Member State in respect of which there are obligations lapsing for aviation operators and other operators. The legal act referred to in Article 19 shall include the measures necessary in the cases referred to in this paragraph".

- 2.6 The European Commission issued a proposal⁴ on 24 October 2017 to amend the EU ETS Registry Regulations, to implement changes to the Union Registry, which would identify allowances issued by a Member State with obligations lapsing. The Commission has proposed that, from 1 January 2018, all UK allowances would be assigned a country code and auctioned and freely allocated as normal, but they would no longer be able to be surrendered for compliance purposes. There would be an option for the Commission to either choose not to assign a country code to allowances or to remove the country code if they deemed that this was no longer necessary, though at the moment it is unclear how the process for the Commission to remove a country code would work. The Climate Change Committee will meet on 30 November to discuss and vote on the proposal.
- 2.7 This measure would have negative and disruptive effects on the carbon market. Creating two tiers of allowances (UK and other) would risk different prices between allowances, increase complexity as participants will need to know the origin of an allowance and reduce confidence in the smooth operation of the EU ETS carbon market. In addition there will be impacts specifically on the UK, in particular that UK operators would not be able to use the free allowances that will be issued to them in February 2018 to surrender for their 2017 emissions in April 2018.

UK proposed approach to 2018 compliance

- 2.8 To alleviate the negative effects of this measure, protect the integrity of the EU ETS and to provide the necessary certainty to the market that UK 2018 compliance obligations would be fulfilled, the Government proposes to amend the 2012 Regulations to bring forward the deadlines for the 2018 compliance year to before the date of withdrawal from the EU (i.e. before 29 March 2019). This consultation seeks views on this proposal.
- 2.9 Our proposal specifically addresses 2018 compliance obligations. The European Commission and Member States have also raised concerns about the status of UK allowances that will be issued during the first three months in 2019. The issue of UK issued 2019 allowances does not become live for a further year and we expect further clarity to be provided through the Article 50 negotiations with the EU. However, if necessary in the event that arrangements after the date of withdrawal are not

⁴ https://ec.europa.eu/clima/news/commission-proposes-safeguard-measures-eu-emissions-trading-system_en

sufficiently clear by the start of 2019, the Government proposes to accept suspending issuing UK allowances (both auctioning and free allocation) between January and March 2019. The Government would intend to lift this suspension as soon as arrangements are clear. The Government does not consider suspending issuing allowances an option for 2018, as the UK will remain a member of the EU for the whole of the year and there is a clear alternative available, through bringing forward the 2018 compliance deadlines.

- 2.10 The proposal to bring forward the deadlines to report emissions and surrender allowances in 2019 for the 2018 compliance year is not dependent on any particular outcome from EU Exit negotiations. The measures under discussion are without prejudice to future decisions on the UK's future relationship with the EU on the EU ETS. We recognise the desire for early clarity on the terms of the future UK-EU partnership and how it might affect the EU ETS and are currently considering a range of options for our future partnership, in consultation with stakeholders.
- 2.11 The next chapter provides further detail on how the proposed amendments to bring forward the 2018 compliance deadlines are intended to work.

Chapter 3: Proposed amendments to 2012 Regulations to bring forward the 2018 compliance deadlines

Proposed amendments to the 2012 Greenhouse Gas Emissions Trading Scheme Regulations

- 3.1 The measure that we propose would place an obligation on the UK to ensure operators surrender allowances before the date of EU Exit. This would address the issues set out in paragraphs 2.3 to 2.7 by guaranteeing that UK regulated operators would be required to comply while the UK remains a Member of the EU, with minimal disruption to operators and the market.
- 3.2 The main changes required are to bring forward the deadlines for aviation and stationary operators to submit a verified emissions report and surrender allowances before the date of EU Exit, respectively to 28 February 2019 and 22 March 2019. This proposal recognises that the earliest date in the EU ETS Monitoring and Reporting Regulation when a Member State can require operators to report their emissions for the previous calendar year is 28 February, while the surrender deadline of 22 March 2019 would be just a week before the date of EU Exit (29 March 2019). It may not be necessary to have a period of three weeks between these proposed deadlines; to provide more time for operators to verify and report their 2018 emissions, an alternative option would be to specify a deadline in March 2019 to report emissions.
- 3.3 We are not proposing any change to the current obligation for installations in the UK Small Emitter and Hospital Opt-out Scheme to report their emissions by 31 March, given that there is no requirement for opt-out scheme installations to surrender allowances. As some installations in the opt-out scheme still choose to have a third party verify their emissions, maintaining the 31 March 2019 deadline to report 2018 emissions would allow EU ETS verifiers to prioritise verifying the emissions of operators and aviation operators in the EU ETS.

Impact of earlier 2018 compliance deadlines on UK regulated operators

- 3.4 We recognise that bringing forward the 2018 compliance deadlines may result in a small additional burden as operators may experience a familiarisation cost as they adapt to understand the change in compliance deadlines. Further, there may be small additional administrative costs from reallocating personnel and resources to meet the earlier deadline to report emissions to regulators. However we expect any impacts to be minimal. The changes proposed would bring forward the deadline for activities that

would have needed to be completed either way, and there would be over a year to prepare for this change. We propose this change as a proportionate measure which will benefit operators by providing certainty that 2018 compliance obligations would be fulfilled, protect the integrity of the EU ETS and avoid the negative impacts of the proposed measure to invalidate UK issued allowances from 1 January 2018.

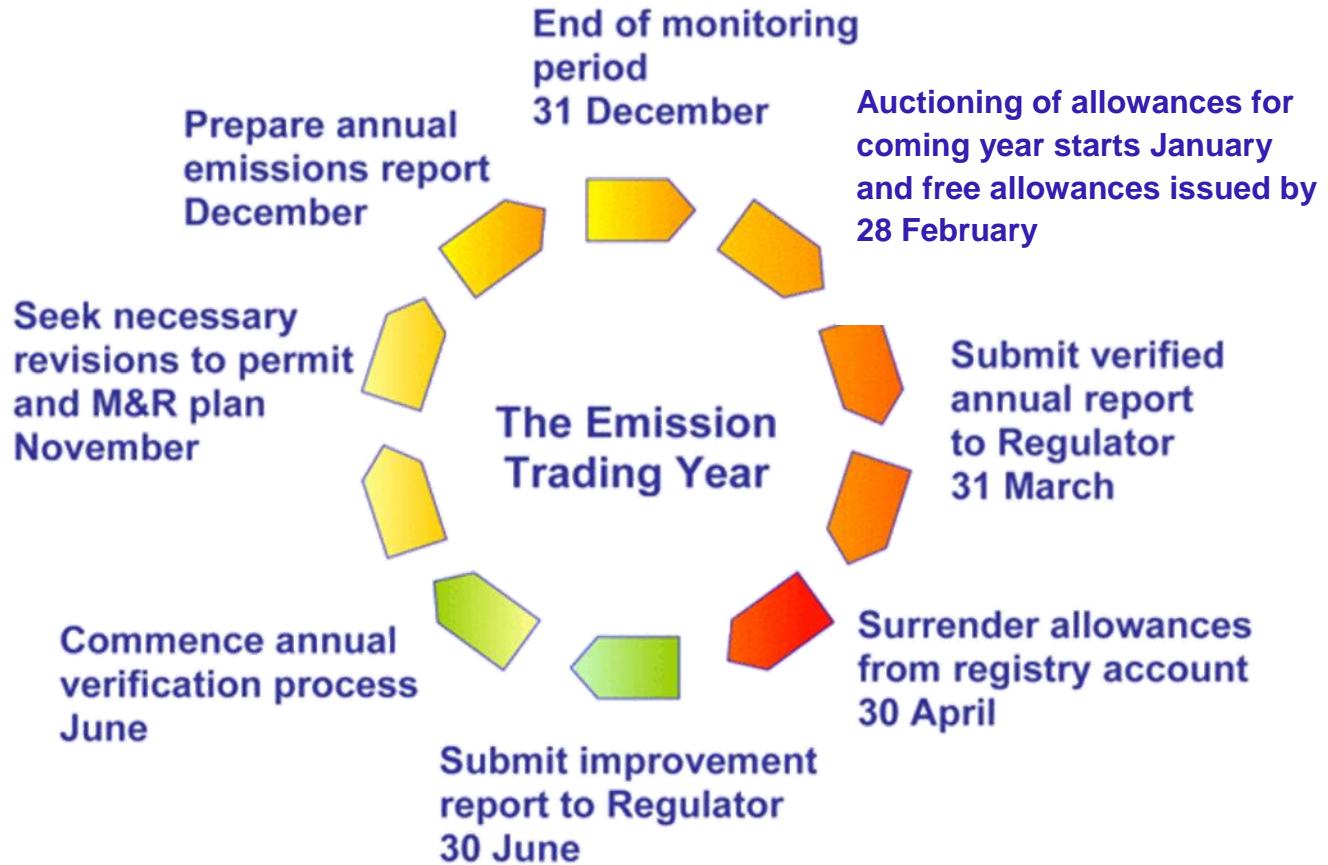
UK regulators enforcement of earlier 2018 compliance deadlines

- 3.5 The proposal to bring forward the 2018 compliance deadlines would place an obligation on UK regulators to ensure that operators surrender allowances in advance of the date of our exit from the EU. As is noted in paragraph 2.4, it is expected that the EU Withdrawal Bill will preserve EU ETS obligations into UK law after EU Exit, including regulators' obligations in relation to taking enforcement action against any operator that does not comply with the proposed earlier deadlines. We therefore do not propose any changes to enforcement and civil penalties. The UK civil penalty for operators who do not report their emissions by the required deadline and the mandatory €100 penalty for each allowance not surrendered by an operator to cover its reported emissions will still apply.

Figure 1: EU ETS Compliance Cycle

Figure 1: EU ETS Compliance Cycle

The EU ETS works on an annual compliance cycle, shown graphically below⁵:



⁵ Source: Environment Agency

