



# DRAFT REGULATIONS: CARBON BORDER ADJUSTMENT MECHANISM (CBAM) (EMISSIONS AND VERIFICATION)

Issued 21 May 2026

ICAEW welcomes the opportunity to comment on the Draft regulations: Carbon Border Adjustment Mechanism (CBAM) published by HM Revenue & Customs on 9 April 2026, a copy of which is available from this [link](#).

This response of 21 May 2026 has been prepared by ICAEW's Tax Faculty. Internationally recognised as a source of expertise, ICAEW's Tax Faculty is a leading authority on taxation and is the voice of tax for ICAEW. It is responsible for making all submissions to the tax authorities on behalf of ICAEW, drawing upon the knowledge and experience of ICAEW's membership. The Tax Faculty's work is directly supported by over 130 active members, many of them well-known names in the tax world, who work across the complete spectrum of tax, both in practice and in business. ICAEW Tax Faculty's Ten Tenets for a Better Tax System, by which we benchmark the tax system and changes to it, are summarised in Appendix 1.

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## KEY POINTS

1. ICAEW welcomes the opportunity to comment on the second package of draft secondary legislation for the Carbon Border Adjustment Mechanism (CBAM), comprising the draft Carbon Border Adjustment Mechanism (Emissions and Verification) Regulations 2026 (“the Regulations”), the accompanying System Boundaries Document and the draft Force of Law Notice, all published on 9 April 2026.
2. This representation makes one structural observation, together with three points where, in our view, the drafting could be improved before the final instruments are laid. We have framed the comments by reference to ICAEW’s Ten Tenets for a Better Tax System (see Appendix 1) where relevant.
3. We recognise that this is a technical consultation on draft secondary legislation rather than a broader policy consultation on the design of UK CBAM. The architectural choices made in the Finance Act 2026 are not in scope for the present exercise. We note, however, that the EU CBAM has undergone significant simplification through the Omnibus Regulation that entered into force in October 2025, including simplified emissions reporting for complex goods and a default carbon price mechanism for overseas carbon price deductions. The Policy Summary states that the UK methodology has been designed to support interoperability with EU CBAM; we would encourage HM Treasury and HMRC to extend that principle to compliance simplification, and to keep the comparative position under review as both regimes bed in. Tenet 3 (simple) supports as straightforward a regime as the underlying policy permits, particularly where compliance burdens fall on businesses new to a tax of this kind.

### Balance between the SI and the Force of Law Notice

4. The Regulations delegate a substantial volume of operative content to the Force of Law Notice. The methodology for measuring emissions (reg 11), the attribution of emissions to production processes (reg 6), precursor emissions methodology (reg 7), the circumstances in which a site visit is required (reg 12(2)(e)), the technical and accreditation standards for verifiers (reg 12(1)(e)) and accreditation bodies (reg 13), the methodology for verifying data (reg 14), the contents of the verification report (reg 15(3)), monitoring period detail (reg 9(5)), the meaning of “satisfactory” (reg 10(2)) and the meaning of “weight” in two places (reg 2) are all left to the notice. The resulting Force of Law Notice runs to 106 pages.
5. The Force of Law Notice is properly authorised by the Regulations, which are in turn authorised by the Finance Act 2026, and we have not identified anything in the notice that goes beyond the scope of those enabling powers. However, although Parliament will have approved the enabling structure, the substantive content of the notice – eg, the methodology for verifying data, the materiality threshold and the independence rules for verifiers – has not been the subject of parliamentary scrutiny and need not be in future. HMRC may amend the notice administratively without any further parliamentary engagement on the substance of the rules it contains. The more material that sits in the notice rather than in the Regulations, the further the regime departs from the Tenet 1 standard that tax rules should be enacted by statute and subject to democratic scrutiny.

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6. The scale of this substantive delegation in the CBAM regime, when compared with established uses of force of law in other tax contexts, raises a genuine question about the constitutional foundation on which the architecture rests. This is not a question we can fully answer without sight of the legal analysis underpinning the chosen approach. In the spirit of mutual transparency on uncertain tax positions – a principle HMRC is itself seeking to extend through the current consultation on the Uncertain Tax Treatment regime – we would welcome publication of the legal reasoning supporting the chosen architecture in the explanatory material accompanying the final instruments. This would allow taxpayers, advisers and Parliament to understand the basis on which substantive policy choices are being made through tertiary material in a regime of this novelty and scale.
7. Setting that constitutional question aside, we recognise that not all of the delegated material needs to sit in the Regulations. Where content is genuinely technical, operationally detailed, and expected to require periodic updating in response to technical or scientific developments – for example, emission factors drawn from international sources, equipment calibration standards, or laboratory analytical methods – placing it in a notice is a defensible choice that reflects sensible administrative flexibility.
8. A different question arises, however, where the content in question is a structural feature of the regime: a rule that determines who is admitted to operate within it, how stringent it is, or what protections are built into its operation. Several items presently in the Force of Law Notice fall into this category:
  - a. the ISO standards specified for verifiers (J.6.1(1)) and accreditation bodies (J.2.2), which determine eligibility to operate in the verification market;
  - b. the 5% materiality threshold (J.7.13), which determines the line between findings requiring correction and those that do not;
  - c. the requirement for an independent reviewer (J.6.5 and J.7.24), which is a structural integrity safeguard rather than an operational detail; and
  - d. the default rule that physical site visits are mandatory unless waived (J.7.9), which is the core assurance mechanism of the verification regime.
9. Each of these is described in the Policy Summary as a feature of the regime as designed. Each, if amended, would materially change the regime's character rather than merely its operation. We consider that they would more appropriately sit in the Regulations.
10. We recognise that placing material in the Regulations rather than in a notice makes subsequent amendment slower and more demanding of parliamentary time. We also recognise that CBAM is a new tax in a developing landscape, and that HMRC may need operational flexibility to respond to issues that emerge once the regime is in operation. Verifier capacity is a particular concern, given the parallel demands of the EU CBAM regime and the finite pool of accredited verifiers; this could create real operational difficulties in the early years of CBAM.
11. We do not consider that the right response to these legitimate concerns is to place the structural features of the regime in a notice. Operational flexibility, where genuinely needed, can be built in through narrowly drafted reliefs or temporary disapplication powers that allow HMRC to respond to specific operational pressures without changing the underlying rule. The detailed design of such powers is a matter for HM Treasury and HMRC, but the principle is that operational flexibility should not require the structural design of the regime to sit outside parliamentary scrutiny.
12. We note also that the six-week window provided is tight given the volume and technical detail of the package – 106 pages of notice in addition to the Regulations and System Boundaries Document – and that there is no guarantee that future amendments to the notice will be subject to comparable consultation. Placing structural features in the Regulations themselves would secure them against administrative amendment in a way that publication by notice does not.
13. We would encourage HM Treasury and HMRC to revisit the allocation of content between the two instruments before finalisation. As noted in paragraph 6 above, we also urge HMRC

to use the explanatory material accompanying the final Regulations to set out comprehensively both the legal reasoning and the policy rationale for wherever that final dividing line is drawn.

### **Mechanism for UK-produced precursor goods**

14. The Policy Summary states that “CBAM will not apply to emissions embodied in UK-produced precursor goods that are imported into the UK as part of a complex CBAM good” and that “the emissions attributable to the UK-produced precursor should be deducted from the total embodied emissions of the imported CBAM good”. The Policy Summary’s record-keeping section also refers to “documents and information relating to evidence of UK origin that has been provided in relation to exported goods which are then reimported in a complex good to be treated as an exemption”, which confirms that an exemption is intended.
15. As far as we can see, the operative mechanism for that exemption is not visible in the package as drafted. We have reviewed the Regulations, the System Boundaries Document, the Force of Law Notice and the Carbon Border Adjustment Mechanism (Administrative Provisions) Regulations 2026 published in February 2026.
16. Reg 16(1)(g) of the Regulations imposes record-keeping requirements in respect of installations producing precursor goods, and reg 6(1)(c) of the Administrative Provisions Regulations requires the weight of precursor goods to be reported on the return where a default value is used. However, neither of these provide a substantive rule by which the emissions of a UK-produced precursor are excluded from the embodied emissions of the imported complex CBAM good.
17. Several practical questions about the operation of the exemption are therefore unanswered. It is not clear whether the deduction is calculated using actual emissions data from the UK installation that produced the precursor, default values, or some other method. It is not clear how the exemption is to operate for UK precursors that were exported before CBAM took effect on 1 January 2027 and are re-imported as part of a complex good thereafter – in particular, how the emissions embodied in those precursors are to be evidenced when the UK installation was not subject to monitoring, reporting or verification obligations at the time of production. The published material gives no indication of which approach is intended.
18. Given the practical importance of this exemption for UK manufacturers whose exported goods may have been in international supply chains for several years, and given that the calculation rule will affect both the CBAM liability and the records businesses need to keep, we would welcome early sight of the proposed mechanism so that consultees can comment on it before the final instruments are laid.

### **Verification report contents**

19. Reg 15(2) of the Regulations sets a six-item statutory minimum for the contents of a verification report: identification of the installation, operator, verifier, accreditation number, monitoring period, and the verifier’s opinion statement. The actual emissions data and emissions intensity – the central evidential output of the verification process – are not on this list. They appear instead in Annex II of the Force of Law Notice, at section 2.4(b), via the broader notice-making power in reg 15(3).
20. We recognise that incorporation by force of law is a familiar legislative technique and that, in operational terms, Annex II will be binding. We nonetheless suggest that the emissions data and the emissions intensity of each good should be included in the reg 15(2) list itself. These are not technical implementation details that need flexibility to evolve; they are the core data points that the verification process exists to confirm. Including them on the face of the Regulations would more accurately reflect the centrality of these items to the verifier’s task and would mean the statutory minimum is a meaningful one.

**Cross-reference error**

21. The Force of Law Notice contains six references to the joint production process “as defined in A.1.2(9) of this notice” (at J.7.11(1)(f)(ii), J.7.12(2)(f)(ii), and four times in Annexes II and III). Section A.1 of the notice is the definitions section and contains no paragraph 9. The joint production process rule for vertically integrated installations is in fact set out at A.2.2(7), which provides that where precursors are not transferred out of the installation for sale or use in other production processes, monitoring and calculation of embodied emissions “may be covered by a joint production process. In that case, monitoring and calculation of embodied emissions of both types of goods shall be carried out jointly”.

## APPENDIX 1

### ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. **Statutory.** Tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament. A clear statutory basis ensures legitimacy, accountability, and public trust in the tax system.
2. **Certain.** As far as possible, the application of tax rules and compliance processes should be certain. Taxpayers should not normally need to resort to the courts to understand how the rules apply to their affairs.
3. **Simple.** The tax system should be easy to understand for all taxpayers and advisers. Complexity undermines trust, creates unfairness, and discourages compliance.
4. **Easy to administer.** Tax liabilities should be straightforward to administer for HMRC, agents, and all taxpayers. Taxes should be designed to work effectively in a digital environment, while administration must remain accessible to those with limited digital capability.
5. **Properly targeted.** Anti-avoidance rules and other targeted measures should be proportionate, clearly defined, and carefully scoped to achieve their policy objective without undermining simplicity or certainty. Poorly targeted measures add complexity and uncertainty, harming compliance.
6. **Stable.** Changes to the tax system should only be made when clearly justified by economic, social, or environmental goals. Transparent, purposeful reforms build confidence and move the system toward greater coherence and long-term stability.
7. **Subject to proper consultation.** Other than in exceptional circumstances, tax changes should be subject to open and meaningful consultation. Adequate time for stakeholder input improves policy quality, practicality, and public trust.
8. **Regularly reviewed.** Tax rules, reliefs, and policy-driven interventions should be subject to regular, transparent review to assess whether they remain relevant, effective, and aligned with current policy goals. Outdated or unjustified provisions should be reformed or repealed to maintain coherence.
9. **Fair and accessible.** The tax system should be fair and accessible in design and in operation, ensuring equitable treatment of taxpayers. Revenue authorities must exercise their powers proportionately, and all taxpayers should have timely access to HMRC assistance, independent appeal, and redress.
10. **Efficient.** The tax system should raise revenue in a way that minimises unnecessary distortions, compliance burdens, and resource misallocation. While all taxes affect behaviour to some degree, tax design should avoid cliff edges, unintended incentives, or inefficiencies that reduce economic wellbeing unless these serve a clearly defined policy aim.

For more information, please see [Ten Tenets for a Better Tax System | ICAEW](#).