

EXPLANATORY MEMORANDUM TO
THE GREENHOUSE GAS EMISSIONS DATA AND NATIONAL
IMPLEMENTATION MEASURES REGULATIONS

2009 No. 3130

1. This explanatory memorandum has been prepared by the Department of Energy and Climate Change and is laid before Parliament by Command of Her Majesty.

2. Purpose of the Instrument

2.1 These Regulations transpose Article 9(a)2 and Article 11 of Directive 2003/87/EC (as amended by Directive 2009/29/EC) so as to improve and extend the greenhouse gas emission allowance trading scheme of the Community. The Regulations apply in England, Wales, Scotland and Northern Ireland.

2.2 Article 9(a)2 imposes an obligation on Member States to submit to the European Commission emissions data for installations that will be introduced into the European Union Emissions Trading System (EU ETS) in Phase III, which starts on 1 January 2013. The data will be used by the European Commission to adjust the Phase III Community-wide cap to account for the expanded scope of the EU ETS in Phase III. The Regulations impose an obligation on relevant operators to submit this data to the regulator, and thereafter for the regulator to submit the data to the European Commission by the deadline of 30 June 2010 as set out in the Directive.

2.3 Article 11 imposes an obligation on Member States to publish and submit National Implementation Measures (NIMs) to the European Commission by 30 September 2011. NIMs will contain a list of installations covered by the revised Directive in the UK's territory and any free allocation to each installation, calculated in accordance with Community-wide allocation methodologies. The Regulations allow for the collection of the information necessary for the UK to comply with its Community obligation under this article, particularly for determining installation level free allocation, and the publishing and submission to the European Commission of NIMs by the deadline.

2.4 A Transposition Note has been prepared to accompany these Regulations.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 These Regulations are made in exercise of the powers conferred by both section 2(2) of the European Communities Act 1972 and section 2 of the Pollution Prevention and Control Act 1999. A combination of these powers is needed as s.2 of the 1999 Act is the appropriate domestic power, but it does not extend to Northern Ireland. It is, therefore, necessary to exercise the powers in section 2(2) of the 1972 Act as well as those in section 2 of the 1999 Act.

4. Legislative Context

4.1 Directive 2003/87/EC of the European Parliament and of the Council ('the EU ETS Directive') established a system for greenhouse gas emission allowance trading within the European Community.

4.2 In January 2007, the European Commission published two Communications entitled 'An Energy Policy for Europe' and 'Limiting Global Climate Change to 2 Degrees Celsius' which set out the Commission's proposals for action by the EU to prevent anthropogenic climate change from irrevocable consequences, centring around a proposal for the EU to autonomously reduce its own emissions by at least 20% below 2005 levels by 2020. Following on from these proposals, in January 2008 the European Commission published proposals to revise Directive 2003/87/EC.

4.3 In December 2008, the European Commission agreed Directive 2009/29/EC, which amends Directive 2003/87/EC so as to improve and extend the greenhouse gas emission allowance trading scheme of the Community. It came into force on 23 April 2009, although the provisions of the Directive will not have any application until the beginning of Phase III.

4.4 The revised Directive is designed to be more environmentally ambitious in order to deliver greater emissions reductions whilst also increasing scarcity in the carbon market. It includes a centralised, EU-wide cap on emissions with an annually declining trajectory which will deliver an overall reduction of 21% below 2005 emissions by 2020, rising to 30% in the context of a comprehensive international agreement at the COP 15 United Nations Climate Change Conference in Copenhagen in December 2009.

4.5 In addition, aviation activities will be included in the EU ETS from 2012. The Aviation Greenhouse Gas Emissions Trading Scheme Regulations 2009 (SI 2009/2301) came into force on 17th September 2009.

4.6 The remainder of the Directive is to be transposed by 31 December 2012. A second set of Regulations will be introduced to transpose the revised Directive in its entirety prior to that date.

5. Territorial Extent and Application

5.1 This instrument applies to England, Wales, Scotland and Northern Ireland.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The establishment of a system for greenhouse gas emission allowance trading within the European Community in 2005 by the EU ETS Directive was a major milestone in the global efforts to tackle climate change. It was one of the key policies introduced by the European Union to help meet the EU's greenhouse gas emissions reduction target of 8% below 1990 levels under the Kyoto Protocol. It works on a 'cap and trade' basis, where, in Phase II (2008-2012), Member States are required to set an emissions cap for all the sectors covered by the EU ETS.

7.2 The rationale behind emissions trading is that it enables emission reductions to take place where the cost of the reduction is lowest, thus lowering the overall costs of combating climate change. More abatement will be undertaken by operators with lower abatement costs, therefore reducing the overall costs of meeting the emissions target (cap) set by any trading scheme. It also ensures that emissions reduction targets are met by setting a cap. This is unlike other systems, such as taxation, where the amount of emissions reductions is uncertain.

7.3 The UK Government is strongly in favour of the EU ETS and pushed for an ambitious outcome during the 2007 negotiations on the revised Directive at the European Council.

7.4 The Regulations transpose Article 9(a)2 and 11 of the revised Directive in accordance with the deadline of 31 December 2009 set out in that Directive. These Articles lay the groundwork for Phase III of the EU ETS through the calibration of the Community-wide cap for the new Phase, and the compilation of Member State National Implementation Measures. The Regulations oblige the operators of relevant installations to submit the data necessary for the successful completion of these two tasks.

8. Consultation outcome

8.1 The Department of Energy and Climate Change consulted on the transposition of Article 9(a)2 and 11 of the revised Directive from June 2009 to September 2009. Respondents' views have been taken into account when drafting these Regulations and the Department has published a summary report and Government response addressing points raised by respondents.

9. Guidance

9.1 The Department and regulators have as far as possible notified relevant stakeholders of the new procedures and monitoring, reporting and verification requirements introduced by these Regulations. Detailed guidelines and further notification of detailed requirements will be issued in good time for these requirements to be understood and applied prior to the deadlines for data submission and data verification.

10. Impact

10.1 An Impact Assessment is attached to this memorandum.

11. Regulating small business

11.1 The legislation applies to small business.

12. Monitoring & review

12.1 In 2011, a second stage transposition of the revised Directive will take place in order to transpose the remainder of the Directive. This is likely to involve a revocation and reissuing of the Greenhouse Gas Emissions Trading Scheme Regulations 2005 (Statutory Instrument 2005 No. 925).

13. Contact

13.1 Daniel Rathwell at the Department of Energy and Climate Change Tel: 0300 068 5283 or email: Daniel.rathwell@decc.gsi.gov.uk can answer any queries regarding the instrument.

Summary: Intervention & Options

Department /Agency:
**Department of Energy
and Climate Change**

Title:
**Impact Assessment of First Stage Transposition
of Revised Directive 2003/87/EC (EU Emissions
Trading System)**

Stage: Implementation

Version: Final

Date: 13 November 2009

Related Publications: Overarching Impact Assessment of EU Climate and Energy Package.

Available to view or download at:

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

Contact for enquiries: Daniel Rathwell

Telephone: 0300 068 5283

What is the problem under consideration? Why is government intervention necessary?

Directive 2009/29/EC, revising Directive 2003/87/EC, obliges Member States to transpose Article 9a(2) and Article 11 of the revised Directive by December 31, 2009. These two Articles relate to the European Commission's need to gather the relevant emissions data for updating the Phase III (2013-2020) Community-wide emissions cap in light of installations new to the EU Emissions Trading System (EU ETS) in Phase III, and the requirement for Member States to publish National Implementation Measures (NIMs) for Phase III of the EU ETS and submit them to the Commission by 30 September 2011. If Government fails to transpose, a Community obligation will not be met, and UK will not be prepared for Phase III of the EU ETS.

What are the policy objectives and the intended effects?

The objective of the European Commission's first stage transposition process is 1. to ensure that the relevant emissions data has been compiled and submitted to the European Commission by the UK so it can set Phase III Community-wide cap; and 2. to ensure that UK is in a position to produce its NIMs by obliging the operators of Phase III EU ETS installations to submit the data needed to determine installation-level allocations in Phase III. Both of these objectives are necessary for Phase III of the EU ETS to function as desired.

What policy options have been considered? Please justify any preferred option.

Option 1 – Do not collect the data.

Option 2a – Collect some data, but do not require data from all installations or for all years.

Option 2b – Collect a full dataset and require it to be independently verified.

Option 2c – Collect a full dataset but require only emissions data to be independently verified.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

Further consideration of the benefits and costs arising from the transposition of the revised Directive will be done as part of an Impact Assessment, prior to the UK's implementation of the NIMs.

Ministerial Sign-off For consultation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

Joan Ruddock Date: 25th November
2009

Summary: Analysis & Evidence

Policy Option: 2b

Description: Comply with Directive: collect full dataset using data collection and validation procedures for the EU ETS

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' The one-off costs to industry of complying with this regulation by collecting and collating emissions, production and other relevant data and having it independently verified. This includes the cost of submitting the data to the Environment Agency. The cost to the Environment Agency of processing the data is also considered.
	One-off (Transition)	Yrs	
	£ 2.6 million	1	
	Average Annual Cost (excluding one-off)		
	£ -		Total Cost (PV) £ 2.6m
<p>Other key non-monetised costs by 'main affected groups' This IA does not consider the ongoing cost to installations of membership of the EU ETS. This includes any additional abatement cost to industry arising from the increased scope of the EU ETS under the revised Directive. These costs will be presented in an Impact Assessment, once more information is available prior to the UK's implementation of the NIMs.</p>			

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups' A key benefit of complying with this regulation is that it will help an accurate Community-wide cap to be set and ensure the UK is in a position to submit its NIMs on time. It will also help inform the UK's position during European negotiations over allocation methodologies. It has not been possible to monetise these benefits.
	One-off	Yrs	
	£ -		
	Average Annual Benefit (excluding one-off)		
	£ -		Total Benefit (PV) £ -
<p>Other key non-monetised benefits by 'main affected groups' The environmental benefits of increasing the scope of the EU ETS under the revised Directive have not been considered in this IA. These benefits will be presented in an Impact Assessment before the UK's implementation of the NIMs.</p>			

Key Assumptions/Sensitivities/Risks The costs will depend on the number of installations affected and the complexity of collating the required historical emissions, production and other relevant data.

Price Base Year 2009	Time Period Years 1	Net Benefit Range (NPV) £ -2.6m	NET BENEFIT (NPV Best estimate) £ -2.6m
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What is the geographic coverage of the policy/option?	UK
On what date will the policy be implemented?	1 January 2010
Which organisation(s) will enforce the policy?	Environment
What is the total annual cost of enforcement for these	£ 390,000
Does enforcement comply with Hampton principles?	Yes

Will implementation go beyond minimum EU requirements?	No			
What is the value of the proposed offsetting measure per year?	£ -			
What is the value of changes in greenhouse gas emissions?	£ -			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation (excluding one-off)	Micro -	Small -	Medium -	Large -
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)			(Increase - Decrease)		
Increase	£ -	Decrease	£ -	Net	£ -

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Evidence Base (for summary sheets)

Background on the European Union Emission Trading System

In December 2008, the European Council and the European Parliament agreed the EU's 2020 Climate and Energy Package, which represents the implementation phase of the EU's political commitment to move to a low carbon future. Together, the various elements of the Climate and Energy Package implement the decisions agreed by EU Heads of State and Government at the March 2007 Spring European Council.

The new Directive 2009/29/EC sets out how the EU ETS will operate beyond 2012, including how the limit on emissions will be established, the scope of the emissions covered by the system, along with various other provisions for the efficient operation of the EU ETS. The Overarching Impact Assessment of the Climate and Energy package includes an initial discussion of the potential impact on the UK of the revisions to the EU ETS Directive.¹ This document provides a more detailed assessment of the impacts for the UK of the first stage transposition of this Directive.

Requirements to collect information under the revised ETS Directive

The revised Directive has expanded and harmonised the coverage of emissions across the EU. The Community-wide cap on emissions, introduced in 2013, will need to be adjusted to take account of those emissions entering into the EU ETS. To enable the European Commission to adjust the cap, the revised Directive requires Member States to collect data on the historical emissions for those installations which will be brought into the EU ETS in 2013.

In addition to expanding the scope of the EU ETS, the revised Directive sets out changes to the way free allowances will be allocated to installations. The main method for allocating free allowances to installations will be to use product benchmarks determined on a sectoral and sub-sectoral basis. While the details of these benchmarks are still to be determined through the European comitology process, the government is aware that the benchmarks will rely on historical production data. Therefore, to determine the levels of free allocation, the operators of installations eligible for free allocation in 2013 through the benchmarking allocation methodology will have to submit their historical production data. Early collection of these data allows for all potential issues surrounding data to be worked out in good time and will be helpful to industry for this reason. In addition, the data will help to inform the UK's position during the comitology process as it will allow the UK to have a much more detailed understanding of the impacts of proposals on UK industry.

For the free allowances which will be allocated using one of the fallback allocation methodologies² set out by the European Commission's consultants, the draft Regulations allow for the collection of 'other relevant data'.

Government intends to produce guidance which will outline data submission and verification requirements in greater detail.

¹ More detail on the Overarching Climate and Energy package Impact Assessment is available at: www.decc.gov.uk/en/content/cms/what_we_do/lc_uk/carbon_budgets/carbon_budgets.aspx.

² In cases where no product benchmark is feasible, the use of fall back approaches such as heat production benchmarking and fuel mix benchmarking will be considered.

The two Articles transposed in the Regulations are important in that they prepare for Phase III of the EU ETS, helping to determine the overall amount of allowances in the EU ETS in Phase III, and the individual free allocations to installations. It is important that the Phase III Community-wide cap is representative of the installations to be in the EU ETS and that the UK's National Implementation Measures³ (NIMs) are submitted in an accurate, efficient and timely fashion using robustly verified data.

Options considered

The following options were considered in preparation of these regulations:

1 – Do nothing: do not collect the emissions, production or other relevant data needed to enable the European Commission to adjust the cap and allocate free allowances to installations.

2a – Attempt to comply with the revised Directive by collecting some data, but do not require data from all installations or for all years.

2b – Attempt to comply with the revised Directive by collecting a full dataset for emissions, production and other relevant data, using data collection and validation procedures established for annual compliance under the EU ETS.

2c – Attempt to comply with revised Directive by collecting a full dataset for emissions, production and other relevant data, but require only emissions data to be independently verified.

Option 1 was rejected on the grounds that it would risk the UK being infracted for non-compliance with the revised Directive. This would be contrary to the UK Government's general position in relation to complying with EU Directives. In addition, doing nothing would not be consistent with the UK's objectives for the EU ETS which are to ensure that the system operates as effectively as possible. Collection of the information required to adjust the cap will allow for the timely implementation of Phase III of the EU ETS that will provide for emissions reductions consistent with the UK's climate change targets.

Option 2a was considered and rejected. As this option may involve collecting emissions data from only some installations, or using a single year's data to estimate emissions for other years, it may help minimise the costs to industry of complying with the revised Directive. However, this was rejected as article 9(a)(2) of the new Directive strongly implies that the European Commission requires data from each installation and the relatively high fixed costs of verifying data (set out below) means the savings achieved from requiring verification of data from only 1 year are likely to be minimal. Also, the data submitted by Member States for compliance with Article 9(a)2 will impact directly on the level of the Community-wide Phase III cap, and the data collected for compliance with Article 11 will directly impact the number of free allowances individual installations will receive. It is therefore important the data submitted to the European Commission is accurate, transparent and verified.

Option 2c was considered and rejected. Under this option only the emissions data would need to be independently verified. Production and other relevant data, used for the calculation of installation free allocations would not require independent verification. These data will be a crucial determinant of the number of free allowances an installation will receive. Across the EU, the value of the allowances that are distributed for free is expected to be several billion Euros each year from 2013. Therefore it is important that this information is independently verified to a high standard in order to reduce the incentives for installations to overstate their production levels or misreport other relevant data, in order to receive a greater number of free allowances.

³ Each Member State is required to publish and submit NIMs to the Commission, by 30 September 2011. The NIMs will contain a list of installations covered by the new Directive in the Member States' territory and any free allocation to each installation calculated in accordance with the Directive.

Option 2b is the preferred option. This option will require operators to submit emissions data, production and other relevant data which are independently verified and consistent with the data requirements of the revised Directive. This option will allow the UK to submit the most representative data set as possible to the European Commission, allowing for a more accurate adjustment of the overall cap and an accurate and fair distribution of free allowances to EU ETS installations in the UK's territory.

Additional abatement benefits and costs

Increasing the scope of the EU ETS under the revised Directive will bring additional emissions into the EU ETS from the non traded sector and the EU cap will be revised in Phase III to reflect this.

As the EU ETS cap is reduced, there is potential for the expansion in scope to have benefits to the environment. However, this would only be the case if the level of extra emissions reduction resulting from the increased scope of the EU ETS is above that which would have occurred outside the EU ETS. This would depend on the extent to which the relevant emissions moved from the non traded sector to the EU ETS would have been subject to emissions reductions policies in the non traded sector.

As well as potentially impacting on environmental benefits, the extra emissions in the EU ETS and subsequent annual reduction in the cap could affect the total abatement cost within the EU ETS. For example, the inclusion of extra emissions could increase the level of effort needed by operators to meet the cap, raising abatement costs. However, this effect needs to be considered alongside the fact that a wider pool of abatement opportunities arising from the increased scope could potentially lower the total cost of abatement if the new installations to the EU ETS have a sufficiently large number of cheap abatement opportunities.

However, at this stage there is insufficient information to monetise these benefits and costs. Therefore, the analysis below focuses on the administrative cost of transposing Articles 9(a)2 and 11 of the revised Directive, as well as a qualitative assessment of the benefits collecting this data brings. The benefits and costs arising from any additional abatement in UK emissions will be presented in an Impact Assessment, once more information is available prior to the UK's implementation of the NIMs.

Administrative costs

Complying with the Regulations by collecting and verifying the emissions and production and other relevant data will impose administrative costs on operators. An administrative cost refers to anything that businesses must do to comply with Regulations that would not otherwise have been done. Typically, this can involve form filling, keeping records, reading and understanding guidance, or responding to information requests.

Installations new to the EU ETS in Phase III will be required to submit emissions data and production and/or other relevant data. Installation already in the EU ETS in Phase II will only be required to submit production and/or other relevant data.

It is crucial to point out that the administrative burdens arising from this transposition are one-off and not recurring costs and fall therefore not under the burdens savings exercise as reflected in Departmental Simplification Plans. These costs therefore do not affect DECC's administrative burden baseline. The standard cost model methodology has been used to calculate the administrative costs. As part of this approach it has been necessary to make a number of assumptions. These have been informed by discussions with the regulator and full consideration of the responses to the consultation document published in June 2009.

Emissions data for Article 9(a)2 compliance

Approximately 170 UK installations will be required to verify and submit emissions data to comply with this Regulation and enable the setting of the Community-wide cap in Phase III. These are installations that were not in the EU ETS in Phase II but will be included from Phase III. As such, they will not have an existing relationship with an independent verifier in relation to the EU ETS, and will be required to contact and contract with one to provide a verification report for their emissions. They may also be unfamiliar with the EU ETS monitoring, reporting and verification regime and therefore may require some additional time to interpret the issued guidance.

Operators will be required to read and understand guidance, and in particular assess whether they need to comply with the Regulations. The consultation document⁴ contained a draft list of the installations that need to comply and there are ongoing and iterative efforts by the UK Government to ensure that this list is as accurate as possible.

Operators will then be required to select a verifier. This involves checking which ones are accredited by the United Kingdom Accreditation Service (UKAS) to perform annual verifications for the EU ETS. Working with their verifier, operators will be required to identify, collect and collate emissions data from their installations. They will also need to discuss with the verifier the specific checks required and whether a site visit is necessary. The cost for collecting and verifying data is estimated to be approximately £2,000 per installation.

Once the verification process has been completed and the verifier is satisfied regarding the emissions data that the operator intends to report, the emissions data must be submitted to the regulator along with evidence that the data has indeed been independently verified. The partial Impact Assessment included a fee for this data submission, but upon consideration Government has determined that there will be no fee for submitting these data to the regulator.

The administrative costs described above represent a one-off cost to the estimated 170 new installations included under the extended scope of the EU ETS. It is not certain what proportion of the estimated 170 installations will be required to submit emissions data on an ongoing basis under the EU ETS. For example, it is possible that Government will determine that some of the installations may be excluded from the EU ETS under the small emitters discretion and not be required to submit data for the EU ETS in the future. Government has not yet made a policy determination on excluding small emitters.

An assessment of the ongoing costs of membership of the EU ETS has not been considered as part of this IA. As explained above, ongoing costs include any additional abatement cost to industry arising from the increased scope of the EU ETS under the revised Directive. These costs will be presented in an Impact Assessment before the UK's implementation of the NIMs.

Production and other relevant data

The draft Regulation requires the collection of historical production data and other relevant data⁵ for all installations eligible for free allocation and expected to be included in the EU ETS in Phase III (from 2013). Approximately 610 installations are covered by the EU ETS in the UK in Phase II, excluding electricity generators (which are not eligible for free allocations in Phase III). A further 170 installations (see above) are expected to be included within the EU ETS in Phase III, giving the estimated number of installations covered by the regulation to be 780.

The costs per installation involved in providing verified production data and/or other relevant data will be similar to those involved in providing verified emissions data. The installations will incur costs from reading and understanding their requirements to collect, collate and compile data.

⁴ Please see www.decc.gov.uk/en/content/cms/consultations/etstranspos1/etstranspos1.aspx

⁵ Other relevant data is the data required for the fallback methodologies, including data for the heat production and fuel mix benchmarks.

There is a requirement that installations have the production data and other relevant data independently verified. While the details of this requirement have not been set out, Government expects that this process will be of similar complexity and cost to the independent verification of emissions data. Installations may choose to use a different verifier to that used for emissions data, and incur additional costs because of this. However, in the absence of any evidence to the contrary, this Impact Assessment assumes that installations will use the same firm to verify their production and other relevant data as used for emissions data.

Calculation of Administrative Costs

Installations new to the EU ETS in Phase III:

- 1) £510,000 for independently verifying emissions, production and other relevant data (£3,000 per installation⁶)
- 2) £190,570 for internal administration activities such as reading and understanding the regulations and guidance, collating data in preparation for independent verification, selecting and contracting with an independent verifier and familiarisation with the process of submitting data (an average of £1,121 per installation).

Existing phase II installations:

- 1) £1,220,000 for independently verifying production and other relevant data (£2,000 per installation)
- 2) £250,100 for internal administration activities such as reading and understanding the regulations and guidance and collating data in preparation for independent verification (an average of £410 per installation).

The higher average per installation cost for new installations to the EU ETS is due to the extra cost of familiarising themselves with the process of submitting data and the need to contact, select and contract with a verifier.

The total one-off administrative cost to all operators covered by the EU ETS in Phase III is £2,170,670⁷. These are based on average costs per installation. Some installations may face higher than average costs if their emissions are particularly complex.

Costs to Government

There will be additional costs for the Environment Agency in collating and submitting the data to the European Commission, as these costs are not being recouped from operators through the charge for submission of data. Using a preliminary estimate of the cost to the regulator of £500 per installation of processing the emissions, production or other relevant data, the total cost to government would be £390,000.

Benefits

The transposition of Articles 9(a)(2) and 11 of the revised Directive by December 31st, 2009 will mean that the United Kingdom successfully complies with an EU transposition requirement relating to climate change that is in accordance with UK's climate change targets. This will demonstrate our commitment to the EU ETS and to its success in Phase III and beyond.

Specifically, the transposition of Article 9(a)(2) will mean that the UK will have helped to inform the European Commission of the installations that will be new to the EU ETS in Phase III and their historical emissions data. This in turn will assist the European Commission in accurately

⁶ The cost of verifying emissions data is assumed to be £2000. The additional cost of verifying production and other relevant data for installations already having their emissions data verified is assumed to be £1000.

⁷ In 2009 prices

adjusting the Community-wide cap to take account of the UK's installations, helping to ensure that the right number of allowances is present in Phase III. This is extremely important to the functioning of the EU ETS beyond Phase II.

Also, the transposition of Article 9(a)(2) will mean that firms who will come into the EU ETS from Phase III will have the opportunity to familiarise themselves with the EU ETS, particularly its monitoring and reporting requirements, three years before they will be required to comply with it. This will help in the transition to Phase III, particularly in introducing the new installations into it, and may lower costs in future. Existing operators will also be informed at an early stage on the production and other relevant data they will be required to submit in Phase III and be in a better position to plan ahead.

The transposition of Article 11 will allow the UK to compile its NIMs in a timely fashion, creating greater predictability for installations already in the EU ETS and those who will come into it in Phase III.

The earlier collection of production and other relevant data will be helpful in informing the UK's position in the comitology process, where free allocation methodologies will be determined. It will enable the UK to view the effect of proposals on its industry sectors as these proposals are made. This will be of great value in strengthening the UK's position during these negotiations, and will allow Government to more effectively represent British industry.

The transposition of this Article will also aid the European Commission in ensuring a smooth transition to Phase III and will contribute to the broader goal of ensuring that the EU ETS functions properly.

As explained earlier, there is the potential for the increased the scope of the EU ETS under the revised Directive to have environmental benefits. However, these have not been considered as part of this IA and will assessed in an IA, prior to the UK's implementation of the NIMs.

Specific impact tests

These Regulations are not expected to have an adverse impact on competition and are not expected to disproportionately impact on small firms.

Competition assessment

Expanding and streamlining the scope of the EU ETS will allow a better and more harmonised coverage. This will reduce any previous competitive distortions within sectors and between Member States. There should be no limitations on competition from those measures covered by the revised EU ETS Directive.

Small firms impact test

Given the breadth of coverage of the EU ETS it is not possible to say for certain what the impact on small firms will be from the proposed amendments to the EU ETS. Without detailed information at firm level, it is not possible to analyse the overlap between small firms and smaller emitters. In addition, the revised Directive grants Member States discretion over whether or not to exclude small emitters from the EU ETS, and Government has not yet made a policy determination on this issue.

Specific Impact Tests: Checklist

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	No	No
Disability Equality	No	No
Gender Equality	No	No
Human Rights	No	No
Rural Proofing	No	No

Transposition Note

Concerning the greenhouse gas emissions data and national implementation measures regulation 2009 (2009 No. 3130), transposing Article 9(a)2 and Article 11 of Directive 2009/29/EC so as to improve and extend the greenhouse gas emission allowance trading scheme of the Community

Article 2 of the amending Directive states that Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 2012. However, they shall bring into force the laws, regulations and administrative provisions necessary to comply with Article 9(a)2 and Article 11 of Directive 2009/29/EC by 31 December 2009. These Regulations concern the transposition of Article 9(a)2 and Article 11 only.

Article	Objective	Implementation	Responsibility
9(a)2	Requires Member States to ensure that the operators of installations carrying out activities only included in the Community scheme from 2013 onwards submit to the relevant competent authority historical emissions data, in order that the data can be taken into account for the adjustment of the Community-wide quantity of allowances to be issued from 2013.	Regulation 3 of the Regulations implements Article 9(a)2 by imposing a duty on operators of the relevant installations to submit independently verified data by the deadline set out in the Article. It also imposes a duty on the competent authority to submit these data to the European Commission, again by the deadline set out in the Article. The Regulation requires that the data is independently verified.	Secretary of State
11(1)	Requires Member States to publish and submit to the European Commission National Implementation Measures (NIMs). NIMs will contain a list of installations covered by Directive 2009/29/EC in a Member State's territory, as well as any free allocation granted to each of these installations.	Regulation 4 of the Regulations implements Article 11(1) by setting out a process whereby the operators of the relevant installations are obliged to send the independently verified data that will be used to determine installation-level allocations to the competent authority, which will then be forwarded to	Secretary of State

		the Secretary of State. Once the Secretary of State has received these data, it can then put together the UK's National Implementation Measures and submit them to the European Commission by the deadlines set out in the Directive.	
11(2)	Requires the competent authorities of Member States to issue the free allowances by 28 February each year.	No specific legislative provision is necessary.	Competent Authority
11(3)	States that Member States may not issue free allowances under 11(2) to installations whose inclusion in the NIMs has been rejected by the European Commission	No specific legislative provision is necessary.	Secretary of State