

# **Climate Change Agreements: Government response to the January and March 2012 consultations**

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The consultation can be found on DECC's website:

<http://www.decc.gov.uk/en/content/cms/emissions/ccas/ccas.aspx>

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## Introduction

1. In January and March 2012 consultations were launched to build on the simplification proposals of the September 2011 consultation and provide further detail on the implementation of the new CCAs (see [January](#) and [March](#) 2012 Consultations).
2. The Consultation published in January 2012 provided an opportunity to comment on new CCA Regulations, the buy-out mechanism, penalties and fees and charges. The regulations provide for the Environment Agency (EA) to act as the administrator for the new agreements, the operation of the penalty regime for non-compliance under the agreements and the buy-out mechanism which replaces the UK Emissions Trading Scheme (UK ETS). Further details of the operation of the buy-out mechanism and penalty regime were also included in the consultation alongside proposals for the charging regime to be implemented by the EA to cover operating costs.
3. The March 2012 Consultation developed charging proposals contained in the document published in January. It also included revised agreements and rules, which had been consulted on previously in 2010 [see [March](#) 2012 Consultation], proposals for energy and carbon accounting and drew attention to the closure of UK ETS and revised eligibility regulations.
4. This document contains the responses to the January 2012 and March 2012 consultations and is published alongside the analysis of the responses.

## Section 1: January 2012 Consultation

5. On 24 January 2012, DECC published an opportunity to comment on the Climate Change Regulations 2012 which appoint the EA as CCA administrator and CCA Scheme administration charges. The document also contained information on the buy-out mechanism which will replace UK ETS as a risk management tool and the penalty mechanism. There were 37 respondents to the document (35 from Sector Associations (SA), 1 from Target Units (TUs), and 1 other).

### 1.1 Climate Change Agreements (Administration) Regulations 2012

6. The Climate Change Regulations 2012 will appoint the EA as the new CCA Administrator who will manage umbrella (sector) and underlying (Target Unit) agreements. Management responsibilities will include: operation of an electronic registry which replaces the current paper based system and which can be accessed by Sector Associations (SAs) and Target Units (TUs); establishing eligibility and entering into agreements with SAs and TUs; assessing TU performance against targets; and operating the buy-out mechanism. The EA will also be responsible for operating a penalty regime as set out in the Regulations.
7. Eighteen of the 37 total respondents commented on the draft Regulations. (17 SAs and 1 TU) The detailed comments on the drafting are analysed in the accompanying document [[Climate Change Agreements: Analysis of January and March 2012 Consultation responses](#)]. Government is grateful for these comments and will review the draft Regulations carefully in light of these responses, before laying the Regulations later in the year.
8. Comments were received on the timescales for some elements of the scheme; reporting and the operation of the registry (the Register); publication of data; and the use of surplus. We will assess all these carefully, but note here:
- Government has considered the request to make the Register available outside of 9am to 5pm and as such there will be 24 hour, 7 days per week system access, except for necessary closure of the registry by the Administrator for maintenance and I.T. upgrade work. System support will be provided by the Administrator in working hours. In agreement with respondents the reporting deadline will be set to midnight.
  - Where a TU has previously banked overachievement and has to make use of the buy-out then, in calculating the buy-out fee, the whole amount of overachievement in CO<sub>2</sub> will be subtracted from the buy-out formula. More details on the use of overachievement will be set out in guidance.
  - Government will proceed with cancellation of surplus where a penalty is imposed on a participant, as it will form part of the penalty for failure to comply with the Regulations. However, it is reiterated that TUs will be responsible for meeting their own targets, including participating in the buy-out or using surplus as required. Multi-facility TUs ('bubbles') will operate as a single TU for the purposes of meeting targets and termination.
  - Government has aligned administration with both the CRC and the EU Emissions Trading System (EU ETS). Therefore, the 20 day working period for notifying changes to agreements will be retained.

- In the interests of transparency and fairness Government has decided that CCA account holders will have the right of appeal to the independent First-tier Tribunal in respect of decisions of the EA . The First-tier Tribunal will cover the imposition of penalties as well as terminations and the inclusion and exclusion of facilities. However, where there is a dispute as to the variation of the sector commitment by the Secretary of State, any dispute as to matters of fact will be appealable to an adjudicator. This is because the chamber of the First-tier Tribunal, which is hearing the decisions on CCAs, has been allocated all functions related to decisions of regulatory bodies (as opposed to the Secretary of State).

## 1.2 The Buy-out Mechanism

9. A new buy-out mechanism will form the basis of a risk management option under new CCAs. Three quarters of respondents to the September 2011 consultation were in favour of this approach. Like the UK ETS, the buy-out mechanism will be available to TUs at reconciliation when they fail to meet their targets and during the target period if errors are identified, for example during an audit.
10. 28 of the 37 total respondents commented on the details of the buy-out mechanism (26 SAs, 1 TU and 1 other). Most comments were concerned with the use of surplus. As noted above, in the new scheme, compliance, including meeting targets, will be the responsibility of the individual TU. The trading mechanism has been removed and replaced with the simpler buy-out. As such, surplus can only be used by the TU that accrued it. It therefore has no market value and we see no merit in introducing complexity by allowing TUs to decide whether to use surplus or to pay the buy-out fee, as there is no benefit in paying this in lieu of using accumulated surplus. Under the new scheme, where there is change of ownership and the Underlying Agreement is varied, surplus will be transferable to the new operator of the CCA facility.
11. 23 respondents specifically commented on the 15 day working period for the payment of any buy-out fee. Government will work with the Administrator to ensure that the reporting timeframe is realistic and allows enough time for buy-out fee calculations and any errors to be corrected. The detail will be contained in the administration rules that will be published by the Administrator in the Autumn.

## 1.3 Penalties

12. The January consultation provided details of the proposed penalty regime. Such a regime will provide a more proportionate and flexible response than is currently available. Regulation 15 of the draft regulations sets out the infringements subject to penalties, such as failure to provide information at the end of a target period by the required deadline. The consultation also presented how penalties will be calculated. Government anticipates that few TUs will find themselves subject to a penalty.
13. 33 of the 37 total respondents commented on the proposed penalty system (32 SAs and 1 TU). 25 respondents made comments specifically referring to the penalty to be applied for Category 1 Infringements. In particular, there was a concern about the potential level of the fine for large TUs and whether the amount could be capped. However, introduction of such a cap would mean that the level of the fine would no longer be proportionate to the infringement. We note that there is no such precedent of a cap in either EU ETS or CRC Energy Efficiency Scheme.
14. 20 respondents made comments on Category 2 Infringements. There was general support for this aspect of the penalty system. Respondents sought reassurance that a pragmatic approach

would be taken when determining whether an infringement had occurred and that a penalty should be imposed. To this end the Environment Agency (EA) has been granted discretion in imposing penalties. In so doing, the EA will therefore take account of all aspects of the case. Some respondents also proposed a de minimis. However, Government does not believe this is necessary, or indeed fair, given the range of sizes of organisations in CCAs, but believes instead that Administrator discretion is a more appropriate approach.

15. Penalties will be levied at the TU level, rather than at the level of the individual facility. As the TU is the party to the agreement, it must fulfil all of its obligations. The Administrator does not have powers to determine the exact origin of the failure. Operators need to consider how to discharge all CCA responsibilities where there are multiple facilities in a TU.
16. Other respondents expressed concern at the minimum fine of £500, which may be disproportionate for minor offenses. Government will reduce this minimum fine to £250.

## 1.4 Fees and Charges

17. As announced in the September 2011 consultation, Government will hand over administration of the new CCAs to the EA and the costs of administering the scheme will be transferred from the taxpayer to participating companies. Administration costs will therefore be recovered by a charging scheme which will be run by the EA.
18. The January consultation presented proposals for the EA charging regime. However, as a result of initial reactions from stakeholders, revised proposals were published in the March Consultation. Responses to these revised proposals are discussed in section 2.4.

## Section 2: March 2012 Consultation

19. The March consultation included revised agreements and rules, based on agreements consulted on in [March 2010](#), together with proposals for energy and carbon accounting. Following responses to the consultation in September 2011, the March consultation also included proposals for a revised charging regime. 52 responses were received (32 SA, 12 TU and 8 others).

### 2.1 Revised agreements and rules

20. The present CCAs contain substantial detail, not only on the responsibilities of agreement holders but also on the scheme's operation and technical aspects. Additionally, agreements differ between sectors. This adds to the scheme's complexity and limits simplicity and transparency.

21. Government plans to implement shortened Agreements and standardised Rules as a schedule to both the Umbrella and Underlying Agreements. The draft agreements presented in the March 2012 consultation reflect this proposal and are based on those published in the March 2010 consultation. The proposed scheme structure will also include Guidance which will cover technical aspects of scheme administration.

22. Termination for failing to meet targets. Two thirds of the 50 respondents to Question 1 did not see any unintended consequences with the proposal to terminate agreements for failure to meet targets. However, Government has reconsidered the legal vires for termination of agreements and considers that its vires do not presently extend to allow termination of an agreement for failure to meet targets or to pay the buy-out fee. The consequence of failing to meet targets or to pay the buy-out will therefore be decertification, as under the current scheme.

23. Revised Agreements. A large number of respondents identified unintended consequences as a result of the revised agreements (Question 2). Most concern expressed related to rules 9 and 14 of the agreements. Government is grateful for these responses, and will consider all comments in detail before issuing the final Rules and Agreements in late summer.

24. Around half the respondents were opposed to the proposal to publish target information (Rule 14.1.3), believing that commercially sensitive or confidential information could be revealed or deduced. However, as targets will be expressed as a percentage energy efficiency (or carbon) improvement (without underpinning energy or throughput measures) Government does not believe this to be the case, and will proceed with this proposal. Publication, like other aspects of the scheme, will be at TU level, including for multi-facility TUs ('bubbles'). There were also concerns raised about comparing the data of different sites and companies, noting that if read in isolation the figures could be misunderstood or misinterpreted. Government appreciates this concern and the publication of these figures will be accompanied by explanatory notes covering aspects of the operation of the scheme, including the omission of emissions covered by EU ETS, accounting for renewable energy consumption and the existence of multiple-facility TUs.

25. 11 respondents believed that the time frame allowed for new entrants to join the scheme is unfair and should be reviewed. However, Government will keep this rule as it requires that in

order to claim CCL discount during the scheme the TU must have and achieve a target. This ensures compliance with State Aid requirements and value for money for the taxpayer.

## 2.2 Eligibility Regulations

26. The March Consultation discussed how the Eligibility Regulations will implement previously announced Government decisions to change the 90/10 rule to a 70/30 rule and remove the energy intensity criteria, but not the eligible processes from legislation. In our September 2011 consultation we stated that the '90/10 + 1/9<sup>th</sup> rule' will be replaced with a '70/30 + 1/9<sup>th</sup> rule' from April 2013. Following further consultation with the CCA sectors, it has been apparent that a number of current CCA participants will still fall below the 70% threshold, putting them at a competitive disadvantage. Some sectors suggested we offset this effect and improve the effectiveness of this taper by introducing a '70/30 + 3/7<sup>ths</sup>' rule. We have given this careful consideration and decided to replace the '70/30 + 1/9<sup>th</sup> rule' with the '70/30 + 3/7<sup>ths</sup>' rule.
27. The [draft regulations](#) which have been published alongside this document include this change on site coverage policy. The publication of the regulations has taken slightly longer than first anticipated as we wanted to ensure that the drafting is modernised and that the version published is as close to the final version as possible. Any comments on the draft regulations can be sent to DECC's [CCA Consultation Mailbox](#). The closing date for comments will be **14 September 2012**.

## 2.3 Closure of UK ETS

28. Government confirmed the decision to replace the UK Emissions Trading Scheme (UK ETS) with a buy-out mechanism in response to the September 2011 consultation published on 24 January 2012. The March consultation proposed to do this by issuing a new UK Greenhouse Gas Emissions Trading Scheme 2012. This would amend the 2002 scheme to provide a sunset provision allowing the Registry to close and all remaining allowances to be cancelled.
29. Just over half of the 49 respondents did not believe there would be unintended consequences as a result of closing UK Emissions Trading Register (UK ETR). Of the respondents who had concerns these were mainly about the loss of financial assets previously deemed to have been gained and the implications for the remainder of the current scheme.
30. Government has consulted on, and then consistently stated its intention to close UK ETR, including prior to the end of Milestone 5 reporting. It has been clear that there is no benefit or use for the allowances outside of this system, and therefore the end of UK ETR would mean that the allowances, generated from previous over-performance, have no intrinsic worth. In fact these allowances represent energy efficiency gains over and above the targets in previous CCAs, and therefore represent energy savings which were considered cost effective to implement. Government reiterates its intention to close the registry and cancel the allowances.
31. Government will close the UK ETR on 15 December 2012. This will allow for any data errors identified by current CCA holders, which require the use of the Registry, to be rectified.

## 2.4 Administrative Charges

32. There was broad support from the consultation exercise for Option 2 (70% in favour of the revised proposals, and no significant objections to the facility charge). This option offers Sector Associations a discount on the charge they will be required to pay the administrator in return for handling the collection of fees from facilities in their sector. Under this option, there would be no additional charge for variations. The EA will issue the final charging scheme, subject to DECC Secretary of State approval, in Autumn 2012.
33. Some representations were made on the differential in charge between TUs and self-reporting TUs and Government will consider these when charging options are reviewed after the new scheme has been running for a period.

## 2.5 Energy and Carbon Accounting

34. In the March consultation, Government proposed a number of changes to the way TUs would report and calculate energy and carbon under the new agreements in order to simplify, streamline and align the CCA scheme, wherever possible, with other schemes, such as EU ETS. Industry has been calling for a reduction in the cumulative burden from having to comply with a number of climate change policies. Proposals and responses from a stakeholder event held on 20 February and subsequent discussions informed the proposals made in the March consultation on the topics of renewable heat, emissions factors and energy.

### Renewable Heat

35. Under the current scheme when heat is generated from renewable fuel then the energy content of the renewable fuel used to generate this heat is not reported as part of a TUs total energy consumption. Renewable heat has therefore counted as both zero energy and zero carbon (except for some sectors who use significant biomass). Government proposed that biomass and biofuel energy consumption should be reported in the new scheme, but that this energy consumption would have a zero carbon factor (except for peat).
36. Respondents were generally supportive of the proposal to use actual gross calorific value (GCV) figures for calculating energy consumption, where these are available, or standard GCV figures where they are not. The relevant CO<sub>2</sub> emissions factors will be derived in first instance from Defra's Green House Gas (GHG) reporting guidelines, or where this is not available or suitable, from another agreed source on a GCV basis. Government will work with EA to provide guidance including a fuller list of standard factors of other fuels, especially those identified in the consultation responses (Question 6). If further fuels are identified at a later date, Government agrees with the suggestion that these can be added to the list, and the standard factors will be based on factors published elsewhere.
37. 20 of the 49 respondents had some concerns about having separate sub-sectors with energy and carbon commitments. These related to the expected low take-up of renewable heat and to an increased workload resulting from the creation of 2 separate sub sectors. However, Government notes that it will be optional for a sector to have a carbon target. Therefore, any increased workload resulting from the adoption of a carbon target will be at the sectors' own request. In light of the potential for carbon savings resulting from improved energy efficiency to be significantly outweighed by switching to low or zero carbon fuels, as explained in the consultation document, Government will proceed with this proposal.

38. The CCA scheme is not designed to provide additional incentives for renewables beyond Feed-in Tariffs (FITs), Renewables Obligation Certificates (ROCs) or Renewable Heat Incentive (RHI) and therefore does not intend to change its position regarding the reporting of electricity. Government is aware that heat is treated more favourably in CCA, in the sense that subsidised renewable heat is considered zero carbon. However, this is both a pragmatic and principled decision. Firstly, unlike the carbon factor for grid electricity, there is no carbon factor which would be easy to use for a quantity of heat delivered. Secondly, potentially more significantly, heat must be produced near the site of consumption. This means that CCA heat production and use is determined largely by the processes in the CCA facilities, and is a question of fuel switching. This is quite different from renewable electricity generation, which is a new activity, not fuel switching. The capacity for renewable electricity generation is unrelated to the processes in the CCA facility, but to other factors, for example the availability of undeveloped land. Government believes that the capacity for renewable heat can reasonably be considered during target setting, and will be considered for those opting for a carbon target.
39. Where non-renewable waste is used as a fuel, both energy and carbon will be accounted for. Where waste is a mix of renewable and non-renewable components, the renewable/non-renewable fractions will be taken into account when accounting for carbon.

#### Carbon Accounting – Emissions Factors

40. The emission factors used in the current scheme have not changed since its introduction in 2001. Holding the same emission factors allows sites to make clear investment decisions based on the knowledge that a particular carbon target will not become more or less challenging over time. It also allows reported emissions savings to be represented as real site savings rather than as a consequence of decarbonisation of the grid. Following comments from Industry to align emissions factors across schemes including CCAs, CRC and EU ETS, Government proposed aligning emissions factors to the Defra/DECC GHG reporting guidelines. CCA reporting takes place biennially, whereas GHG reporting guidelines are reviewed on an annual basis. To overcome this mismatch three options were presented in the March consultation: (1) use of latest Defra/DECC GHG figures at the time of reporting and to account for expected electricity decarbonisation during the target setting process; (2) use of fixed factors for both target setting and assessment of target achievement (3) total alignment with GHG reporting guidelines, using annually updated figures.
41. There was a very mixed response to the proposals, with equal numbers preferring options 1 and 2 (14 respondents each). The option of complete alignment (option 3) was least favoured with only 5 respondents in favour of this option. Option 3 was seen by some respondents as complex (requiring annual reports), while others took the view that it reduced complexity (by aligning with other schemes). Such divergent views may reflect the diverse CCA population, with organisations of very different scales, who may or may not be included in other schemes.
42. Most of the comments received under all options related to emphasising the certainty required in the new scheme. Although there were advantages in Option 1, seen by a few participants to reduce administrative burden, there was a concern raised about the divergence of the assumed and actual carbon intensity for electricity. Overall a greater number of respondents considered that the fixing of emissions factors, as provided for in Option 2, would be predictable, transparent and provide certainty. 18 respondents made other suggestions; 12 of which suggested a variation of Option 1 which would use factors fixed over the lifetime of the scheme. This has many practical similarities with Option 2, although it may reflect better future decarbonisation of the electricity grid. In total 26 respondents were in favour of fixing emissions factors at the start of the scheme.

43. In light of the responses, and considering a desire for simplicity and certainty, Government has decided that it will proceed with Option 2 on the basis of fixing the emissions factors at the beginning of the scheme for both target setting and in assessing the targets. In doing this, it will use Defra/DECC GHG reporting guidelines published in 2012. CCA reporting is in energy terms, and the Register will undertake the conversion to carbon. EA will publish the CO<sub>2</sub> factors used for assessing the targets in guidance. In addition to the emissions calculated using these fixed emissions factors, the carbon emissions for an underlying agreement calculated using the most recent version of the Defra/DECC GHG figures will be available from the Administrator at the request of the agreement holder. This will address the confidentiality concerns identified for Option 2, and will allow the agreement holder to align as far as is possible on a 2 year reporting basis with others schemes.

#### Energy Accounting

44. Government concluded that energy accounting should continue on a primary energy basis. In light of responses at the stakeholder event, reporting of (as distinct from accounting for) grid electricity will be on a delivered basis. This removes the need for agreement holders to convert to primary energy themselves, but to report only delivered electricity. Accounting for the consumption of CHP outputs will be substantially unchanged from the current scheme. CHP accounting protocols will be covered in guidance after consultation with industry.

45. The conversion factor for converting grid electricity consumption from delivered to primary terms will be 2.6.

## **Annex 1: List of Consultation Respondents to the January and March 2012 Consultations**

### **Sector Associations**

Agricultural Industries Confederation  
Aluminium Federation  
Association of Wallcovering Manufacturers  
British Beer and Pub Association  
British Calcium Carbonates Federation  
British Cement Association  
British Ceramic Confederation  
British Coatings Federation  
British Compressed Gases Association  
British Glass Manufacturers Confederation  
British Leather Confederation  
British Lime Association  
British Meat Federation  
British Non-Woven Manufacturers Association  
British Plastics Federation  
British Poultry Council  
British Printing Industries Federation  
British Soft Drink Association  
Chemicals Industry Association  
Cleveland Potash Ltd  
Confederation of British Metal Forming  
Dairy UK  
Food and Drink Federation  
Food Storage and Distribution Federation  
Gypsum Products Development Association  
Kaolin and Ball Clay Association  
Maltsters Association of Great Britain  
Metal Packaging Manufacturers Association  
Mineral Wool Energy Savings TU (MINESCO)  
Non-Ferrous Alliance  
Packaging and Industrial Films Association  
Paper Federation of Great Britain  
Slag Grinders Sector Ltd  
Society of Motor Manufacturers and Traders  
Spirits Energy Efficiency TU  
Surface Engineering Association  
Target 2010  
UK Renderers Association  
UK Steel Association  
Wood Panel Industries Federation

### **Companies with CCAs (Target Units, TUs)**

AstraZeneca UK Ltd  
Cemex UK Operations Ltd  
Discovery Foods

Formica Ltd  
Glaxo Smithkline R&D  
Hanson Building Products  
Hanson Cement  
Ibstock Brick Ltd  
Knauf UK GmbH  
Tarmac  
Tata Steel UK Ltd  
Toyota Motor Manufacturing UK Ltd

**Others**

ADS Group Ltd  
EDF  
EEF  
ESTA Energy Services and Technology Association  
FEC Services Ltd  
M&C Energy Group  
UK Emissions Trading Group  
[www.EnergyElephant.Com](http://www.EnergyElephant.Com)  
[www.ukace.org](http://www.ukace.org)

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