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STATUTORY INSTRUMENTS

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**2012 No. 3038**

**CLIMATE CHANGE**

**The Greenhouse Gas Emissions  
Trading Scheme Regulations 2012**

*Made* - - - - *5th December 2012*  
*Laid before Parliament* *10th December 2012*  
*Coming into force* - - *1st January 2013*

The Secretary of State is a Minister designated<sup>(1)</sup> for the purposes of section 2(2) of the European Communities Act 1972<sup>(2)</sup> in relation to the environment.

In accordance with section 2(4) of the Pollution Prevention and Control Act 1999 (“the 1999 Act”)<sup>(3)</sup>, the Secretary of State has consulted the Environment Agency, the Scottish Environment Protection Agency, and such bodies or persons appearing to the Secretary of State to be representative of the interests of local government, industry, agriculture and small businesses, and such other bodies and persons, as the Secretary of State considers appropriate.

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972, and it appears to the Secretary of State that it is expedient for the references to EU instruments in these Regulations to be construed as references to those instruments as amended from time to time.

Accordingly the Secretary of State, in exercise of the powers conferred by sections 2 and 7(9) of and Schedule 1 to the 1999 Act<sup>(4)</sup> and by section 2(2) of the European Communities Act 1972, as read with paragraph 1A of Schedule 2 to the European Communities Act 1972<sup>(5)</sup>, makes the following Regulations<sup>(6)</sup>:

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(1) [S.I. 2008/301](#).

(2) [1972 c. 68](#); section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 ([c. 51](#)) and by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 ([c. 7](#)).

(3) [1999 c. 24](#).

(4) Paragraph 9A of Schedule 1 was inserted by [S.I. 2005/925](#), and amended by [S.I. 2012/2788](#). There are other amendments to Schedule 1 which are not relevant to these Regulations.

(5) Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 ([c. 51](#)) and amended by [S.I. 2007/1388](#) and by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 ([c. 7](#)).

(6) Under section 57 of the Scotland Act 1998 ([c. 46](#)), despite the transfer to the Scottish Ministers of functions in relation to observing and implementing obligations under Community law in respect of devolved matters, any function of the Secretary of State in relation to any matter continues to be exercisable as regards Scotland for the purposes specified in section 2(2) of the European Communities Act 1972. And similarly, under paragraph 5 of Schedule 3 to the Government of Wales Act 2006 ([c. 32](#)), despite the transfer to the Welsh Ministers of functions under section 2 of the 1999 Act so far as exercisable in relation to Wales (except in relation to offshore oil and gas exploration and exploitation), those functions continue to be exercisable by the Secretary of State in relation to Wales for such purposes.

## PART 1

### General

#### Citation and commencement

1. These Regulations may be cited as the Greenhouse Gas Emissions Trading Scheme Regulations 2012 and come into force on 1st January 2013.

#### Duty to review these Regulations

2.—(1) The Secretary of State must from time to time—

- (a) carry out a review of these Regulations;
- (b) set out the conclusions of the review in a report; and
- (c) publish the report.

(2) In carrying out the review the Secretary of State must, so far as is reasonable, have regard to how the Directive, and measures adopted under it by the European Commission, are implemented in other member States.

(3) The report must in particular—

- (a) set out the objectives intended to be achieved by the regulatory system established by these Regulations;
- (b) assess the extent to which those objectives are achieved; and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(4) The first report under this regulation must be published before the end of the period of five years beginning with the day on which these Regulations come into force.

(5) Reports under this regulation are afterwards to be published at intervals not exceeding five years.

#### Interpretation

3.—(1) In these Regulations—

“the 2005 Regulations” means the Greenhouse Gas Emissions Trading Scheme Regulations 2005(7);

“the 2010 Regulations” means the Aviation Greenhouse Gas Emissions Trading Scheme Regulations 2010(8);

“allocation”, in relation to an allowance, means allocation free of charge in accordance with Chapter 1 or 2 of the Directive;

“allowance”—

- (a) in this regulation, has the meaning given in Article 3(a) of the Directive, but
- (b) otherwise (and subject to regulations 54(7) and 82(1)) means an allowance other than an aviation allowance;

“annual reportable emissions” means the reportable emissions arising in any scheme year;

“authority” means—

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(7) S.I. 2005/925; amended by S.I. 2005/2903, 2006/737, 2007/465, 2007/1096, 2007/3433, 2010/1513, 2011/1506, 2011/2911 and S.R. (N.I.) 2010/92.

(8) S.I. 2010/1996, amended by S.I. 2011/76 and 2011/2911.

- (a) in relation to an installation which is (or will be) situated in England or an offshore installation, the Secretary of State;
- (b) in relation to an installation, other than an offshore installation, which is (or will be) situated in—
  - (i) Scotland, the Scottish Ministers;
  - (ii) Wales, the Welsh Ministers;
  - (iii) Northern Ireland, the Department of the Environment;

(c) in relation to a UK administered operator, the authority defined in regulation 20;

(d) in relation to a banned non-UK operator, the Secretary of State;

“aviation activity” means an aviation activity listed in Annex 1 to the Directive;

“aviation allowance” means any allowance allocated in accordance with Article 3e or 3f of the Directive or auctioned in accordance with Article 3d of the Directive;

“aviation emissions” means emissions, arising from an aviation activity, of gases specified in respect of that activity by Annex 1 to the Directive;

“aviation emissions plan” means an emissions plan as defined by regulation 20;

“banned non-UK operator” means a person on whom an operating ban has been imposed under Article 16(10) of the Directive and who is not a UK administered operator;

“bioliquids” has the meaning given in Article 2(h) of the Renewable Energy Directive;

“cease operation”, in relation to an installation, has the meaning given in paragraph (3);

“chief inspector” means the chief inspector constituted under regulation 8(3) of the Northern Ireland Regulations;

“current operator” has the meaning given by regulation 12(1);

“the Directive” means Directive [2003/87/EC](#) of the European Parliament and of the Council establishing a scheme for greenhouse gas emissions allowance trading within the Community and amending Council Directive [96/61/EC](#)(**9**), as amended from time to time and as adapted by Annex 20 to the EEA agreement(**10**);

“duly made”, in relation to an application, means made in accordance with the requirements of these Regulations;

“emissions” has the meaning given in Article 3(b) of the Directive;

“excluded installation” means an installation the exclusion of which is deemed to be approved by the European Commission under the first sub-paragraph of Article 27(2) of the Directive, unless a notice has been given to the operator under paragraph 8(1) or (4) or paragraph 9(1) of Schedule 5 (in which case the installation ceases to be an excluded installation as from the date specified in the notice);

“excluded installation emissions permit” means a permit—

- (a) granted following an application under regulation 10(2), or
- (b) which results from a variation under paragraph 2 of Schedule 5;

“fee”, in relation to any matter, means the fee or charge prescribed in respect of that matter by a scheme, or regulations, made under—

- (a) regulation 18;

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(9) OJ No L 275, 25.10.2003, p 32. The Directive was amended by European Parliament and Council Directives [2004/101/EC](#) (OJ No L 338, 13.11.2004, p 18), [2008/101/EC](#) (OJ No L 8, 13.1.2009, p 3) and [2009/29/EC](#) (OJ No L 140, 5.6.2009, p 63), and by Regulation (EC) No 219/2009 of the European Parliament and of the Council (OJ No L 87, 31.3.2009, p 109).

(10) See Point 21al of that Annex, amended by Decision of the EEA Joint Committee No 6/2011 (OJ No L 93, 7.4.2011, p 35); and see the Introduction and Sectoral Adaptation included at the beginning of the Annex.

- (b) section 41A of the Environment Act 1995**(11)**;
- (c) regulation 4 of the Greenhouse Gas Emissions Trading Scheme Charging Scheme Regulations (Northern Ireland) 2010**(12)**; or
- (d) Article 127 of the Planning (Northern Ireland) Order 1991**(13)**;
- “the Free Allocation Decision” means Commission Decision 2011/278/EU of 27 April 2011 determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87/EC**(14)**;
- “greenhouse gas emissions permit” means a permit granted following an application under—
- (a) regulation 10(1); or
- (b) regulation 8 of the 2005 Regulations;
- “installation” has the meaning given in Article 3(e) of the Directive (and references to an “installation” include a reference to a part of an installation);
- “KP registry administrator” has the meaning given by regulation 81(1);
- “monitoring and reporting conditions” has the meaning given by paragraph 3(8) of Schedule 5;
- “monitoring and reporting requirements” has the meaning given by paragraph 2(3) of Schedule 4;
- “the Monitoring and Reporting Regulation” means Commission Regulation (EU) No 601/2012 of 21 June 2012 on the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87/EC of the European Parliament and of the Council**(15)**, as amended from time to time;
- “new operator” has the meaning given by regulation 12(1);
- “Northern Ireland Regulations” means the Pollution Prevention and Control Regulations (Northern Ireland) 2003**(16)**;
- “notice of surrender” has the meaning given in regulation 13(7);
- “offshore installation” means—
- (a) an offshore petroleum installation; or
- (b) an offshore storage or unloading installation;
- “offshore petroleum installation” means an installation which—
- (a) is used for purposes connected with the exploration for, or exploitation of, petroleum (within the meaning of section 1 of the Petroleum Act 1998**(17)**); and
- (b) is, or will be, situated in the area (together with places above and below it) comprising—
- (i) those parts of the sea adjacent to England and Wales from the low water mark to the landward baseline of the United Kingdom territorial sea;
- (ii) the United Kingdom territorial sea apart from those areas comprised in any controlled waters within the meaning of section 30A(1) of the Control of Pollution Act 1974**(18)**; and

**(11)** 1995 c. 25; section 41A was amended by S.I. 2011/2911 and 2012/2788, and see further the footnote to regulation 18(3).

**(12)** S.R. (N.I.) 2010 No. 151; amended by S.I. 2011/2911 and 2012/2788.

**(13)** Article 127 was substituted by S.I. 2006/1252 (N.I. 7).

**(14)** OJ No L 130, 17.5.2011, p 1.

**(15)** OJ No L 181, 12.7.2012, p 30.

**(16)** S.R. (NI) 2003 No 46, amended by S.R. (NI) 2003 No 496 and S.I. 2003/3311; there are other amending instruments which are not relevant.

**(17)** 1998 c. 17.

**(18)** 1974 c. 40; section 30A was substituted (in relation to Scotland) by section 169 of, and paragraph 4 of Schedule 23 to, the Water Act 1989 (c. 15), and was amended by section 120 of, and paragraph 29 of Schedule 22 to, the Environment Act 1995.

(iii) those areas of sea in any area for the time being designated under section 1(7) of the Continental Shelf Act 1964(19);

“the Offshore Regulations” means the Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001(20);

“offshore storage or unloading installation” means an installation which—

(a) is used for purposes connected with an activity within section 2(3) or section 17(2) of the Energy Act 2008(21); and

(b) is, or will be, situated in the area (together with places above and below it) comprising—

(i) those parts of the sea adjacent to England from the low water mark to the landward baseline of the United Kingdom territorial sea;

(ii) the United Kingdom territorial sea, other than the territorial sea adjacent to Scotland or Wales; and

(iii) those areas of sea in a Gas Importation and Storage Zone (within the meaning of section 1(5) of that Act(22));

“operator”, in relation to an installation, has the meaning given in paragraph (2) (and “operate” has the corresponding meaning);

“partial transfer” has the meaning given by regulation 12(2);

“permit” (except in paragraph 1(2)(b) of Schedule 4 and paragraph 7(12) of Schedule 6) means—

(a) a greenhouse gas emissions permit; or

(b) an excluded installation emissions permit;

“the Planning Appeals Commission” means the Planning Appeals Commission established under article 110 of the Planning (Northern Ireland) Order 1991(23);

“prescribed” (in relation to a fee) means specified in, or determined under, the scheme or regulations in question;

“the Registries Regulation 2010” means Commission Regulation (EU) No 920/2010 of 7 October 2010 for a standardised and secured system of registries pursuant to Directive 2003/87/EC of the European Parliament and of the Council and Decision No 280/2004/EC of the European Parliament and of the Council(24);

“the Registries Regulation 2011” means Commission Regulation (EU) No 1193/2011 of 18 November 2011 establishing a Union Registry for the trading period commencing on 1 January 2013, and subsequent trading periods, of the Union emissions trading scheme pursuant to Directive 2003/87/EC of the European Parliament and of the Council and Decision No 280/2004/EC of the European Parliament and of the Council and amending Commission Regulations (EC) No 2216/2004 and (EU) No 920/2010(25), as amended from time to time;

“registry administrator” has the meaning given by regulation 8(1);

(19) 1964 c. 29; section 1(7) was amended by section 37 of, and paragraph 1 of Schedule 3 to, the Oil and Gas (Enterprise) Act 1982 (c. 23).

(20) S.I. 2001/1091; amended by S.I. 2005/2055, 2007/938, 2007/938 and 2010/1513.

(21) 2008 c. 32; section 17 was amended by S.S.I. 2011/224 and S.I. 2011/2453.

(22) Section 1 is amended (from a date yet to be appointed) by section 41 of, and paragraph 5 of Schedule 4 to, the Marine and Coastal Access Act 2009 (c. 23).

(23) S.I. 1991/1220 (N.I. 11); relevant amending instruments are S.I. 1999/660 (N.I. 4) and 2003/430 (N.I. 8).

(24) OJ No L 270, 14.10.2010, p 1; amended by the Registries Regulation 2011.

(25) OJ No L 315, 29.11.2011, p 1.

“registry account” means an operator holding account or an aircraft operator holding account in the Union Registry (and “open”, “blocked” or “excluded” status, in relation to such an account, have the meanings given by Article 9 of the Registries Regulation 2011);

“regulated activity” means an activity (other than an aviation activity) that—

- (a) is listed in Annex 1 to the Directive, and
- (b) results in specified emissions;

“regulator” means, in relation to—

- (a) an installation (other than an offshore installation) which is, or will be, situated in—
  - (i) England and Wales, the Environment Agency;
  - (ii) Scotland, SEPA;
  - (iii) Northern Ireland, the chief inspector;
- (b) an offshore installation, the Secretary of State;
- (c) a UK administered operator, the regulator specified in regulations 27 to 29;
- (d) a banned non-UK operator, the Environment Agency;

“the Renewable Energy Directive” means Directive [2009/28/EC](#) of the European Parliament and of the Council on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives [2001/77/EC](#) and [2003/30/EC\(26\)](#), as amended from time to time;

“reportable emissions” means—

- (a) in relation to an installation, the total specified emissions (expressed in tonnes of carbon dioxide equivalent) which arise from the regulated activities carried out at that installation; or
- (b) in relation to a UK aircraft operator, the total aviation emissions of that aircraft operator (expressed in tonnes of carbon dioxide equivalent);

“revocation notice” has the meaning given by regulation 14(1);

“scheme year” means the year beginning with 1st January 2013 or any subsequent calendar year;

“SEPA” means the Scottish Environment Protection Agency;

“specified emissions”, in relation to an activity listed in Annex 1 to the Directive, means emissions of gases specified in Annex 1 in respect of that activity;

“sub-installation” has the meaning given by Article 3(b), (c), (d) and (h) and Article 6 of the Free Allocation Decision;

“surrender requirements” has the meaning given by paragraph 2(4) of Schedule 4;

“tonne of carbon dioxide equivalent” has the meaning given in Article 3(j) of the Directive;

“trading period” means one of the following eight-year periods—

- (a) 2013 to 2020; and
- (b) subsequent consecutive periods of eight calendar years;

“UK administered operator” has the meaning given in regulation 20;

“UK aircraft operator” has the meaning given by regulation 26;

“the Union Registry” means the registry established by Article 4 of the Registries Regulation 2011;

“the UK Registry” means the registry operated by the Environment Agency for the purposes specified in Article 3(1) of the Registries Regulation 2010 immediately before the coming into force of these Regulations;

“variation”, in relation to a permit or a plan, means the amendment of its provisions (and “vary” has the corresponding meaning);

“the Verification Regulation” means Commission Regulation (EU) No 600/2012 of 21 June 2012 on the verification of greenhouse gas emission reports and tonne-kilometre reports and the accreditation of verifiers pursuant to Directive 2003/87/EC of the European Parliament and of the Council(27), as amended from time to time;

“working day” means any day other than—

- (a) a Saturday, Sunday, Good Friday, or Christmas Day; or
- (b) a day which is a bank holiday under the Banking and Financial Dealings Act 1971(28);

“written procedures” means the written procedures required by Article 11(1) of the Monitoring and Reporting Regulation.

(2) The “operator” of an installation is the person who has control over its operation; but where—

- (a) an installation has not been put into operation, the operator is the person who will have control over the operation of the installation when it is put into operation;
- (b) an installation has ceased operation, the operator is the person who holds the permit relating to the installation; and
- (c) the holder of a permit has ceased to have control of the installation to which it relates, the operator is that permit holder.

(3) An installation ceases operation where—

- (a) the conditions in paragraph 7(1)(b) or (c) of Schedule 6 apply in relation to that installation; or
- (b) the installation is a relevant installation, and has permanently ceased the carrying out of regulated activities for the purposes of paragraph 7 of that Schedule.

(4) For the purposes of paragraph (3), a relevant installation is any installation other than—

- (a) an excluded installation; or
- (b) an installation that, by virtue of Article 10a(3) of the Directive, is not eligible for an allocation.

(5) References in these Regulations to anything taking effect (or ceasing to have effect) on a particular date are to be read as references to it taking effect (or ceasing to have effect) as from the beginning of that date.

#### **Application to the Crown etc.**

- 4. Schedule 1 (application to the Crown etc.) has effect.

#### **Notices etc.**

- 5. Schedule 2 (notices etc.) has effect.

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(27) OJ No L 181, 12.7.2012, p 1.

(28) 1971 c. 80; see section 1 and Schedule 1 (which was amended by section 1 of the St Andrew’s Day Bank Holiday (Scotland) Act 2007 (2007 asp 2)).

**Applications etc.**

6. Schedule 3 (applications etc.) has effect.

**Functions of the regulator: Northern Ireland**

7.—(1) Regulation 8(4) of the Northern Ireland Regulations (delegation of functions) has effect as if the reference to the chief inspector’s functions included a reference to the chief inspector’s functions under these Regulations.

(2) Regulation 37(1) of the Northern Ireland Regulations (power of the Department to give directions) has effect as if the reference to functions under those Regulations included a reference to functions under these Regulations.

(3) Any direction of the Department of the Environment that is given by virtue of paragraph (2) must be published in such manner as the Department of the Environment considers appropriate.

**Commission Regulations: designations**

8.—(1) The Environment Agency is the national administrator designated by the United Kingdom for the purposes of the Registries Regulation 2011, and in these Regulations is referred to in that capacity as the “registry administrator”.

(2) Subject to paragraph (3), the regulator is the competent authority designated by the United Kingdom for the purposes of the Registries Regulation 2010.

(3) The Secretary of State is the competent authority so designated for the purposes of—

- (a) Article 26(2);
- (b) Article 27(6),
- (c) Article 28(1); and
- (d) Article 64a(1).

(4) Subject to paragraph (5), the regulator is the competent authority designated by the United Kingdom for the purposes of the Registries Regulation 2011 (other than Articles 23(3) and 31(6)).

(5) The Secretary of State is the competent authority so designated for the purposes of—

- (a) Article 17;
- (b) Article 29(2);
- (c) Article 30(1);
- (d) Article 31(7); and
- (e) Article 71(1).

(6) Subject to paragraph (7), the regulator is the competent authority designated by the United Kingdom for the purposes of the Monitoring and Reporting Regulation.

(7) The Secretary of State is the competent authority so designated for the purposes of Article 68(3).

(8) Subject to paragraph (9), the regulator is the competent authority designated by the United Kingdom for the purposes of the Verification Regulation.

(9) The Secretary of State is the competent authority so designated for the purposes of Article 64(3), and is designated as the focal point authorised by the United Kingdom for the purposes of Article 69(2).



## PART 2

### Stationary installations

#### CHAPTER 1

##### Permits

#### **Requirement for permit to carry out regulated activities**

9. No person may carry out a regulated activity at an installation except to the extent authorised by a permit held by the operator of the installation.

#### **Applications for and grant of permits**

10.—(1) The operator of an installation (other than an excluded installation) may apply to the regulator for a greenhouse gas emissions permit to carry out a regulated activity at the installation.

(2) The operator of an excluded installation may apply to the regulator for an excluded installation emissions permit to carry out a regulated activity at the installation.

(3) However, an application may not be made—

(a) under paragraph (1) or (2) where a permit has already been granted in respect of the installation and continues to have effect; or

(b) under paragraph (2) where an excluded installation emissions permit has been granted in respect of the installation and has been surrendered or revoked.

(4) Following an application under paragraph (1) or (2), the permit must be granted if the regulator is satisfied that—

(a) the application is duly made, and

(b) at the time that the permit is granted (or, if later, has effect) the applicant will be capable of monitoring and reporting emissions from the installation in accordance with—

(i) the monitoring and reporting requirements of the greenhouse gas emissions permit,  
or

(ii) the monitoring and reporting conditions of the excluded installations permit,

but must otherwise be refused.

(5) A permit may be granted under this regulation in respect of more than one installation on the same site, provided that they are operated by the same operator.

(6) Paragraph 1 of Schedule 4 makes further provision about applications for permits.

(7) Paragraph 2 of Schedule 4 makes provision about the contents of greenhouse gas emissions permits, and paragraph 3 of Schedule 5 makes provision about the contents of excluded installation emissions permits.

#### **Review, variation and consolidation of permits**

11.—(1) The regulator must review a permit before the end of the period of five years beginning with the date on which the permit was granted, and afterwards at intervals not exceeding five years.

(2) The regulator may, by giving notice to the operator, vary a permit at any time and may in particular make any variation of the permit that the regulator considers necessary in consequence of—

(a) a review under paragraph (1);

- (b) any report made by the operator under Article 69 of the Monitoring and Reporting Regulation; or
- (c) any notification as mentioned in paragraph 2(7)(b) of Schedule 4 (notification of planned changes in operation etc).
- (3) The regulator may by giving notice to the operator vary a permit where the operator—
  - (a) applies to the regulator for such a variation pursuant to a provision of the permit; or
  - (b) has failed to comply with a requirement of the permit to apply for such a variation.
- (4) The regulator may by giving notice to the operator vary a permit in order to comply with regulator’s duty under—
  - (a) regulation 88(6); or
  - (b) any of the following provisions of Schedule 5—
    - (i) paragraph 2(1);
    - (ii) paragraph 3(3);
    - (iii) paragraph 6(5) or (6);
    - (iv) paragraph 7(4)(b), (6)(b) or (7)(b);
    - (v) paragraph 8(6).
- (5) A notice given under paragraph (2), (3)(b) or (4) may specify a period within which a fee for the variation of the permit must be paid.
- (6) The regulator may by giving notice to the operator replace a permit with a consolidated permit applying to the same regulated activities, and containing the same or equivalent provisions, in the following circumstances—
  - (a) where the permit has been varied;
  - (b) where there is more than one permit applying to installations on the same site operated by the same operator.

### **Transfer of permits**

- 12.**—(1) Subject to paragraph (6), the holder of a permit (“the current operator”) and another person may jointly apply to the regulator for the permit to be transferred to that other person (“the new operator”).
- (2) An application may also be made under paragraph (1) for the partial transfer of a permit; and for that purpose a “partial transfer” is a transfer in respect of—
- (a) some only of the installations to which the permit relates; or
  - (b) some only of the parts of an installation to which the permit relates.
- (3) Paragraph 3 of Schedule 4 makes further provision about the transfer, or partial transfer, of a permit.
- (4) Subject to paragraph 3(2)(b) of Schedule 4, an application under paragraph (1) must be granted if the regulator is satisfied that—
- (a) the application is duly made, and
  - (b) the new operator will (from the relevant date) be the operator of the installation and will be capable of monitoring and reporting emissions from the installation in accordance with—
    - (i) the monitoring and reporting requirements of the greenhouse gas emissions permit, or
    - (ii) the monitoring and reporting conditions of the excluded installations emissions permit,

but must otherwise be refused.

(5) For the purposes of paragraph (4), the relevant date is the date mentioned in paragraph 3(6), (8) or (10) of Schedule 4 as the case may be.

(6) An application for the transfer (or partial transfer) of a permit may not be made in respect of any installation (or part of an installation) that has ceased operation.

### **Surrender of permits**

**13.**—(1) Subject to paragraph (4), if an installation has ceased operation the operator must apply to the regulator to surrender the permit authorising regulated activities at the installation.

(2) Such an application must be made within the period specified by paragraph (3), or such longer period as may be agreed with the regulator.

(3) The period specified is, in the case of an installation that has ceased operation by virtue of meeting the condition in—

- (a) paragraph 7(1)(b) or (c) of Schedule 6, one month beginning with the date on which the installation ceased operation;
- (b) paragraph 7(1)(d) of Schedule 6, one month following the end of the relevant period (as defined by paragraph 7(5) of that Schedule).

(4) The application need not be made where—

- (a) the permit authorises regulated activities at more than one installation, some of which have not ceased operation; and
- (b) by the end of the period mentioned in paragraph (2), the operator has applied to vary that permit so that it no longer applies to any of those installations that have ceased operation.

(5) Where the carrying out of regulated activities at an installation mentioned in paragraph (6) has been suspended, but the installation has not ceased operation, the operator may at any time make an application under paragraph (1) but is not obliged to do so.

(6) Those installations are—

- (a) an excluded installation; or
- (b) an installation that, by virtue of Article 10a(3) of the Directive, is not eligible for an allocation.

(7) If the application under paragraph (1) is granted, the notice of determination given to the operator (“notice of surrender”) takes effect on the date specified in the notice.

(8) Paragraph 4 of Schedule 4 makes further provision about the surrender of permits.

### **Revocation of permits**

**14.**—(1) The regulator—

- (a) may at any time revoke a permit by serving on the operator a notice to that effect (a “revocation notice”), and in particular may do so if the operator has failed to pay a fee for the subsistence of the permit; and
- (b) must do so where the regulator becomes aware that the operator has failed to comply with regulation 13(1) to (3).

(2) A revocation notice takes effect—

- (a) 28 days after the date on which it is served; or
- (b) if a later date is specified in the notice, on that date.

(3) Paragraph 5 of Schedule 4 makes further provision about the revocation of permits.

## CHAPTER 2

### Excluded installations: further provision

#### Excluded installations

**15.**—(1) Schedule 5 makes further provision about excluded installations.

(2) Subject to paragraphs (3) and (4), and unless a contrary intention appears, these Regulations apply to an excluded installation as they apply to an installation that is not an excluded installation.

(3) The following provisions do not so apply—

- (a) regulation 12(2);
- (b) Chapter 3 of this Part and Schedule 6.

(4) The following provisions so apply—

- (a) paragraph 4 of Schedule 4, but as if—
  - (i) any reference in that paragraph to the monitoring and reporting requirements of the greenhouse gas emissions permit were a reference to the monitoring and reporting conditions of the excluded installation emissions permit; and
  - (ii) sub-paragraph (1)(c) and sub-paragraphs (2)(b)(ii), (3), (4) and (6) to (8) were omitted;
- (b) paragraph 5 of Schedule 4, but as if—
  - (i) any reference in that paragraph to the monitoring and reporting requirements of the greenhouse gas emissions permit were a reference to the monitoring and reporting conditions of the excluded installation emissions permit; and
  - (ii) sub-paragraph (1)(c) and sub-paragraphs (3)(b)(ii), (4), (5) and (7) to (9) were omitted.

## CHAPTER 3

### Allocation of allowances

#### Allocation of allowances for 2013 to 2020

**16.**—(1) In this regulation the “allocated amount”, in relation to an installation, means the annual amount of allowances to be allocated to that installation for each scheme year in the trading period 2013 to 2020.

(2) Subject to paragraph (5), the allocated amount is the amount specified in the list that was submitted to the European Commission on 12th December 2011 in accordance with Article 15(5) of the Free Allocation Decision, as substituted by the modified list submitted in April 2012 following the first stage of the Commission’s scrutiny process<sup>(29)</sup>.

(3) Schedule 6 sets out procedures for the allocation of allowances to new entrants to the scheme, and for the adjustment of existing allocations.

(4) The Secretary of State must make any revisions to that list that become necessary in consequence of—

- (a) the procedures set out in Schedule 6;
- (b) the application of the linear reduction factor referred to in Article 9 of the Directive; or

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<sup>(29)</sup> See *Modified UK National Implementation Measures for Phase III of the EU Emissions Trading System* <http://www.decc.gov.uk/assets/decc/11/cutting-emissions/eu-ets/5233-modified-uk-national-implementation-measures-for-p.pdf>.

- (c) any other adjustment required by the European Commission in accordance with the Directive or the Free Allocation Decision.
- (5) Following such a revision the allocated amount is the amount specified in the list as so revised.
- (6) The Secretary of State must by 30th April in each scheme year publish the latest version of the list as so revised.
- (7) Paragraph (6) is subject to regulation 47 (national security).

## CHAPTER 4

### Offshore installations

#### **Powers of entry**

**17.**—(1) The Secretary of State may authorise in writing any person who appears suitable to the Secretary of State to exercise, in accordance with the terms of that authorisation, any of the powers specified in paragraph (2) in respect of offshore installations for the purposes of—

- (a) determining whether the requirements, restrictions or prohibitions imposed under or by virtue of these Regulations are being, or have been, complied with;
- (b) discharging one or more of the functions conferred or imposed upon the Secretary of State under or by virtue of these Regulations; or
- (c) determining whether and, if so, how such a function should be discharged.

(2) The powers exercisable under paragraph (1) are the powers in sub-paragraphs (a) to (k) of regulation 13(2) of the Offshore Regulations (but subject to paragraphs (3) to (4) of that regulation<sup>(30)</sup>).

(3) Regulation 18(1)(h) of the Offshore Regulations applies to a failure to comply with an obligation imposed pursuant to a power exercisable under paragraph (1) as it applies to a failure to comply with an obligation imposed pursuant to regulation 13(2) of the Offshore Regulations.

#### **Charging schemes**

**18.**—(1) The Secretary of State may make, and from time to time revise, a scheme prescribing charges in relation to offshore installations in respect of the matters to which paragraph (2) applies.

(2) This paragraph applies to—

- (a) the performance by the Secretary of State of functions conferred under or by virtue of these Regulations, as regulator in relation to offshore installations; and
- (b) the subsistence of an account required to be held in a trading scheme registry by the operator of an offshore installation.

(3) In this regulation, “trading scheme registry” has the meaning given by section 41A(7) of the Environment Act 1995<sup>(31)</sup>.

(4) The charges prescribed by a scheme under paragraph (1) must be paid to the Secretary of State.

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<sup>(30)</sup> Paragraphs (1) and (2) of regulation 13 were amended, paragraph (3) substituted, and paragraphs (3A) and (3B) inserted, by [S.I. 2005/2055](#).

<sup>(31)</sup> [1995 c. 25](#); section 41A of that Act (“the 1995 Act”) was inserted by [S.I. 2005/925](#); sections 41 and 41A were amended by [S.I. 2011/2911](#), and sections 41, 41A, 42 and 56 and 111 were amended by [S.I. 2012/2788](#). By paragraph 9A(2) of Schedule 1 to the Pollution Prevention and Control Act 1999, subsections (2) to (5) of section 41A of the 1995 Act apply in relation to the Secretary of State and a charging scheme made under this regulation as they apply in relation to SEPA and a charging scheme made by SEPA under the 1995 Act. Paragraph 9A of that Schedule was also amended by [S.I. 2012/2788](#).

**Charging schemes: supplementary**

**19.**—(1) On making, or revising, a scheme the Secretary of State must lay before each House of Parliament a copy of (as the case may be)—

- (a) the scheme; or
- (b) the revisions made to the scheme (or the scheme as so revised).

(2) A scheme may, in particular—

- (a) make different provision for different cases, including different provision in relation to different persons in different circumstances or localities;
- (b) allow for reduced charges payable in respect of permits granted to the same operator;
- (c) provide for the times at which and the manner in which the payments required by the scheme are to be made (subject to any requirements in these Regulations as to times at which payment is required); and
- (d) make such incidental, supplementary and transitional provisions as appear to the Secretary of State to be appropriate.

(3) The Secretary of State must take such steps as the Secretary of State considers appropriate for bringing the provisions of a scheme which is for the time being in force to the attention of persons likely to be affected by it.

(4) In this regulation, “scheme” means a scheme made under regulation 18(1).

**PART 3****Aviation****CHAPTER 1****General****Interpretation**

**20.** In this Part (and in Schedules 7 to 10)—

“the 2009 Regulations” means the Aviation Greenhouse Gas Emissions Trading Scheme Regulations 2009<sup>(32)</sup>;

“area”, in relation to a regulator, means—

- (a) in respect of the Environment Agency, England and Wales;
- (b) in respect of SEPA, Scotland;
- (c) in respect of the chief inspector, Northern Ireland;

“authority”, in relation to a UK administered operator (“P”) means—

- (a) the Welsh Ministers, where—
  - (i) P’s regulator is the Environment Agency; and
  - (ii) P’s registered office is in Wales;
- (b) the Scottish Ministers, where P’s regulator is SEPA;
- (c) the Department of the Environment in Northern Ireland, where P’s regulator is the chief inspector;

<sup>(32)</sup> [S.I. 2009/2301](#); revoked with savings etc. by [S.I. 2010/1996](#).

(d) otherwise, the Secretary of State;

“benchmarking plan” has the meaning given by paragraph 2 of Schedule 7;

“benchmarking year”, in relation to a trading period, means the calendar year ending 24 months before the beginning of the period;

“Commission list” means the list of operators set out in [Commission Regulation \(EC\) No 748/2009](#) on the list of aircraft operators which performed an aviation activity listed in Annex I to Directive [2003/87/EC](#) on or after 1 January 2006 specifying the administering Member State for each aircraft operator<sup>(33)</sup>, as amended from time to time;

“emissions plan” means a plan issued under—

- (a) regulation 34(1)(a);
- (b) regulation 19(1)(a) of the 2010 Regulations; or
- (c) regulation 15(1)(a) of the 2009 Regulations;

“member State” includes an EEA state;

“registered office” (except in Schedule 9) means the registered office in the United Kingdom that a company is required to have under section 86 of the Companies Act 2006<sup>(34)</sup>;

“tonne-kilometre” and “tonne-kilometre data” have the same meaning as in the Monitoring and Reporting Regulation;

“UK administered operator” means (subject to regulations 22 to 25) a person who is—

- (a) identified in the Commission list, and
- (b) specified in that list as an aircraft operator to be administered by the United Kingdom;

“unlisted operator” means a person who is—

- (a) not identified in the Commission list, and
- (b) the user or owner of an aircraft used to perform an aviation activity.

### **Civil Aviation Authority**

**21.**—(1) The Civil Aviation Authority must provide such assistance and advice as the regulator may require in connection with any of the regulator’s functions under this Part (including Schedules 7 to 10) or under regulation 44.

(2) The Civil Aviation Authority is entitled to recover from the regulator a sum equal to any expense reasonably incurred by it in providing the regulator with assistance or advice under paragraph (1).

## **CHAPTER 2**

### **UK administered operators, UK aircraft operators and regulators**

#### **UK administered operators: power to designate**

**22.**—(1) This paragraph applies where the Secretary of State is satisfied that, under Article 18a(1) of the Directive, the United Kingdom is to be regarded as the administering member State in respect of an unlisted operator (“P”).

(2) Where paragraph (1) applies the Secretary of State must—

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<sup>(33)</sup> OJ No L 219, 22.8.2009, p 1; amended by Commission Regulations (EU) No 82/2010 (OJ No L 25, 29.1.2010, p 12), No 115/2011 (OJ No L 39, 12.2.2011, p 1), No 394/2011 (OJ No L 107, 27.4.2011, p 1) and No 100/2012 (OJ No L 39, 11.2.2012, p 1).

<sup>(34)</sup> 2006 c. 46.

- (a) designate P as an operator to whom these Regulations apply; and
  - (b) give notice to P of that designation.
- (3) From the date of service of the notice under paragraph (2), P is to be treated as a UK administered operator for the purposes of these Regulations.
- (4) Before making a designation under paragraph (2), the Secretary of State must consult—
- (a) P;
  - (b) the relevant regulator;
  - (c) the relevant authority; and
  - (d) such other persons as the Secretary of State considers appropriate.
- (5) For the purposes of paragraph (4)—
- (a) the relevant regulator is the person who will be the regulator of P if the designation is made; and
  - (b) the relevant authority is a person (other than the Secretary of State) who will then be the authority in relation to P.
- (6) A designation under paragraph (2)—
- (a) must (subject to paragraph (7)) be revoked by the Secretary of State if paragraph (1) no longer applies in relation to P, and
  - (b) ceases to have effect once P is identified in the Commission list,
- but this is without prejudice to any specification of P in that list as an aircraft operator to be administered by the United Kingdom.
- (7) A designation may not be revoked solely because P has ceased to perform an aviation activity.
- (8) Paragraphs (2)(b), (3) and (4) apply to the revocation of a designation as they apply to the designation itself, except that the reference in paragraph (3) to being treated as a UK administered operator is to be read (subject to the proviso in paragraph (6)) as a reference to no longer being so treated.

#### **Application to be designated as a UK administered operator**

**23.**—(1) An unlisted operator (“Q”) may apply to the Secretary of State to be designated as a UK administered operator.

(2) Where such an application is made the Secretary of State must, after consulting the relevant persons—

- (a) designate Q in accordance with regulation 22(1) and (2); or
  - (b) refuse the application.
- (3) For the purposes of paragraph (2) the relevant persons are—
- (a) the person who will be the regulator of Q if the designation is made;
  - (b) a person (other than the Secretary of State) who will then be the authority in relation to Q; and
  - (c) such other persons as the Secretary of State considers appropriate.

(4) An application under this regulation must be accompanied by evidence that the United Kingdom is to be regarded as the administering member State in respect of Q.

#### **Transfers of operators between member States**

**24.**—(1) This regulation applies where a person (a “transferred operator”)—



- (a) was a non-UK operator at the beginning of a scheme year but, in the course of that year, ceased to be a non-UK operator and became a UK administered operator, or
  - (b) was a UK administered operator at the beginning of a scheme year but, in the course of that year, ceased to be a UK administered operator and became a non-UK operator.
- (2) For those purposes, “non-UK operator” means a person who is—
- (a) identified in the Commission list, and
  - (b) specified in that list as an aircraft operator to be administered by a member State other than the United Kingdom (“the other State”).
- (3) Subject to paragraphs (4) and (5), a regulator (“R”) in performing any of R’s functions under these Regulations may (if it appears to R appropriate to do so) treat the transferred operator—
- (a) as a person who, for the whole of that scheme year, is not a UK administered operator, or
  - (b) as a person who is a UK administered operator for the whole of that scheme year.
- (4) R may not so treat a transferred operator unless R has—
- (a) consulted the other State and the transferred operator, and
  - (b) given both of them notice of that decision.
- (5) R may not treat the transferred operator as a UK administered operator under paragraph (3)(b) for the purposes of imposing a civil penalty in respect of any failure to comply with these Regulations that occurred—
- (a) while the transferred operator was still a non-UK operator, or
  - (b) after the transferred operator became a non-UK operator.

### **Gibraltar operators**

- 25.**—(1) This paragraph applies where—
- (a) a person (“P”) is specified in the Commission list as an aircraft operator to be administered by the United Kingdom;
  - (b) the Commission list identifies P’s State as “Gibraltar (UK)”; and
  - (c) the Secretary of State is satisfied that P is regulated for the purposes of the Directive under legislation implementing the Directive that is applicable in Gibraltar.
- (2) Where paragraph (1) applies, the Secretary of State—
- (a) may designate P as a Gibraltar operator, and
  - (b) must in that case give notice to P of the designation.
- (3) From the date of service of the notice under paragraph (2), P is to be treated for the purposes of these Regulations as a person who is not a UK administered operator.
- (4) Where regulation (1)(b) or (c) no longer applies in relation to P, the Secretary of State may revoke P’s designation; and in that case—
- (a) the Secretary of State must give notice to P of the revocation, and
  - (b) from the date following the date of service of that notice (and for as long as paragraph (1) (a) continues to apply in relation to P) P is to be treated as a UK administered operator for the purposes of these Regulations.
- (5) Before making a designation under paragraph (2), the Secretary of State must consult—
- (a) P;
  - (b) the regulator of P;
  - (c) a person (other than the Secretary of State) who is the authority in relation to P; and

- (d) the Government of Gibraltar.
- (6) Before revoking a designation under paragraph (4), the Secretary of State must consult—
  - (a) P;
  - (b) the person who will be the regulator of P if the revocation is made;
  - (c) a person (other than the Secretary of State) who will then be the authority in relation to P; and
  - (d) the Government of Gibraltar.

### **UK aircraft operators**

**26.**—(1) A person (“P”) is a UK aircraft operator in relation to a scheme year where, in respect of that year, P—

- (a) is a UK administered operator; and
  - (b) performs an aviation activity (or is deemed to perform an aviation activity in accordance with paragraph (5)).
- (2) Where the regulator cannot identify the person that performed an aviation activity the regulator may, where the owner of the aircraft at the time it was used to perform the activity (“the owner”) is a UK administered operator or an unlisted operator, serve a notice on the owner.
- (3) A notice under paragraph (2) must—
- (a) where this information is available to the regulator, specify the dates, times and locations of the activity;
  - (b) be accompanied by such evidence relevant to the activity as the regulator considers appropriate; and
  - (c) require the owner to inform the regulator of the identity of the person who performed the activity, by the deadline specified in the notice.
- (4) The regulator may extend the deadline specified in a notice under paragraph (2).
- (5) Where the owner does not comply with a notice under paragraph (2) by the deadline as so specified or extended, the owner is on the expiry of that deadline deemed to be the person that performed the aviation activity.

### **Regulators: general**

- 27.** Subject to regulations 28 and 29, the regulator of a UK administered operator (“P”) is—
- (a) the Environment Agency, where—
    - (i) P has its registered office in England or Wales; or
    - (ii) P does not have a registered office;
  - (b) SEPA, where P has its registered office in Scotland;
  - (c) the chief inspector, where P has its registered office in Northern Ireland.

### **Regulators: assessment of emissions**

- 28.**—(1) Where—
- (a) a UK aircraft operator (“A”) does not have a registered office, and
  - (b) the regulator (“B”) is in possession of the necessary data,

B must by 1st September in the final year of each trading period make an assessment in accordance with paragraph (2).

- (2) The assessment must—
- (a) determine whether the highest percentage of A’s aviation emissions is attributable to the area of a different regulator (“C”); and
  - (b) in doing so take into account data from the two scheme years preceding the year in which the assessment is made (if received by B before the date that it is made).
- (3) Where that assessment shows that the highest percentage of emissions is attributable to the area of C, B must give notice to A and C by 21st December in the final year of the trading period.
- (4) Where—
- (a) B has given notice under paragraph (3), and
  - (b) the regulator for the trading period following that notice is not determined under regulation 29,
- C is the regulator of A from the beginning of that trading period.

**Regulators: change in registered office**

**29.**—(1) This paragraph applies where a UK administered operator (“A”) with a registered office in the area of one regulator changes, in the course of a trading period, the address of its registered office to the area of a different regulator (“R”).

(2) Where paragraph (1) applies, R is the regulator of A from the beginning of the next trading period.

(3) Where—

- (a) a UK administered operator (“B”) which did not have a registered office at the beginning of a trading period acquires a registered office in the course of that period, and
- (b) that registered office is in the area of a regulator (“S”) who is not the regulator of B in that trading period,

S is the regulator of B from the beginning of the next trading period.

CHAPTER 3

Allocation of aviation allowances

**Allocation of aviation allowances**

**30.** The following Schedules have effect—

- (a) Schedule 7 (allocation of aviation allowances);
- (b) Schedule 8 (allocation of aviation allowances from the special reserve).

CHAPTER 4

Monitoring and reporting aviation emissions

**Interpretation**

**31.** In this Chapter, any reference to a numbered Article is to that Article of the Monitoring and Reporting Regulation.

**Application for an emissions plan by a UK administered operator**

**32.**—(1) Subject to paragraphs (3), (4) and (6), a UK administered operator (“A”) must apply to the regulator for a monitoring plan in accordance with Article 51(1).

(2) That application must contain a plan to monitor A's aviation emissions (together with supporting documents) submitted under Article 12(1).

(3) If A has previously been issued with an emissions plan—

(a) an application under paragraph (1) may not be made without the agreement of the regulator; and

(b) any plan issued under regulation 34(1)(a) replaces the plan that has previously been issued.

(4) Where an application is made by virtue of the second or third sub-paragraphs of Article 51(1), the application must include a satisfactory explanation of why it could not have been made earlier.

(5) Without prejudice to paragraph (1), a UK administered operator who has not previously been issued with an emissions plan may make an application in accordance with paragraph (2) at any time.

(6) If A is a transferred operator within regulation 24(1)(a), and has previously applied to another member State for a monitoring plan in accordance with Article 51(1)—

(a) this regulation applies to A as it applies to a UK administered operator who is not a transferred operator; but

(b) the application to the regulator may be made within the period of 8 weeks beginning with the date on which A became a UK administered operator.

#### **Requirement to notify the regulator if an emissions plan is not applied for**

**33.**—(1) Without prejudice to regulation 32(1), a person (“B”) who becomes a UK administered operator after 31st December 2012 must by the relevant date—

(a) apply to the regulator in accordance with regulation 32, or

(b) notify the regulator in accordance with paragraph (2).

(2) The notification must state that B does not expect to commence an aviation activity within the four-month period beginning with the relevant date.

(3) For the purposes of this regulation, “the relevant date” is the last day of the period of 12 weeks beginning with the date on which B became a UK administered operator.

#### **Issue of an emissions plan**

**34.**—(1) Where a UK administered operator (“A”) has made an application under regulation 32 the regulator must, by the notice of determination of the application—

(a) issue to A a plan setting out how A's aviation emissions must be monitored; or

(b) where paragraph (2) applies, refuse the application.

(2) This paragraph applies where—

(a) the regulator is not satisfied that the plan proposed in the application complies with the Monitoring and Reporting Regulation; and

(b) A has not agreed to amendments of the plan that so satisfy the regulator.

(3) A plan issued under paragraph (1)(a) must contain—

(a) the provisions of the plan as proposed in the application, or with amendments as mentioned in paragraph (2)(b); and

(b) any conditions included pursuant to regulation 36(1).

(4) Where the application is refused—

(a) the regulator must state in the notice under paragraph (1)(b) what changes must be made to the application if a plan is to be issued; and

- (b) A must (or, in the case of an application under regulation 32(5), may) resubmit the amended application within the period of 31 days beginning with the date of service of that notice.

(5) This regulation applies to the resubmission of an application as it applies to the original application, but for that purpose the references to the period of two months in paragraph 2(1)(a) and (2)(b) of Schedule 3 are to be read as a reference to a period of 24 days.

### **Monitoring and reporting emissions**

**35.**—(1) Once a UK administered operator (“A”) has been issued with an emissions plan, A must monitor aviation emissions for each scheme year in which A is a UK aircraft operator.

(2) Monitoring under paragraph (1) must be carried out in accordance with—

- (a) the Monitoring and Reporting Regulation; and
- (b) A’s emissions plan (including the written procedures supplementing that plan).

(3) A must prepare a verified report of aviation emissions, for the whole of each such scheme year, in accordance with the Monitoring and Reporting Regulation and the Verification Regulation.

(4) The report prepared under paragraph (3) must be submitted to the regulator by 31st March in the year following that scheme year.

### **Emissions plan conditions**

**36.**—(1) Each regulator (“R”) must ensure that the emissions plan of a UK administered operator (“A”) for which R is the regulator includes any conditions that R from time to time considers necessary to give proper effect to—

- (a) the Monitoring and Reporting Regulation; and
- (b) the Verification Regulation.

(2) A must comply with any condition included in A’s emissions plan.

### **Variation of an emissions plan**

**37.**—(1) The regulator may, by giving notice to a UK administered operator (“A”), make any variation of A’s emissions plan that the regulator considers necessary in consequence of a report made by A under Article 69.

(2) The regulator may, by giving notice to A, vary A’s emissions plan where—

- (a) A applies to the regulator for an amendment to the emissions plan, pursuant to a condition of the plan; or
- (b) A has failed to comply with a requirement in the emissions plan to apply for such an amendment.

(3) The regulator may, by giving notice to a UK administered operator, vary an emissions plan in order to comply with the regulator’s duty under regulation 36(1) or 89(4).

(4) A notice given under paragraph (1), (2)(b) or (3) may specify a period within which a fee for the variation of the emissions plan must be paid.

### **Variation of a benchmarking plan**

**38.** The regulator may, by giving notice to a UK administered operator (“B”), vary B’s benchmarking plan where B applies to the regulator under paragraph 4(1) of Schedule 7 or paragraph 4(1) of Schedule 8.

## CHAPTER 5

### Sanctions (other than civil penalties)

#### **Detention and sale of aircraft**

**39.**—(1) Where a person (“P”) is—

- (a) a UK administered operator who has not paid a civil penalty within the period of 6 months beginning with the date by which it is due, or
- (b) the subject of an operating ban imposed under Article 16(10) of the Directive,

the regulator may detain a relevant aircraft.

(2) For the purposes of paragraph (1)—

- (a) a “civil penalty” is any penalty imposed—
  - (i) under Part 7; or
  - (ii) under the 2010 Regulations in respect of a failure to comply with those Regulations on or after 1st January 2012; and
- (b) a “relevant aircraft” is any aircraft of which the regulator has reason to believe that P is the operator.

(3) Schedule 9 makes further provision about the detention of aircraft under this regulation, and about the sale of aircraft following such detention.

(4) For the purposes of paragraph (2), and of Schedules 9 and 10, the operator of an aircraft is the person using the aircraft to perform an aviation activity (and “operate” has the corresponding meaning).

#### **Aircraft operating bans**

**40.** Schedule 10 has effect in relation to—

- (a) requests to the European Commission made by the Secretary of State under Article 16(5) of the Directive for the imposition of an operating ban on a UK administered operator; and
- (b) the enforcement of any operating ban imposed under Article 16(10) of the Directive.

## PART 4

### Surrender of allowances

#### **Surrender of allowances: operators of installations**

**41.** For each scheme year, the operator of an installation must surrender allowances in accordance with the surrender requirements of the permit for the installation.

#### **Surrender of allowances: UK aircraft operators**

**42.**—(1) For each scheme year a UK aircraft operator (“P”) must, by the following 30th April, surrender a number of allowances or aviation allowances equal to P’s annual reportable emissions in that scheme year.

(2) For the purposes of the requirement in paragraph (1) the amount of the annual reportable emissions in a recovery year is deemed to be increased by an amount equal to the amount of annual

reportable emissions, arising in the non-compliance year, in respect of which P failed to comply with that requirement.

- (3) For the purposes of paragraph (2)—
  - (a) a “non-compliance year” is any scheme year for which P fails to comply with the requirement in paragraph (1); and
  - (b) the “recovery year” is—
    - (i) the scheme year following the non-compliance year; or
    - (ii) where the non-compliance results from an error in the verified emissions report submitted by P, the scheme year in which the error is discovered.

## PART 5

### Enforcement etc.

#### **Enforcement notices**

**43.**—(1) Where the regulator considers that a person (“P”) has contravened, is contravening, or is likely to contravene a relevant provision, the regulator may serve a notice (“enforcement notice”) on P.

- (2) For the purpose of paragraph (1), a “relevant provision” is any provision of—
  - (a) these Regulations;
  - (b) the Monitoring and Reporting Regulation;
  - (c) a permit; or
  - (d) an aviation emissions plan.
- (3) An enforcement notice must—
  - (a) state the regulator’s view under paragraph (1);
  - (b) specify the matters constituting the contravention or making a contravention likely;
  - (c) specify the steps that must be taken to remedy the contravention or to ensure that the likely contravention does not occur; and
  - (d) specify the period within which those steps must be taken.
- (4) P must comply with the requirements of the notice within the period so specified.
- (5) The regulator may withdraw an enforcement notice at any time by further notice served on P.

#### **Power to determine reportable emissions**

**44.**—(1) A power of the regulator to make a conservative estimate of emissions in accordance with Article 70 of the Monitoring and Reporting Regulation (a “determination of emissions”) may also be exercised where—

- (a) an operator fails to comply with the requirement to submit—
  - (i) a surrender report in accordance with paragraph 4(1)(a) and (b) of Schedule 4; or
  - (ii) a revocation report in accordance with paragraph 5(1)(a) and (b) of Schedule 4;
- (b) an operator has failed to satisfy the regulator as required pursuant to paragraph 2(3)(c) of Schedule 4 or paragraph 3(8)(c) of Schedule 5;
- (c) a request has been made under regulation 54(5)(b); or

- (d) the regulator considers that such a determination is necessary for the purpose of imposing, or considering whether to impose, a penalty under Part 7.
- (2) In the case referred to in paragraph (1)(b), in making the determination the regulator may substitute an emissions factor of greater than zero for the factor reported in respect of the bioliquids concerned.
- (3) The regulator may make a determination of emissions where—
  - (a) the operator has failed to submit a report as required pursuant to paragraph 3(8)(b) of Schedule 5; or
  - (b) the regulator has reason to believe that the report submitted is incorrect.
- (4) A determination of emissions—
  - (a) must be notified to the operator or UK aircraft operator concerned; and
  - (b) is to be treated as determining all of the reportable emissions from the installation (or of the UK aircraft operator) for the period to which the determination relates.
- (5) A notice under paragraph (4)—
  - (a) except where it relates to an excluded installation, must be served on the registry administrator (and is in that case to be regarded as an instruction to the registry administrator for the purposes of Article 32(6) of the Registries Regulation 2011); and
  - (b) must, where required by Article 70(2) of the Monitoring and Reporting Regulation, specify the corrections that are required to the verified report mentioned in regulation 35(3) or in paragraph 2(3)(b) of Schedule 4.
- (6) A regulator who makes a determination of emissions under the Monitoring and Reporting Regulation, or by virtue of this regulation, may recover the cost of doing so from the operator or UK aircraft operator concerned.

## PART 6

### Information

#### **Provision of information**

**45.**—(1) An authority or the Secretary of State may, by notice served on a regulator (“R”), require R to furnish such information about the discharge of R’s functions as the authority or the Secretary of State may require.

(2) For the purposes mentioned in paragraph (4), an authority, the Secretary of State, the registry administrator, the KP registry administrator or a regulator (a “relevant body”) may, by notice served on any person, require that person (“P”) to furnish such information as is specified in the notice, in such form and within such period following service of the notice or at such time as is so specified.

(3) The information which P may be required to furnish by a notice under paragraph (2) includes information, which, although it is not in P’s possession or would not otherwise come into P’s possession, is information which it is reasonable to require P to compile for the purpose of complying with the notice.

- (4) The purposes referred to in paragraph (2) are—
  - (a) the discharge of the relevant body’s functions; and
  - (b) applying, seeking to apply, or assessing whether to seek to apply emission allowance trading to activities or greenhouse gases which are not listed in Annex 1 to the Directive, in accordance with Article 24 of the Directive.



(5) Where the Secretary of State is entitled to serve a notice on a person under paragraph (2)—

- (a) in relation to England and Wales, the regulator, and
- (b) in relation to Scotland and Northern Ireland, the regulator or the Environment Agency,

may serve that notice for the purpose of assisting the Secretary of State.

(6) In this regulation, “functions” means functions under or by virtue of—

- (a) these Regulations;
- (b) the Monitoring and Reporting Regulation;
- (c) the Verification Regulation;
- (d) the Registries Regulation 2010; or
- (e) the Registries Regulation 2011.

### **Disclosure of information**

**46.**—(1) Subject to paragraph (2) a relevant body (within the meaning of regulation 45(2)) must not disclose or publish any information provided to the relevant body under these Regulations except where—

- (a) disclosure or publication is—
  - (i) required in these Regulations or otherwise by law;
  - (ii) necessary for the performance of the relevant body’s functions (as defined by regulation 45(6)); or
  - (iii) made with the consent of the person by or on behalf of whom the information was provided; or
- (b) disclosure is between one relevant body and another.

(2) The Secretary of State may use any information held or obtained for the purposes of these Regulations, and may share such information with other government bodies, for the purpose of preparing and publishing national energy and emissions statistics, including the preparation and publication of a national inventory.

(3) For the purpose of paragraph (2), “national inventory” means the estimation, under Article 4(1)(a) of the United Nations Framework Convention on Climate Change<sup>(35)</sup>, of anthropogenic emissions of greenhouse gases by sources and removals of all greenhouse gases by sinks not controlled by the Montreal Protocol.

### **National security**

**47.**—(1) No information may be published—

- (a) by the Secretary of State under regulation 16(6), paragraph 8 of Schedule 7 or paragraph 8 of Schedule 8, or
- (b) by the regulator under regulation 71,

if, in the opinion of the Secretary of State, the publication of that information would be contrary to the interests of national security.

(2) For the purposes of paragraph (1)(b), the Secretary of State may give to the regulator directions specifying information which may not be published under regulation 71.

(3) The regulator must notify the Secretary of State of any information which is excluded from publication in accordance with directions under paragraph (2).

## PART 7

### Civil Penalties

#### Interpretation

**48.** In this Part—

“carbon price”, in relation to a tonne of carbon dioxide equivalent, is the price referred to in regulation 49;

“penalty notice” means a notice served under regulation 50(1);

“additional penalty notice” means a notice served under regulation 50(3).

#### Carbon Price

**49.**—(1) In respect of the scheme year beginning with 1st January 2013, the carbon price is £6.70.

(2) For each subsequent scheme year, the Secretary of State must determine a price as the carbon price for that year, based on the sterling equivalent of the average end of day settlement price (in Euro per tonne of carbon dioxide equivalent) of the December futures contracts for that scheme year.

(3) For that purpose—

“average end of day settlement price” means the average over the 12 months ending with the relevant date;

“futures contract” means the futures contract as traded on the single largest carbon market exchange (as determined by volume of sales in the 12 months ending with the relevant date);

“sterling equivalent” means the sterling equivalent converted by reference to the Bank of England annual average spot exchange rate for the 12 months ending with the relevant date;

“the relevant date”, in relation to the year for which the carbon price is set, is 11th November in the preceding year.

(4) The Secretary of State must publish a determination made under paragraph (2) one month before the beginning the scheme year in question.

#### Penalty notices

**50.**—(1) Where the regulator is satisfied that a person (“P”) is liable to a civil penalty under this Part the regulator must (subject to regulation 51) serve a notice on P.

(2) The penalty notice must specify—

(a) the regulation under which that liability arises;

(b) the amount of the civil penalty due;

(c) where appropriate, how that amount is calculated;

(d) whether or not P may be liable to a civil penalty in accordance with regulation 53(2)(b), 56(2)(b), 60(2)(b), 62(2)(b), 63(2)(b), 64(2)(b), 67(2)(b), 68(2)(b), or 69(2)(b) (an “additional daily penalty”); and

(e) if P will not be liable to an additional daily penalty, the date by which the penalty for which P is liable must be paid.

(3) Subject to regulation 51 and to paragraph (4), where the regulator is satisfied that P is liable to an additional daily penalty the regulator must, when the amount of that additional daily penalty can be determined, serve a notice on P specifying—

(a) the total amount of the civil penalties due; and

(b) the date by which that amount must be paid.

(4) In the case of an additional daily penalty under regulation 67(2)(b), a notice under paragraph (3) stating the amount of additional daily penalty that has accrued by the date of the notice may be served at such intervals as the regulator thinks fit.

(5) A civil penalty imposed by a penalty notice or an additional penalty notice must be paid to the regulator by the date specified in the notice.

(6) Any such civil penalty is recoverable by the regulator—

(a) as a civil debt; and

(b) where applicable, in accordance with regulation 39 and Schedule 9.

(7) the regulator must, as soon as is reasonably practicable—

(a) give notice to the authority of the service of any penalty notice or additional penalty notice; and

(b) pass to the authority any civil penalty that has been paid to the regulator.

### **Discretion in imposing civil penalties**

**51.**—(1) Where the regulator considers it appropriate to do so, the regulator may (subject to paragraph (2))—

(a) refrain from imposing a civil penalty;

(b) reduce the amount of a penalty (including the amount of an additional daily penalty);

(c) extend the time for payment specified in the penalty notice or additional penalty notice;

(d) withdraw a penalty notice or an additional penalty notice;

(e) modify the notice by substituting a lower penalty.

(2) The powers under paragraph (1) do not apply in relation to any penalty arising under regulation 54(1).

### **Carrying out a regulated activity contrary to regulation 9**

**52.**—(1) Where in any scheme year a regulated activity is carried out that is not authorised by a permit, contrary to regulation 9, the operator of the installation (“P”) is at the end of that year liable to the civil penalty in paragraph (2).

(2) For each such year, the civil penalty is  $A + (B \times C)$ , where—

A is the estimated amount of the costs avoided by P in that year as a result of carrying out a regulated activity without such authorisation;

B is the estimated amount of reportable emissions from the installation in the period during which a regulated activity was carried out without such authorisation;

C is the carbon price for that year.

(3) In exercising powers under regulation 51 in relation to the penalty in paragraph (2), the regulator must ensure that the penalty imposed exceeds the amount of any economic benefit that P has obtained as a result of carrying out a regulated activity that is not authorised by a permit.

(4) The authority must exercise powers under section 40 of the Environment Act 1995 or regulation 37 of the Northern Ireland Regulations to give the regulator directions as to—

(a) the estimation by the regulator of A and B in paragraph (2); and

(b) the exercise of the regulator’s powers in accordance with paragraph (3).

**Failure to comply with a condition of a permit**

**53.**—(1) An operator is liable to the civil penalties in paragraph (3) where the operator fails to comply (or comply on time) with a condition of a permit included pursuant to—

- (a) paragraph 2(1)(e)(ii) or (iv) of Schedule 4 (but excluding the condition mentioned in paragraph (4) below);
- (b) paragraph 3(1)(g), (h) or (i) of Schedule 5; or
- (c) regulation 10 of the 2005 Regulations, other than regulation 10(3) and (4) (or such a condition as modified by virtue of regulation 88(6) or (7) of these Regulations).

(2) However, an operator is not liable to those civil penalties where the failure to comply gives rise to a penalty under regulation 57.

(3) The civil penalties are—

- (a) £3,750; and
- (b) £375 for each day that the operator fails to comply with the condition following service of a penalty notice, up to a maximum of £33,750.

(4) An operator is liable to a civil penalty of £5,000 where the operator fails to comply with a condition of a permit included pursuant to paragraph 2(7)(a) of Schedule 4.

**Failure to surrender allowances**

**54.**—(1) A person (“P”) is liable to the civil penalty in paragraph (2) where P fails to surrender sufficient allowances, contrary to regulation 41 or regulation 42.

(2) The civil penalty (“excess emissions penalty”) is the sterling equivalent of 100 Euros for each allowance that P failed so to surrender.

(3) But paragraph (1) is subject to paragraphs (4) to (6).

(4) Where paragraph (5) applies, P is not liable to the excess emissions penalty for a failure to surrender allowances in respect of those reportable emissions in a scheme year that—

- (a) were not reported in the verified emissions report submitted for that year, but
- (b) have been determined by the regulator following a request under paragraph (5)(b).

(5) This paragraph applies where P, before the regulator serves on P a penalty notice imposing an excess emissions penalty in respect of emissions in that scheme year (or a notice of the regulator’s intention to do so)—

- (a) notifies the regulator that there are annual reportable emissions not included in the report that has been submitted for that year,
- (b) requests the regulator to make a determination of the annual reportable emissions for that year, and
- (c) has surrendered allowances equal to the reportable emissions as so determined.

(6) Where paragraph (5) applies, P is liable to the civil penalty of the sterling equivalent of 20 Euros for each allowance that P failed to surrender in respect of the unreported emissions by the relevant date.

(7) In this regulation—

- (a) “allowance”, where P is a UK aircraft operator, includes an aviation allowance;
- (b) “relevant date” means 30th April in the year following the scheme year mentioned in paragraph (4);
- (c) “unreported emissions” means the emissions mentioned in paragraph (4);

- (d) “sterling equivalent” means, subject to paragraph (8), the sterling equivalent converted by reference to the applicable rate of conversion; and
- (e) for that purpose the applicable rate is the first rate of conversion to be published in September of the year preceding the scheme year in which P is liable to the penalty in the C series of the Official Journal of the European Union, adjusted in accordance with paragraph (8).

(8) If the last Harmonised Index of Consumer Prices for the member States of the European Union (“HICP”) published by Eurostat before the end of April in the year in which P failed to surrender the allowances shows an average percentage price increase as compared with the last HICP published before the end of April 2012, the sterling equivalent is increased by the same percentage.

#### **Exceeding an emissions target for an excluded installation**

**55.**—(1) An operator of an excluded installation is liable to the civil penalty in paragraph (2) where in any scheme year the operator fails to comply with paragraph 5 of Schedule 5.

(2) The civil penalty is  $(A - B) \times C$ , where—

A is the amount of annual reportable emissions arising in the scheme year;

B is the emissions target for that year;

C is the carbon price for that year.

#### **Failure to pay a penalty for exceeding an emissions target for an excluded installation**

**56.**—(1) An operator of an excluded installation is liable to the civil penalties in paragraph (2) where the operator fails to pay a penalty imposed under regulation 55 by the date specified in the penalty notice.

(2) The civil penalties are—

(a) 10% of the penalty imposed under regulation 55; and

(b) £150 for each day that the operator fails to pay that penalty following service of a penalty notice in respect of the penalty under sub-paragraph (a), up to a maximum of £13,500.

#### **Under-reporting of emissions from an excluded installation**

**57.**—(1) An operator of an excluded installation is liable to the civil penalty in paragraph (2) where there are reportable emissions in a scheme year (“the unreported emissions”) that—

(a) were not reported in the report submitted for that year under paragraph 3(8)(b) of Schedule 5; but

(b) have been determined by the regulator under regulation 44(3).

(2) The civil penalty is  $A + (B \times C)$  where—

A is £3,750;

B is the amount of the unreported emissions;

C is the carbon price for that year.

#### **Failure to notify when an excluded installation ceases to meet the criteria for being excluded**

**58.**—(1) An operator of an excluded installation (“P”) is liable to the civil penalties in paragraphs (2) and (3) where P fails to comply (or comply on time) with a notification requirement under—

(a) a condition of a permit included pursuant to paragraph 3(4) or (5) of Schedule 5; or

(b) paragraph 4(1) or (2) of Schedule 5.

(2) For the first scheme year in which P fails to comply with the requirement to notify by 31st March in that year, the civil penalty is £2,500.

(3) For the first and each subsequent scheme year in which P has still failed to comply with the notification requirement by 31st October in that year, P is at the end of the following scheme year (“S”) liable to the civil penalty in paragraph (4).

(4) The civil penalty is  $2 \times (A + B)$ , where—

A is £2,500;

B is the avoided compliance costs.

(5) In paragraph (4) “avoided compliance costs” means  $((W - X) \times Y) - Z$ , where—

W is the amount of annual reportable emissions arising in S;

X is the number of allowances for S to which P would have been entitled in accordance with Article 10a of the Directive, if the installation had not been an excluded installation and had been carrying out regulated activities;

Y is the carbon price for S;

Z is any penalty due under regulation 55 in respect of S.

#### **Failure to surrender a permit**

**59.** Where an operator fails to make an application to surrender a permit, contrary to regulation 13(1) and (2), the operator is liable to a civil penalty of £5,000.

#### **Failure to submit or resubmit an application for an emissions plan**

**60.**—(1) A UK administered operator (“A”) is liable to the civil penalties in paragraph (2) where A fails to—

(a) submit (or to submit on time) an application for an emissions plan, contrary to regulation 32(1);

(b) provide a satisfactory explanation, contrary to regulation 32(4); or

(c) resubmit (or to resubmit on time) an application for an emissions plan, where required to do so by regulation 34(4).

(2) The civil penalties are—

(a) £1,500; and

(b) £150 for each day that the application or resubmission of an application is not provided, following the service of a penalty notice, up to a maximum of £13,500.

#### **Failure to notify the regulator if an emissions plan is not applied for**

**61.**—(1) A UK administered operator (“A”) is liable to the civil penalty in paragraph (2) where A fails to comply with the requirements of regulation 33(1).

(2) The civil penalty is £5,000.

#### **Failure to comply with a condition of an emissions plan**

**62.**—(1) A UK administered operator (“A”) is liable to the civil penalties in paragraph (2) where A fails to comply (or to comply on time) with a condition in an emissions plan, contrary to regulation 36(2).

(2) The civil penalties are—

- (a) £1,500; and
- (b) £150 for each day that A fails to comply with the condition following the service of a penalty notice, up to a maximum of £13,500.

#### **Failure to monitor aviation emissions**

**63.**—(1) A UK administered operator (“A”) is liable to the civil penalties in paragraph (2) where A fails to monitor aviation emissions, contrary to regulation 35(1).

- (2) The civil penalties are—
  - (a) £1,500; and
  - (b) £150 for each day that A fails to monitor aviation emissions following the service of a penalty notice, up to a maximum of £13,500.

#### **Failure to report aviation emissions**

**64.**—(1) A UK administered operator (“A”) is liable to the civil penalties in paragraph (2) where A fails to report (or to report on time) aviation emissions, contrary to regulation 35(4).

- (2) The civil penalties are—
  - (a) £3,750; and
  - (b) £375 for each day that the report is not submitted, following the service of a penalty notice, up to a maximum of £33,750.

#### **Failure to provide assistance and advice**

**65.** Where an aerodrome operator fails to provide reasonable assistance and advice, contrary to paragraph 7(1) of Schedule 9, the aerodrome operator is liable to a civil penalty of £50,000.

#### **Failure to comply with a direction relating to an operating ban**

**66.** Where a person fails to comply with a direction, contrary to paragraph 2(4)(a) of Schedule 10, that person is liable to a civil penalty of £50,000.

#### **Failure to return allowances**

**67.**—(1) An operator or a UK administered operator (“P”) is liable to the civil penalties in paragraph (2) where P—

- (a) receives allowances or aviation allowances to which P is not entitled; and
  - (b) fails to return (or return on time) such allowances or aviation allowances, contrary to—
    - (i) paragraph 11(4) of Schedule 6; or
    - (ii) paragraph 10(4) of Schedule 7.
- (2) The civil penalties are—
- (a) £20,000; and
  - (b) £1,000 for each day that P fails to return the allowances following the service of a penalty notice.

#### **Failure to comply with an enforcement notice**

**68.**—(1) A person (“P”) is liable to the civil penalties in paragraph (2) where P fails to comply (or to comply on time) with the requirements of an enforcement notice, contrary to regulation 43(4).

(2) The civil penalties are—

- (a) £20,000; and
- (b) £1,000 for each day that P fails to comply with the requirements of the enforcement notice, following service of a penalty notice, up to a maximum of £30,000.

#### **Failure to comply with an information notice**

**69.**—(1) A person (“P”) is liable to the civil penalties in paragraph (2) where P fails to comply (or to comply on time) with the requirements of notice served under regulation 45(2) (an “information notice”).

(2) The civil penalties are—

- (a) £1,500; and
- (b) £150 for each day that P fails to comply with the requirements of the information notice, following service of a penalty notice, up to a maximum of £13,500.

#### **Providing false or misleading information**

**70.**—(1) A person (“P”) is liable to the civil penalty in paragraph (2) where P provides false or misleading information, or makes a statement which is false or misleading in a material particular, where the statement is made or the information is provided—

- (a) in any application made under these Regulations, or in response to a notice served under paragraph 1(12) of Schedule 3;
  - (b) in a notice under regulation 33(1)(b);
  - (c) in an aviation emissions report prepared under regulation 35(3);
  - (d) in response to a notice served under regulation 45(2);
  - (e) pursuant to a requirement mentioned in regulation 80(2) or (4);
  - (f) in purported compliance with the conditions of a permit or an aviation emissions plan; or
  - (g) pursuant to paragraph 6(2), 7(9), 8(4)(a), 8(5) or 11 of Schedule 6.
- (2) The civil penalty is £1,000.

#### **Publication of names of persons subject to penalties under regulation 54(1)**

**71.**—(1) As soon as possible after—

- (a) the expiry of the period for appealing the imposition of a penalty by the regulator under regulation 54(1), or
- (b) if such an appeal is made, the determination or withdrawal of the appeal,

the regulator must (subject to paragraph (2)) publish the name of the person on whom that penalty was imposed.

(2) The name must not be published if, following such an appeal, the person is found not to be liable to any of the penalty imposed under regulation 54(1).

(3) Paragraph (1) is subject to regulation 47 (national security).



**PART 8**  
**Appeals**  
**CHAPTER 1**  
**General**

**Interpretation**

**72.** In this Part—

- (a) “appeal body” has the meaning given by regulation 75;
- (b) “decision” means—
  - (i) a notice or deemed refusal under these Regulations; or
  - (ii) an action or decision of the registry administrator or the KP registry administrator;
- (c) “notice” includes—
  - (i) in the case of a notice determining an application for a permit or the transfer of the permit, the provisions of any permit attached to the notice; and
  - (ii) in the case of a notice determining an application for an aviation emissions plan, the conditions included in the plan issued by the notice.

**Rights of appeal**

**73.—**(1) Subject to paragraph (3), the following persons may appeal to the appeal body—

- (a) a person who is aggrieved by a decision determining any application made by them under these Regulations;
- (b) a person who is aggrieved by a notice served on them under any provision mentioned in paragraph (2).

(2) Those provisions are—

- (a) regulation 11(2), (3)(b) or (4);
- (b) regulation 14(1);
- (c) regulation 26(2);
- (d) regulation 37(1), (2)(b) or (3);
- (e) regulation 43(1);
- (f) regulation 44(4);
- (g) regulation 45(2);
- (h) regulation 50(1) or (3);
- (i) paragraph 8(1) or (4) of Schedule 5;
- (j) paragraph 6(7)(a) of Schedule 6, in relation to a decision to make a request under paragraph 6(5)(a) or (b) of that Schedule;
- (k) paragraph 7(11)(a) of Schedule 6, in relation to a decision to make a request under paragraph 7(9)(a) of that Schedule;
- (l) paragraph 7(11)(b) of Schedule 6;
- (m) paragraph 8(11)(a) of Schedule 6, in relation to a decision to make a request under paragraph 8(9)(a) or (b) of that Schedule;
- (n) paragraph 11(2) of Schedule 6;

- (o) paragraph 10(2) of Schedule 7.
- (3) An appeal under paragraph (1) may not be made to the extent that the decision implements—
  - (a) a direction given by the authority under section 40 of the Environment Act 1995 or regulation 37 of the Northern Ireland Regulations<sup>(36)</sup>, or
  - (b) a direction given by an appeal body under these Regulations.

### **Rights of appeal: registries**

**74.**—(1) A person who is aggrieved by a decision of the registry administrator referred to in a provision of the Registries Regulation 2011 mentioned in paragraph (2) may exercise the right to object given by that provision by appealing to the appeal body.

(2) Those provisions are—

- (a) Article 20(3);
- (b) Article 22(6);
- (c) Article 23(3);
- (d) Article 30(5);
- (e) Article 31(6).

(3) A person who is aggrieved by a decision of the KP registry administrator referred to in a provision of the Registries Regulation 2010 mentioned in paragraph (4) may exercise the right to object given by that provision by appealing to the appeal body.

(4) Those provisions are—

- (a) Article 18(3);
- (b) Article 20(4)
- (c) Article 21(1);
- (d) Article 27(5);
- (e) Article 28(5).

(5) On receiving notice under regulation 80(10), the account holder may appeal to the appeal body against the decision to set a registry account to blocked status.

### **Appeal body**

**75.**—(1) In the case of an appeal against a decision of SEPA, the appeal body is the Scottish Ministers.

(2) In the case of an appeal against a decision of the chief inspector, the appeal body is the Planning Appeals Commission.

(3) In the case of an appeal against any other decision the appeal body is the First-tier Tribunal.

### **Effect of an appeal**

**76.**—(1) Subject to paragraphs (2) to (4), the bringing of an appeal under regulation 73 suspends the effect of the decision pending the final determination or withdrawal of the appeal.

(2) The bringing of an appeal does not suspend the effect of—

- (a) a decision refusing an application;
- (b) a deemed refusal;

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<sup>(36)</sup> Regulation 37 is modified by regulation 7(2) of these Regulations.

- (c) a notice under—
  - (i) regulation 11(2), (3)(b) or (4);
  - (ii) regulation 37(1), (2)(b) or (3);
  - (iii) regulation 43(1);
  - (iv) paragraph 8(1) or (4) of Schedule 5; or
  - (v) paragraphs 6(7)(a), 7(11)(a) or (b), or 8(11)(a) of Schedule 6.

(3) Where (following an application for a permit or for the transfer of a permit) a permit has been granted or varied, the bringing of an appeal against the provisions of the permit or the terms of the variation does not suspend the effect of those provisions or terms.

(4) Where an aviation emissions plan has been issued following an application under regulation 32, the bringing of an appeal against the conditions included in the plan does not suspend the effect of those conditions.

(5) The bringing of an appeal against a determination of emissions under regulation 44(4) suspends the effect of the decision only for the purpose of assessing whether there has been compliance with regulation 41 or 42.

(6) The bringing of an appeal under regulation 74 does not suspend the effect of the decision pending the final determination or withdrawal of the appeal.

### **Determination of an appeal**

77.—(1) In determining an appeal under regulation 73(1) the appeal body may, subject to paragraph (3)—

- (a) affirm the decision;
- (b) quash the decision or vary any of its terms;
- (c) substitute a deemed refusal with a decision of the appeal body; or
- (d) give directions to the regulator as to the exercise of the regulator’s functions under these Regulations.

(2) In determining an appeal under regulation 74 the appeal body may give directions to—

- (a) the registry administrator as to the exercise of its functions under the Registries Regulation 2011, or
- (b) the KP administrator as to the exercise of its functions under the Registries Regulation 2010.

(3) The appeal body may not make a determination that would result in a decision which could not otherwise have been made under these Regulations or under the Registries Regulation 2010 or 2011.

## **CHAPTER 2**

### **Appeals: Scotland and Northern Ireland**

#### **Procedure for appeals**

78.—(1) Schedule 11, Part 1, has effect in relation to the making and determination of an appeal to the Scottish Ministers.

(2) The Scottish Ministers may—

- (a) appoint any person to exercise on their behalf, with or without payment, the function of determining an appeal under this Part or any matter or question involved in such an appeal; or

- (b) refer any matter or question involved in such an appeal to such person as they may appoint for the purpose, with or without payment.
- (3) Schedule 11, Part 2, has effect in relation to appointments under paragraph (2)(a).
- (4) Schedule 12 has effect in relation to the making and determination of an appeal to the Planning Appeals Commission.

## PART 9

### The Union Registry and the UK Registry

#### Interpretation

**79.**—(1) In this regulation and regulation 80, a reference to a numbered Article is to that Article of the Registries Regulation 2011.

(2) In regulation 80—

“the allocation table” means the national allocation table notified to the European Commission by the United Kingdom under Article 49;

“the aviation allocation table” means the national aviation allocation table notified by the United Kingdom to the European Commission under Article 53(1).

#### The Union Registry

**80.**—(1) The registry administrator may require users of the Union Registry to comply with reasonable terms and conditions in relation to that registry.

(2) It is the duty of the account holder to comply with the requirement to enter emissions data in accordance with Article 32(2); furthermore, an amount of zero must be entered by the account holder if the latter is—

- (a) an operator who carried out no regulated activity in the year to which the data would relate; or
- (b) a UK administered operator who carried out no aviation activity in that year.
- (3) The verifier is responsible under Articles 32(4) and (5) for—
  - (a) approving the annual verified emissions; and
  - (b) marking the emissions as verified.

(4) The operator or the UK administered operator is responsible for complying with the requirement under Article 14(1) or 15(1) to provide information to the registry administrator and request the opening of a registry account.

(5) In complying with the requirement mentioned in paragraph (4), the operator or the UK administered operator must provide such evidence of identity and address as may be required by the registry administrator.

(6) Where—

- (a) an operator fails to comply with regulation 41, or
- (b) a UK aircraft operator fails to comply with regulation 42,

the registry administrator must set the relevant registry account to blocked status until the compliance status figure for the installation or UK aircraft operator, calculated in accordance with Article 34, is greater than or equal to zero.

(7) This paragraph applies where—

- (a) an operator is required to submit a report to the regulator by the terms of a notice of surrender or a revocation notice; and
  - (b) the operator—
    - (i) fails to submit the report to the regulator within the time specified in the report;
    - (ii) submits an incomplete report to the regulator within the time so specified; or
    - (iii) submits within the time so specified a report to the regulator that cannot be verified in whole or in part in accordance with the monitoring and reporting requirements for the installation.
- (8) Where paragraph (7) applies, the registry administrator must set the relevant operator holding account to blocked status until—
- (a) the report has been prepared and verified in accordance with the requirements of paragraph 4(1)(b) or 5(1)(b) of Schedule 4 and has been submitted to the regulator; or
  - (b) the regulator has notified, in accordance with regulation 44(4)(a), a determination of the reportable emissions referred to in paragraph 4(1)(a) or 5(1)(a) of that Schedule.
- (9) Where an operator is in breach of the requirement to comply with a notice given under paragraph 11(2) of Schedule 6 or paragraph 10(2) of Schedule 7, the registry administrator must set the operator holding account to blocked status until that notice has been complied with.
- (10) Where the registry administrator sets a registry account to blocked status pursuant to paragraph (6), (8) or (9) it must notify the account holder specifying the reason why, and the period during which, the relevant registry account will be blocked.
- (11) The regulator must, as soon as is reasonably practicable, notify the registry administrator where a change to the allocation table or aviation allocation table becomes necessary—
- (a) by virtue of Article 50(1) or 54(1), or
  - (b) for any other reason (and in particular in consequence of paragraph 5 or 10 of Schedule 6).
- (12) The registry administrator must, as soon as is reasonably practicable, notify the European Commission in accordance with Article 50(2) or 54(2) of any changes to the allocation table or aviation allocation table (other than those falling within paragraph (11)(a)).
- (13) This paragraph applies where—
- (a) a notice of surrender or a revocation notice has been given and has taken effect; and
  - (b) the operator is unable to comply with the requirement to surrender allowances imposed by that notice by the date specified in the notice, due to the suspension of access to the relevant registry account by the registry administrator pursuant to Article 31.
- (14) Where paragraph (13) applies, the registry administrator must, if so requested by the operator, surrender the number of allowances specified in the notice of surrender or the revocation notice.
- (15) The registry administrator or the KP registry administrator may refuse to—
- (a) open any account in the Union Registry or the UK Registry, or
  - (b) approve an authorised representative or an additional authorised representative in relation to such an account,
- where it is satisfied that the proposed account holder, authorised representative or additional authorised representative is not a fit and proper person to hold such an account or, as the case may be, act as such a representative.
- (16) The registry administrator may extend the suspension of the running of delays under Article 36(3) to all days in a scheme year that are not working days, provided that the decision to do so is published by the registry administrator by 1st December in the previous scheme year.

## The UK Registry

**81.**—(1) The Environment Agency must continue to operate the UK Registry for the purposes of meeting the obligations of the United Kingdom referred to in Article 3(1) of the Registries Regulation 2010 (obligations as a Party to the Kyoto Protocol<sup>(37)</sup> and under Article 6 of Decision No 280/2004/EC<sup>(38)</sup>), and in that capacity is referred to in these Regulations as the “KP registry administrator”.

(2) The Environment Agency may require users of the UK Registry to comply with reasonable terms and conditions in relation to that registry.

## PART 10

### Supplementary

#### Recovery of fees

**82.**—(1) In this regulation “allowances” includes aviation allowances.

(2) Any fee payable by virtue of these Regulations may be recovered by the regulator—

- (a) as a civil debt; or
- (b) by the seizure and sale of a number of allowances held by the operator or UK administered operator liable to the fee (“the debtor”) in accordance with paragraph (3).

(3) Where the regulator proposes to recover an unpaid fee by the seizure and sale of allowances held by the debtor, the regulator must—

- (a) notify the registry administrator and the debtor;
- (b) instruct the registry administrator to transfer a number of allowances sufficient to cover the unpaid fee, and any expenses incurred in recovering it from the debtor, to the regulator’s person holding account in the Union Registry;
- (c) sell the allowances transferred under sub-paragraph (b) for the best price that can reasonably be obtained, though a failure to do so does not make a sale under this paragraph void or voidable; and
- (d) apply the proceeds of sale in the following order—
  - (i) in payment of the unpaid fee in respect of which the allowances were seized and sold;
  - (ii) in payment of any expenses incurred by the regulator in seizing and selling the allowances,

and pay any residue from the proceeds of sale to the debtor.

#### Consequences of non-payment

**83.** The regulator is not required to perform a function for which a fee is payable in relation to a person who has not paid a fee which that person is liable to pay.

#### Guidance

**84.**—(1) The authority may issue guidance to the regulator with respect to the carrying out of any of the regulator’s functions under these Regulations, the Monitoring and Reporting Regulation or the Verification Regulation.

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(37) Kyoto Protocol to the United Nations Framework Convention on Climate Change (Cm 6485).

(38) OJ No L 49, 19.2.2004, p 1.

(2) The Secretary of State may issue guidance to the registry administrator or the KP registry administrator with respect to the carrying out of any of its functions under these Regulations, the Registries Regulation 2011 or the Registries Regulation 2010.

(3) The regulator, the registry administrator or the KP registry administrator must have regard to any guidance issued under paragraph (1) or (2).

## PART 11

### Revocations, savings and transitional provisions.

#### Revocations

**85.** The following enactments are revoked—

- (a) the 2005 Regulations;
- (b) the following enactments amending the 2005 Regulations—
  - (i) [S.I. 2006/737](#);
  - (ii) [S.I. 2007/465](#);
  - (iii) [S.I. 2007/1096](#);
  - (iv) [S.I. 2007/3433](#);
  - (v) regulation 3 of [S.R. \(N.I.\) 2010/92](#);
  - (vi) regulation 4 of [S.I. 2005/2903](#);
  - (vii) regulation 8 of [S.I. 2010/1513](#);
  - (viii) regulations 3 and 4 of [S.I. 2011/1506](#);
  - (ix) paragraphs 1 to 20 of the Schedule to [S.I. 2011/2911](#);
- (c) the Greenhouse Gas Emissions Data and National Implementation Measures Regulations 2009(**39**);
- (d) the 2010 Regulations;
- (e) the Aviation Greenhouse Gas Emissions Trading Scheme (Amendment) Regulations 2011(**40**).

#### Savings and transitional provisions: the 2005 Regulations

**86.**—(1) Notwithstanding the revocations made by regulation 85, the following provisions of the 2005 Regulations (“the relevant provisions”) continue to have effect to the extent specified below.

(2) Part 1 and Schedule 1 have effect for the purpose of the relevant provisions.

(3) Regulations 16 and 17 have effect for the purposes of making an application for the surrender of a permit, or the service of a notice of revocation in respect of a failure to make such an application, where the circumstances giving rise to the requirement to make the application occurred before 1st January 2013.

(4) Regulation 18(3) to (5) has effect in relation to the charging schemes referred to in that regulation.

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(39) [S.I. 2009/3130](#).

(40) [S.I. 2011/765](#).

(5) Regulation 22 (other than paragraph (2)) has effect for the purpose of allowing an operator to make an application for an allocation from the new entrant reserve (as defined by regulation 2 of the 2005 Regulations).

(6) But for the purpose of paragraph (5) above, the reference in regulation 22(22) to regulation 15(1) of the 2005 Regulations is to be read as a reference to regulation 12(1) of these Regulations (and the reference to the proposed transferee is accordingly to be read as a reference to the new operator).

(7) Subject to paragraph (8) below, regulation 26 has effect for all purposes relating to the registry referred to in Article 3(2) of the Registries Regulation 2010.

(8) In regulation 26—

- (a) paragraphs (2) to (5) do not have effect; and
- (b) paragraph (8) has effect as if the references to Articles 18, 20(4) and 27(5) were omitted.

(9) The following provisions have effect in so far as they relate to any activities carried out, or emissions arising, prior to 1st January 2013—

- (a) regulation 27A;
- (b) Part 4.

(10) Subject to paragraph (11) below, Part 5 and Schedules 2 to 4 have effect in relation to any appeal brought against a decision or notice specified in regulation 32(1) to (5) of the 2005 Regulations.

(11) Regulation 32(4) has effect as if the reference to the appropriate authority were a reference to the First-tier tribunal (and the reference to the appropriate authority in regulation 32(7) is to be construed accordingly).

(12) Regulation 35 has effect in so far as it relates to functions carried out before 1st January 2013 or under the relevant provisions.

(13) Regulation 36 has effect in so far as it relates to a civil penalty in respect of emissions arising before 1st January 2013.

(14) Regulation 37 has effect.

(15) Paragraph (1)(c) to (f) of regulation 38 has effect in so far as it relates to the relevant provisions, but where the conduct giving rise to the offence occurs after 31st December 2012 the following civil penalties apply instead of the offences under that paragraph—

- (a) the penalty in regulation 59 above applies instead of the offence of failing to making an application to surrender a permit;
- (b) the penalties in regulation 53 above apply instead of the offence of failing to comply with a notice under regulation 22(13)(a) (and for that purpose the condition of the notice is deemed to be a condition falling within paragraph (1)(c) of regulation 53);
- (c) the penalties in regulation 68 above apply instead of the offence of failing to comply with an enforcement notice; and
- (d) the penalty in regulation 70 above applies instead of an offence under paragraph (1)(f) of regulation 38.

(16) Subject to paragraph (17) below, regulation 38(2) and (3) has effect.

(17) No prosecution may be brought in respect of an offence under regulation 38(1)(a) if—

- (a) the conduct that gave rise to the offence continues after 31st December 2012; and
- (b) the person who has committed the offence will be liable to a civil penalty under regulation 52 above.



(18) Regulations 39 to 41 have effect in relation to a failure to surrender allowances in respect of emissions arising before 1st January 2013, and regulation 40 has effect in relation to an understatement of such emissions.

(19) Parts 8 to 10 have effect in so far as they relate to functions carried out, or powers exercised, under the relevant provisions or as national administrator under the Registries Regulation 2010.

### **Savings and transitional provisions: the 2010 Regulations**

**87.**—(1) Notwithstanding the revocations made by regulation 85, the following provisions of the 2010 Regulations (“the relevant provisions”) continue to have effect to the extent specified below.

(2) Part 1 has effect for the purpose of the relevant provisions.

(3) The time period in regulation 18(1) has effect in relation to a person who became an aircraft operator under the 2010 Regulations before 1st January 2013, but the application for an emissions plan must otherwise be made under regulation 32 of these Regulations.

(4) Regulations 21 and 22 have effect in relation to aviation emissions arising before 1st January 2013.

(5) Regulations 26 and 27 have effect in relation to aviation emissions arising before 1st January 2013.

(6) Regulation 28 has effect in relation to the charging schemes referred to in that regulation.

(7) Regulation 29 has effect in relation to the functions referred to in that regulation.

(8) The following have effect in relation to civil penalties arising under the 2010 Regulations—

(a) Part 8;

(b) regulation 49.

(9) Part 11 and Schedules 3 to 5 have effect in relation to any appeal brought against any decision made or notice served under the 2010 Regulations.

(10) The following have effect in relation to decisions or functions of the regulator under the 2010 Regulations—

(a) Part 12;

(b) regulations 58 and 59.

(11) Regulations 55 to 57, and Schedule 6, have effect in relation to information provided, reports submitted, or notices served under the 2010 Regulations.

(12) Paragraph (3), and (5) to (8), of regulation 60 have effect.

### **Transitional provisions: permits**

**88.**—(1) An application under regulation 8 of the 2005 Regulations for a greenhouse gas emissions permit that is made to the regulator before 1st January 2013, and not determined before that date, may be treated by the regulator as an application made under—

(a) regulation 10(1) above; or

(b) if the installation to which the application relates is an excluded installation, regulation 10(2) above.

(2) An application under regulation 14 of the 2005 Regulations for the variation of a permit that is made to the regulator before 1st January 2013, and not determined before that date, may be treated by the regulator as an application made under regulation 11(3)(a) above.

(3) An application under regulation 15 of the 2005 Regulations for the transfer of a permit (other than for a partial transfer) that is made to the regulator before 1st January 2013, and not determined before that date, may be treated by the regulator as an application made under regulation 12(1) above.

(4) An application under regulation 15 of the 2005 Regulations for the partial transfer of a permit that is made to the regulator before 1st January 2013 and not determined before that date may be treated by the regulator as an application made under regulation 12(1) above, provided that the application has been amended to the satisfaction of the regulator (and is otherwise deemed to have been withdrawn).

(5) Subject to paragraphs (6) and (7), a permit granted under regulation 9 of the 2005 Regulations that is in force immediately before 1st January 2013 (“the permit”) continues to have effect until it is revoked or surrendered under these Regulations.

(6) The regulator must vary the permit as necessary to bring it into a form in which it could have been granted under regulation 10 above.

(7) Until such variations are made, the permit has effect in relation to emissions in the year beginning with 1st January 2013, or in any subsequent scheme year, as if—

- (a) any reference in the permit to Commission Decision [2007/589/EC](#) of 18 July 2007 were a reference to the Monitoring and Reporting Regulation, and any reference to Section 5.2, 5.3 or Section 9 of Annex 1 to that Decision were a reference to the corresponding provision of that Regulation;
- (b) any reference in the permit to Annex 5 to the Directive were a reference to the Verification Regulation;
- (c) any reference in the permit to the Emission Trading Registry for the UK were a reference to the Union Registry; and
- (d) any requirement of the permit to submit a report to the regulator by 30th June each year, setting out proposed improvements in monitoring at the installation, applied only in relation to the report required to be submitted by 30th June 2013.

(8) Notwithstanding the variations made pursuant to paragraph (6), the permit as it had effect immediately before 1st January 2013 continues to have such effect in relation to any emissions arising before that date and any obligations relating to them.

### **Transitional provisions: aviation emissions plans**

**89.**—(1) An application for an emissions plan under regulation 18 of the 2010 Regulations that has not been determined under those Regulations may be treated by the regulator as an application made under regulation 32 above.

(2) An application for the variation of an emissions plan, pursuant to a condition of the plan, that is made to the regulator before 1st January 2013 may be treated by the regulator as an application made under regulation 37(2)(a) above.

(3) Subject to paragraph (4) and (5), an aviation emissions plan that is in force immediately before 1st January 2013 (“the plan”) continues to have effect.

(4) The regulator must vary the plan as necessary to bring it into a form in which it could have been issued under regulation 34 above.

(5) Until such variations are made, the plan has effect in relation to emissions in the year beginning with 1st January 2013, or in any subsequent scheme year, as if—

- (a) any reference in the plan to Commission Decision [2007/589/EC](#) of 18 July 2007 were a reference to the Monitoring and Reporting Regulation, and any reference to Section 9 of Annex 1 and Sections 2, 3 and 4 of Annex 14 to that Decision were a reference to the corresponding provision of that Regulation; and

- (b) any requirement of the plan to submit a report to the regulator by 30th June each year, setting out proposed improvements in monitoring of aviation activities, applied only in relation to the report required to be submitted by 30th June 2013.

5th December 2012

*Verma*  
Parliamentary Under-Secretary of State  
Department of Energy and Climate Change

## SCHEDULE 1

Regulation 4

## Application to the Crown etc.

**Crown application**

1. Subject to paragraphs 2 and 3, these Regulations bind the Crown.

**Entry to Crown premises**

2.—(1) If the Secretary of State considers that in the interests of national security particular powers of entry must not be used in relation to particular Crown premises, the Secretary of State may certify that those powers must not be used in relation to those premises.

(2) In this paragraph—

“Crown premises” means premises held or used by or on behalf of the Crown;

“power of entry” means a power of entry exercisable under section 108 of the Environment Act 1995<sup>(41)</sup> or regulation 27 of the Northern Ireland Regulations, in relation to a function under these Regulations.

**Service on certain Crown operators**

3.—(1) This paragraph applies in relation to an installation operated by a person acting on behalf of—

- (a) the Royal Household;
- (b) the Duchy of Lancaster; or
- (c) the Duke of Cornwall or other possessor of the Duchy of Cornwall.

(2) In relation to the serving or giving of notices or other documents under these Regulations, the following person must be treated as the operator—

- (a) in relation to sub-paragraph (1)(a), the Keeper of the Privy Purse;
- (b) in relation to sub-paragraph (1)(b), the person appointed by the Chancellor of the Duchy of Lancaster;
- (c) in relation to sub-paragraph (1)(c), the person appointed by the Duke of Cornwall or other possessor of the Duchy of Cornwall.

## SCHEDULE 2

Regulation 5

## Notices etc.

1. In this Schedule, “instrument” means any notice or direction served or given under these Regulations (but does not include a notice or direction required to be given to the regulator or registry administrator).

2. An instrument must be in writing.
3. An instrument may be served on or given to a person (“P”) by—
  - (a) delivering it to P in person;

<sup>(41)</sup> 1995 c. 25; relevant amendments to section 108 were made by S.I. 2000/1973 and S.S.I. 2000/323.

- (b) sending it to a postal or email address n provided by P for the purpose of service of instruments;
  - (c) leaving it at P’s proper address; or
  - (d) sending it by post or electronic means to P’s proper address.
4. In the case of a body corporate, an instrument may be served on or given to the secretary or clerk of that body.
5. In the case of a partnership, an instrument may be served on or given to a partner or a person having control or management of the partnership business.
6. If a person (“Q”) to be served with or given an instrument has specified an address in the United Kingdom (other than Q’s proper address) at which Q or someone on Q’s behalf will accept instruments of that description, that address must instead be treated as Q’s proper address.
7. For the purposes of this Schedule, “proper address” means (subject to paragraph 6)—
- (a) in the case of a body corporate or its secretary or clerk—
    - (i) the registered or principal office of that body, or
    - (ii) the email address of the secretary or clerk;
  - (b) in the case of a partnership or a partner or person having control or management of the partnership business—
    - (i) the principal office of the partnership, or
    - (ii) the email address (or, in the case of a partnership established outside the United Kingdom, the last known address) of a partner or a person having that control or management;
  - (c) in any other case, a person’s last known address (which for the purpose of this paragraph and paragraph (b) includes an email address).
8. For the purposes of paragraph 7, where a body corporate registered outside the United Kingdom or a partnership established outside the United Kingdom has an office in the United Kingdom, the principal office of that body corporate or partnership is its principal office in the United Kingdom.
- 9.—(1) Where for the purposes of paragraph 7 the person giving or serving an instrument is not able to ascertain a proper address in relation to a UK administered operator, a relevant address may instead be treated as the proper address.
- (2) For that purpose, “relevant address” means an address derived from information supplied to the regulator by Eurocontrol (or any other organisation) at the request of the European Commission(42).
10. The provisions of this Schedule do not apply where a contrary provision applies under paragraph 8 of Schedule 9.

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(42) Article 18b of the Directive enables the Commission to request the assistance of Eurocontrol (or another relevant organisation) in preparing its list of operators; Eurocontrol (the European Organisation for the Safety of Air Navigation) is an intergovernmental organisation of 38 States and the European Union.

## SCHEDULE 3

Regulation 6

## Applications etc.

**Applications etc.: general**

1.—(1) This paragraph applies—

- (a) to any application, notice or report submitted to the regulator under any provision of—
  - (i) these Regulations,
  - (ii) a permit, or
  - (iii) an aviation emissions plan; and
- (b) notwithstanding any further provision made under or by virtue of these Regulations in respect of such application, notice or report.

(2) Sub-paragraph (10) also applies to applications—

- (a) to the registry administrator to open an account in the Union Registry, and
- (b) to the KP registry administrator to open an account in the UK Registry,

and for that purpose the provision of updated information in relation to such an account is to be treated as an application.

(3) For the purposes of this paragraph, an application includes any proposed plan required to be submitted as part of the application.

(4) An application, report or notice—

- (a) must be in writing; and
- (b) unless agreed otherwise in writing with the regulator, must be submitted on a form made available by the regulator for that purpose.

(5) Such a form must specify, as the case may be—

- (a) the information required by the regulator to determine the application; or
- (b) the matters required to be included in the report.

(6) Unless agreed otherwise in writing with the regulator, the form must be sent to the regulator electronically.

(7) A form provided by the regulator which specifies an electronic address for submission must, if submitted electronically, be sent to that address.

(8) A form provided by the regulator for submission through a website must, unless the regulator agrees otherwise in writing, be submitted through that site and in accordance with the instructions given there for completion and submission.

(9) Unless the information has been provided in a previous application made to the regulator, an application must contain the name, postal address (including postcode) and telephone number of the applicant, together with—

- (a) an email address for service, or
- (b) a postal address for service (including postcode) in the United Kingdom,

and in the case of an application under regulation 12 (transfer of permits) those requirements apply to each of the joint applicants.

(10) An application must be accompanied by the fee prescribed, but—

- (a) where the application is sent electronically, the fee may be sent to the regulator separately from the application (and in that case the application is deemed not to have been received by the regulator until the fee has also been received); and

- (b) where the application relates to an offshore installation, the fee need not be paid until the end of the period of 28 days beginning with the date on which the regulator serves a notice on the operator requesting payment of the fee.
- (11) An application may be withdrawn at any time before it is determined.
- (12) The regulator may, by notice to the applicant, require the applicant to provide such further information specified in the notice, within the period so specified, as the regulator may require for the purpose of determining the application.
- (13) The application is deemed to have been withdrawn where—
  - (a) the applicant has failed to provide that information by the end of that period (or by such later date as may be agreed with the regulator); and
  - (b) the regulator gives notice to the applicant that the application is treated as having been withdrawn.

### **Determination of applications**

- 2.—(1) Subject to sub-paragraph (2), where an application to the regulator under these Regulations is duly made it must be determined by the regulator within—
- (a) the period of two months beginning with the date on which the application was received, or
  - (b) such longer period as may be agreed in writing with the applicant.
- (2) For the purposes of sub-paragraph (1)—
- (a) an application is determined when notice of the determination is given to the applicant by the regulator; and
  - (b) in calculating the period of two months, no account is to be taken of any period beginning with the date on which a notice under paragraph 1(12) is served on the applicant and ending with the date on which the applicant provides the information specified in the notice.
- (3) If the regulator fails to determine the application within the period allowed by sub-paragraphs (1) and (2)—
- (a) the applicant may give to the regulator notice that the applicant treats the application as having been refused, and
  - (b) the application is then deemed to have been refused at the end of that period.
- (4) Where the application is an application for a permit or the transfer of a permit, any permit that is granted as a result of the application must be attached to the notice given under sub-paragraph (2) (a).

## SCHEDULE 4

Regulations 10, 12, 13 and 14

### Permits

#### **Applications for permits**

- 1.—(1) An application for a permit must contain—
- (a) as well as the address for service required under Schedule 3, any address to which correspondence relating to the application should be sent; and (if the applicant is a body corporate)—
    - (i) its registered number and the postal address of its registered or principal office, and

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- (ii) if that body corporate is a subsidiary of a holding company within the meaning of section 1159 of the Companies Act 2006<sup>(43)</sup>, the name of the holding company (other than a holding company which is itself a subsidiary) and the postal address of its registered or principal office;
  - (b) in relation to the site of the installation—
    - (i) the postal address and national grid reference of the site (or equivalent information identifying the installation and its location);
    - (ii) a description of the site and the location of the installation on it; and
    - (iii) the name of any local authority in whose area the site is situated;
  - (c) a description of the installation, including a description of—
    - (i) the regulated activities to be carried out at the installation and the specified emissions from those activities; and
    - (ii) any directly associated activities (within Article 3(e) of the Directive) that are also to be carried out;
  - (d) a description of the raw and auxiliary materials used in carrying out regulated activities in the installation, the use of which is likely to lead to specified emissions;
  - (e) a description of the sources of specified emissions from the regulated activities carried out in the installation;
  - (f) a monitoring plan submitted under Article 12 of the Monitoring and Reporting Regulation, together with—
    - (i) the supporting documents under Article 12(1) of that Regulation;
    - (ii) the summary of a procedure ensuring fulfilment of the requirements referred to in Article 12(3)(a) and (b) of that Regulation; and
    - (iii) the uncertainty assessment carried out under Article 28(1)(a) of that Regulation;
  - (g) a description, including the reference number, of any environmental licence issued in relation to the installation;
  - (h) any additional information which the applicant wishes the regulator to take into account in considering the application; and
  - (i) a non-technical summary of the information referred to in paragraphs (c) to (h).
- (2) For the purposes of sub-paragraph (1)(g), “environmental licence” means—
- (a) an authorisation under Part 1 of the Environmental Protection Act 1990<sup>(44)</sup> or the Industrial Pollution Control (Northern Ireland) Order 1997<sup>(45)</sup>; or
  - (b) a permit under—
    - (i) the Environmental Permitting (England and Wales) Regulations 2010<sup>(46)</sup>;
    - (ii) the Pollution Prevention and Control (Scotland) Regulations 2000<sup>(47)</sup>;
    - (iii) the Offshore Regulations; or
    - (iv) the Northern Ireland Regulations.
- (3) Where an application is for a permit in respect of more than one installation, the application must contain the information required by sub-paragraph (1) in respect of each installation.

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<sup>(43)</sup> 2006 c. 46.

<sup>(44)</sup> 1990 c. 43.

<sup>(45)</sup> 1997 No. 2777 (N.I. 18).

<sup>(46)</sup> S.I. 2010/675; the Regulations have been amended a number of times, most recently by S.I. 2012/630.

<sup>(47)</sup> S.S.I. 2000/323; the Regulations have been amended a number of times, most recently by S.S.I. 2011/265.



## **Content of a greenhouse gas emissions permit**

- 2.—(1) A greenhouse gas emissions permit granted under regulation 10 must contain—
- (a) the name and postal address in the United Kingdom (including postcode) of the operator;
  - (b) the postal address and national grid reference of the installation (or equivalent information identifying the installation and its location);
  - (c) a description of the installation, including—
    - (i) the regulated activities to be carried out at the installation and the specified emissions from those activities; and
    - (ii) any directly associated activities (within Article 3(e) of the Directive) that are also to be carried out;
  - (d) a description of the site and the location of the installation on that site; and
  - (e) as defined below—
    - (i) the monitoring plan;
    - (ii) the monitoring and reporting requirements;
    - (iii) the surrender requirements; and
    - (iv) the supplementary requirements.
- (2) The monitoring plan is the plan approved in accordance with Articles 11 to 13 of the Monitoring and Reporting Regulation.
- (3) The monitoring and reporting requirements are—
- (a) a requirement to monitor the annual reportable emissions of the installation in accordance with—
    - (i) the Monitoring and Reporting Regulation; and
    - (ii) the monitoring plan (including the written procedures supplementing that plan);
  - (b) a requirement to prepare, for each scheme year, a verified report of those emissions in accordance with the Monitoring and Reporting Regulation and the Verification Regulation, and to submit that report to the regulator by 31st March in the following year;
  - (c) a requirement to satisfy the regulator, if an emission factor of zero has been reported in respect of the use of bioliquids, that the sustainability criteria set out in Article 17(2) to (5) of the Renewable Energy Directive have been fulfilled in accordance with Article 18(1) of that Directive; and
  - (d) any further conditions that the regulator considers necessary to give proper effect to the Monitoring and Reporting Regulation or the Verification Regulation.
- (4) The surrender requirements are conditions obliging the operator to surrender, by the 30th April following a scheme year, a number of allowances equal to the annual reportable emissions of the installation in that scheme year.
- (5) For the purposes of the surrender requirements the amount of the annual reportable emissions of the installation in a recovery year is deemed to be increased by an amount equal to the amount of annual reportable emissions, arising in the non-compliance year, in respect of which the operator failed to comply with the surrender requirements.
- (6) For the purposes of sub-paragraph (5)—
- (a) a “non-compliance year” is a scheme year in respect of which an operator fails to comply with the surrender requirements; and
  - (b) the “recovery year” is—
    - (i) the scheme year following the non-compliance year; or

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- (ii) where the non-compliance results from an error in the verified emissions report submitted by the operator, the scheme year in which the error is discovered.
- (7) The supplementary requirements are—
  - (a) notification requirements corresponding to the requirements in paragraphs 6(2) and 8(4) (a) and (5) of Schedule 6 (except in the case of the installations mentioned in paragraph 1(3)(b) of that Schedule);
  - (b) any other conditions that the regulator considers necessary to ensure that the operator notifies the regulator of any planned or effective changes to the capacity, activity level or operation of the installation, by 31st December in the year in which the change was planned or has occurred; and
  - (c) any other conditions that the regulator considers appropriate to include in the permit.

### **Transfer of permits**

- 3.—(1) An application under regulation 12 must—
  - (a) contain the information mentioned in sub-paragraph (3); and
  - (b) identify the installations, or parts of an installation, to which the application relates (“the transferred units”) and the regulated activities authorised to be carried out at them (“the transferred activities”).
- (2) In the case of a partial transfer—
  - (a) the application must also state—
    - (i) the amount of allowances that are to be transferred to the transferred units; and
    - (ii) the initial installed capacity of all sub-installations to which the permit relates, identifying those that correspond to the transferred units; and
  - (b) the application may not be granted unless the regulator is satisfied that—
    - (i) the amount mentioned in paragraph (a)(i) reflects the historical activity levels of the transferred units, calculated in accordance with Article 9 of the Free Allocation Decision; and
    - (ii) the capacities mentioned in paragraph (a)(ii) have been calculated in accordance with Article 7(3) of the Free Allocation Decision.
- (3) The information referred to in sub-paragraph (1)(a) is—
  - (a) in relation to each applicant, as well as the address for service required under Schedule 3 any address to which correspondence relating to the application should be sent;
  - (b) in relation to the new operator, the information mentioned in paragraph 1(1)(a)(i) and (ii); and
  - (c) a monitoring plan and other information mentioned in paragraph 1(1)(f) submitted by the new operator, or a specification by that operator of the parts of the existing monitoring plan that it is proposed should be varied and any necessary corresponding updating of that information.
- (4) Where the application relates to a partial transfer, a transfer of the permit is effected by the regulator giving notice—
  - (a) granting a permit to the new operator (“the new permit”) which—
    - (i) authorises the carrying out of the transferred activities;
    - (ii) identifies the transferred units at which they may be carried out; and

- (iii) includes such other provisions as the regulator (subject to sub-paragraph (5)) considers appropriate; and
  - (b) making such corresponding variations to the provisions of the permit held by the current operator (“the original permit”) as the regulator (subject to sub-paragraph (5)) considers appropriate.
- (5) In exercising the powers given by sub-paragraph (4)(a)(iii) and (b), the regulator must ensure that the conditions of the new permit, or the original permit as varied, are (so far as relevant) the same as the conditions that were included in the original permit, subject to such modifications as in the opinion of the regulator are necessary to take account of the transfer.
- (6) For the purposes of sub-paragraph (4) the new permit, and the variations of the original permit, have effect from a date agreed with the applicants and specified in the new permit and in the original permit as so varied.
- (7) Where the application does not relate to a partial transfer, the transfer of the permit is effected by the regulator giving notice varying the permit so that it includes—
- (a) the name and other particulars of the new operator;
  - (b) the date referred to in sub-paragraph (8); and
  - (c) such variations to the monitoring plan as the regulator considers appropriate.
- (8) From a date agreed with the applicants, the new operator is to be treated as the holder of the permit as varied under sub-paragraph (7).
- (9) If the new operator already holds a permit (an “existing permit”) for an installation that is on the same site as the transferred unit the regulator may effect a transfer within sub-paragraph (7) by—
- (a) giving notice of such variations to the existing permit as in the opinion of the regulator are necessary to take account of the transfer; and
  - (b) cancelling the permit held by the current operator.
- (10) For the purposes of sub-paragraph (9)—
- (a) the variations of the existing permit have effect from a date agreed with the applicants and specified in the existing permit as so varied; and
  - (b) the cancelled permit ceases to have effect on that date.
- (11) A regulator who effects the transfer of a permit in accordance with this paragraph must notify the registry administrator of the transfer.
- (12) Upon receipt of a notice under sub-paragraph (11) the registry administrator must carry out any necessary changes to the national allocation table pursuant to Article 50(1)(d) or (e) of the Registries Regulation 2011.

### **Surrender of permits**

- 4.—(1) The notice of surrender must require the operator, in relation to the scheme year in which it takes effect (“the relevant year”), to—
- (a) submit to the regulator by a date specified in the notice a report (“the surrender report”) specifying the reportable emissions from the beginning of the relevant year until the date on which the notice takes effect;
  - (b) ensure that the surrender report is prepared and verified in accordance with the monitoring and reporting requirements of the greenhouse gas emissions permit to which the application to surrender relates (“the permit”); and
  - (c) by a date specified in the notice, surrender allowances equal to—
    - (i) the reportable emissions specified in the surrender report;

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- (ii) where an operator has failed to comply with the surrender requirements of the permit imposed in respect of the last scheme year for which the date for surrendering allowances in accordance with those requirements has passed, the annual reportable emissions in respect of which the operator failed so to comply;
  - (iii) where the notice of surrender is served in a scheme year in which an error in the report submitted by an operator under the monitoring and reporting requirements in relation to any earlier scheme year has been discovered, the annual reportable emissions in respect of which, as a result of that error, the operator failed to comply with the surrender requirements of the permit in respect of the scheme year to which the error relates; and
  - (iv) where an operator has failed to comply with regulation 13(2), the total number of allowances which by the date on which the notice of surrender is served have been issued in respect of the installation which would not have been issued if the operator had so complied.
- (2) From the date on which the notice of surrender takes effect—
- (a) the permit ceases to have effect to authorise the carrying out of a regulated activity or to require the monitoring of emissions; but
  - (b) any conditions of the permit continue to have effect so far as they are not superseded by the requirements of that notice in accordance with sub-paragraphs (5) to (7) until the regulator certifies—
    - (i) that those requirements and any surrender requirements of the permit have been complied with, or
    - (ii) that there is no reasonable prospect of further allowances being surrendered by the operator in respect of the installation to which the notice relates.
- (3) From the scheme year following the relevant year, for the purposes of assessing compliance with any surrender requirements of the permit the amount of reportable emissions of the installation (before any increase in accordance with paragraph 2(5)) is deemed to be zero.
- (4) Where the regulator certifies in accordance with sub-paragraph (2)(b)(ii) that there is no reasonable prospect of further allowances being surrendered by the operator, the regulator must notify the registry administrator.
- (5) The requirements specified in a notice of surrender pursuant to sub-paragraph (1)(a) and (b) are to be treated as if they were monitoring and reporting requirements of the permit.
- (6) Subject to paragraph (7), the requirements specified in a notice of surrender pursuant to sub-paragraph (1)(c) are to be treated as if—
- (a) they were surrender requirements of the permit, and
  - (b) the number of allowances required to be surrendered by the notice of surrender were the annual reportable emissions of the installation in respect of the scheme year to which the notice relates.
- (7) Where the surrender report understates any reportable emissions, the requirement to surrender allowances equal to the amount of the understatement is not superseded by the requirements specified in the notice of surrender.
- (8) Where the operator fails to comply with the requirements of a notice of surrender included pursuant to sub-paragraph (1), the regulator must notify the registry administrator.

### **Revocation of permits**

5.—(1) The revocation notice must require the operator, in relation to the scheme year in which it takes effect (“the relevant year”), to—

- (a) submit to the regulator by a date specified in the notice a report (“the revocation report”) specifying the reportable emissions from the beginning of the relevant year until the date on which the notice takes effect;
  - (b) ensure that the revocation report is prepared and verified in accordance with the monitoring and reporting requirements of the greenhouse gas emissions permit to which the revocation notice relates (“the permit”); and
  - (c) by a date specified in the notice, surrender allowances equal to—
    - (i) the reportable emissions specified in the revocation report;
    - (ii) where an operator has failed to comply with the surrender requirements of the permit imposed in respect of the last scheme year for which the date for surrendering allowances in accordance with those requirements has passed, the annual reportable emissions in respect of which the operator failed so to comply;
    - (iii) where the revocation notice is served in a scheme year in which an error in the report submitted by an operator under the monitoring and reporting requirements in relation to any earlier scheme year has been discovered, the annual reportable emissions in respect of which, as a result of that error, the operator failed to comply with the surrender requirements of the permit in respect of the scheme year to which the error relates; and
    - (iv) where the notice has been served under regulation 14(1)(b), the total number of allowances which by the date on which the revocation notice is served have been issued in respect of the installation which would not have been issued if the operator had so complied.
- (2) A revocation notice must specify a period within which the fee for the revocation of the permit must be paid.
- (3) From the date on which the revocation notice takes effect—
- (a) the permit ceases to have effect to authorise the carrying out of a regulated activity or to require the monitoring of emissions; but
  - (b) any conditions of the permit continue to have effect so far as they are not superseded by the requirements of that notice in accordance with sub-paragraphs (6) to (8) until the regulator certifies—
    - (i) that those requirements and any surrender requirements of the permit imposed have been complied with, or
    - (ii) that there is no reasonable prospect of further allowances being surrendered by the operator in respect of the installation to which the notice relates.
- (4) From the scheme year following the relevant year, for the purposes of assessing compliance with the surrender requirements of the permit the amount of reportable emissions of the installation (before any increase in accordance with paragraph 2(5)) is deemed to be zero.
- (5) Where the regulator certifies in accordance with sub-paragraph (3)(b)(ii) that there is no reasonable prospect of further allowances being surrendered by the operator, the regulator must notify the registry administrator.
- (6) The requirements specified in a revocation notice pursuant to sub-paragraph (1)(a) and (b) are to be treated as if they were monitoring and reporting requirements of the permit.
- (7) Subject to paragraph (8), the requirements specified in a revocation notice pursuant to sub-paragraph (1)(c) are to be treated as if—
- (a) they were surrender requirements of the permit, and

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- (b) the number of allowances required to be surrendered by the revocation notice were the annual reportable emissions of the installation in respect of the scheme year to which the notice relates.
- (8) Where the revocation report understates any reportable emissions, the requirement to surrender allowances equal to the amount of the understatement is not superseded by the requirements specified in the revocation notice.
- (9) Where the operator fails to comply with the requirements of a revocation notice included pursuant to sub-paragraph (1), the regulator must notify the registry administrator.
- (10) A regulator who has served a revocation notice may, at any time before the date on which it takes effect, withdraw the notice.

## SCHEDULE 5

Regulations 10(7) and 15

### Excluded installations

#### Interpretation

- 1.—(1) In this paragraph, “hospital” means—
  - (a) any institution for the reception and treatment of persons suffering from illness;
  - (b) any maternity home;
  - (c) any institution for the reception and treatment of persons during convalescence or persons requiring medical rehabilitation;
  - (d) any clinics, dispensaries or out-patient departments maintained in connection with an establishment mentioned in paragraphs (a) to (c);
  - (e) any research or teaching facility that is associated with an establishment mentioned in paragraphs (a) to (c) which has as its primary purpose medical research or medical teaching;
  - (f) any other facility which has as its primary purpose the provision of such services as are necessary to maintain the proper functioning of any establishment mentioned in paragraphs (a) to (d), including in particular—
    - (i) blood transfusion services,
    - (ii) catering services,
    - (iii) laundry services, or
    - (iv) medical sanitisation services.
- (2) For the purposes of sub-paragraph (1), “illness” includes any disorder or disability of the mind and any injury or disability requiring medical or dental treatment or nursing.
- (3) For the purposes of this Schedule, an installation primarily provides services to a hospital in a scheme year—
  - (a) where no more than 15% of heat produced by the installation is exported to an establishment other than a hospital in that year; or
  - (b) if the installation is not owned by a hospital, not less than 85% of heat produced by the installation is supplied to one or more hospitals in that year.
- (4) In this Schedule—
  - “emissions report” has the meaning given by paragraph 3(8)(b)(i);

“emissions target”, in relation to a scheme year, means an amount of reportable emissions specified in an excluded installation emissions permit as the target for the excluded installation in that year;

“maximum amount” means annual reportable emissions of 24,999 tonnes of carbon dioxide equivalent in any scheme year.

### **Conversion of a greenhouse gas emissions permit**

2.—(1) Where a greenhouse gas emissions permit has been granted in respect of an installation that is an excluded installation, the regulator must vary the greenhouse gas emissions permit (with effect from a date to be included in the permit) so that the provisions of the permit are replaced by provisions that satisfy the requirements of paragraph 3.

(2) When a permit is varied under sub-paragraph (1)—

- (a) the regulator may make only such variations as appear to the regulator to be necessary in consequence of the installation being an excluded installation; but
- (b) that is without prejudice to the duty to vary the permit in accordance with regulation 88(6).

(3) A variation of a permit under this paragraph does not affect any obligations of the operator under the permit in respect of emissions arising prior to 1st January 2013.

### **Content of an excluded installation emissions permit**

3.—(1) An excluded installation emissions permit must contain—

- (a) the name and postal address in the United Kingdom (including postcode) of the operator and any other address for correspondence specified by the operator;
- (b) the postal address and national grid reference of the installation (or for offshore installations equivalent information identifying the installation and its location);
- (c) a description of the installation, including—
  - (i) the regulated activities to be carried out at the installation and the specified emissions from those activities; and
  - (ii) the directly associated activities (within Article 3(e) of the Directive) that are also to be carried out;
- (d) a description of the site and the location of the installation on that site;
- (e) an emissions target for each scheme year prior to 2021;
- (f) a monitoring plan (as defined in sub-paragraph (7));
- (g) the monitoring and reporting conditions (as defined in sub-paragraph (8));
- (h) the record keeping requirements (as defined in sub-paragraph (9)); and
- (i) any other conditions that the regulator considers appropriate to include in the permit.

(2) The authority must exercise powers under section 40 of the Environment Act 1995, or regulation 37 of the Northern Ireland Regulations(48), to give the regulator directions as to the calculation of the emissions targets included under sub-paragraph (1)(e).

(3) If the regulator has been directed to do so under an enactment mention in sub-paragraph (2) before 30th September in any scheme year, the regulator must vary the permit by substituting new emissions targets for the existing targets for each subsequent scheme year in order to take into account (to the extent and in the manner specified in the direction)—

- (a) any amendments to the Directive;

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(48) Regulation 37 is modified by regulation 7(2) of these Regulations.

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- (b) any amendments to the list adopted by the European Commission under Article 10a(13) of the Directive;
  - (c) any amendments to Decision No.406/2009/EC of the European Parliament and the Council of 23 April 2009 on the effort of Member States to reduce their greenhouse gas emissions to meet the Community’s greenhouse gas emission reduction commitments up to 2020(49);
  - (d) any measures relating to carbon budgets under the Climate Change Act 2008(50); or
  - (e) any other matters mentioned in the direction.
- (4) An excluded installation emissions permit that is granted in respect of an installation which does not primarily provide services to a hospital must contain a condition requiring the operator to give notice to the regulator by the relevant date if the annual reportable emissions from the installation in any scheme year exceed the maximum amount.
- (5) An excluded installation emissions permit granted in respect of an installation which primarily provides services to a hospital must contain a condition requiring the operator to give notice to the regulator by the relevant date if the installation ceases to do so in any scheme year.
- (6) For the purposes of sub-paragraphs (4) and (5), the relevant date is 31st March in the year following the scheme year in question.
- (7) The monitoring plan is the plan approved in accordance with Articles 11 to 13 of the Monitoring and Reporting Regulation.
- (8) The monitoring and reporting conditions are—
- (a) a requirement to monitor the annual reportable emissions of the installation in accordance with—
    - (i) the relevant provisions of the Monitoring and Reporting Regulation; and
    - (ii) the monitoring plan (including the written procedures supplementing that plan);
  - (b) a requirement to submit to the regulator, for each scheme year, by 31st March in the following year a report of the annual reportable emissions from the installation in accordance with the relevant provisions of the Monitoring and Reporting Regulation (“the emissions report”) that is either—
    - (i) verified in accordance with the Verification Regulation, or
    - (ii) accompanied by a notice declaring that—
      - (aa) in preparing the emissions report the operator has complied with the relevant provisions of the Monitoring and Reporting Regulation;
      - (bb) the operator has complied with the monitoring plan for the installation; and
      - (cc) the report is free from material misstatements;
  - (c) a requirement to satisfy the regulator, if an emission factor of zero has been reported in respect of the use of bioliquids, that the sustainability criteria set out in Article 17(2) to (5) of the Renewable Energy Directive have been fulfilled in accordance with Article 18(1) of that Directive; and
  - (d) any further conditions that the regulator considers necessary to ensure that the operator complies with the relevant provisions of the Monitoring and Reporting Regulation.
- (9) The record keeping requirements are any conditions requiring the operator of an installation referred to in sub-paragraph (5) who has not given notice in accordance with that provision to—
- (a) maintain records demonstrating that it continues to primarily provide services to a hospital; and

(49) OJ L 140, 5.6.2009, p 136.

(50) 2008 c. 27.



(b) comply with requests from the regulator to inspect those records for the purpose of verifying the accuracy of the records and of the emissions report.

(10) In this paragraph, “relevant provisions” means the provisions specified in the permit as relevant for the purposes of monitoring and reporting emissions from excluded installations.

(11) The authority must exercise powers under section 40 of the Environment Act 1995, or regulation 37 of the Northern Ireland Regulations, to give the regulator directions as to the provisions that are to be specified in accordance with sub-paragraph (10).

#### **Activities during 2012: duty to notify regulator**

4.—(1) An operator of an excluded installation which primarily provided services to a hospital before 2013, but ceased to do so during 2012, must give notice to the regulator of that cessation no later than 31st March 2013.

(2) The operator of a relevant installation must give notice to the regulator no later than 31st March 2013 where the annual reportable emissions from the installation during 2012 exceeded the maximum amount.

(3) For the purposes of sub-paragraph (2) an installation is a “relevant installation” if—

- (a) it is an excluded installation that does not primarily provides services to a hospital; and
- (b) the operator of the installation was, prior to 2013, not under any obligation to report its annual reportable emissions to the regulator.

#### **Emissions target: duty not to exceed**

5. An operator must ensure that annual reportable emissions from an excluded installation in a scheme year do not exceed the emissions target for that year.

#### **Emissions target: increase in the capacity of an excluded installation**

6.—(1) Where a capacity increase has occurred at an excluded installation after 30th June 2011, the operator may apply to the regulator for an increase in the emissions targets for the installation.

(2) An application under sub-paragraph (1) must be made—

- (a) by 31st December in the year during which the capacity increase occurred or within 3 months of the date of the capacity increase, whichever is later; or
- (b) where the capacity increase occurred before 1st January 2013, by 30th June 2013.

(3) The application must contain evidence demonstrating the following—

- (a) the date on which the capacity increase was put into operation;
- (b) that the increase is not temporary;
- (c) that the increase is in operation and is required for the purpose of carrying out the operator’s primary business activities;
- (d) in the case of a capacity increase at a heat sub-installation where measurable heat is produced otherwise than within the installation’s boundaries, that the increase is solely associated with measurable heat produced at the installation; and
- (e) any further matters that the regulator is required to take into account by a direction referred to in sub-paragraph (8).

(4) Where the regulator receives an application under sub-paragraph (1), and is satisfied with information provided by the operator under sub-paragraph (3), the regulator may calculate new emissions targets for that and subsequent scheme years.

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(5) Where the regulator calculates new emissions targets pursuant to sub-paragraph (4), the regulator must vary the permit by substituting the new emissions targets for the existing targets.

(6) Where after having varied the permit under sub-paragraph (5) the regulator is subsequently satisfied that the evidence provided by the operator under sub-paragraph (3) is incorrect or incomplete, the regulator may recalculate those new emissions targets and vary the permit accordingly by making a new substitution of emissions targets.

(7) However, except where the excluded installation primarily provides services to a hospital, the increase in an emissions target under sub-paragraph (4) or (6) may not result in an emissions target which exceeds the maximum amount.

(8) The authority must exercise powers under section 40 of the Environment Act 1995, or regulation 37 of the Northern Ireland Regulations, to give the regulator directions as to—

- (a) the further matters required to be taken into account when considering an application under sub-paragraph (1); and
- (b) the calculation or recalculation of emissions targets under sub-paragraphs (4) or (6).

(9) In this paragraph—

- (a) “capacity increase” means an increase in a sub-installation’s installed capacity whereby one or more identifiable physical changes relating to its technical configuration and functioning other than a replacement of an existing production line takes place;
- (b) “installed capacity” means—
  - (i) the sub-installation’s installed capacity on 30 June 2011; or
  - (ii) in the case of an installation which has had a capacity increase since 30th June 2011, the installed capacity of the sub-installation following the last capacity increase;
- (c) “measurable heat” has the same meaning as in Article 3(e) of the Free Allocation Decision;
- (d) “sub-installation” has the meaning given in Article 3(b), (c), (d) and (h) and Article 6 of the Free Allocation Decision.

### **Banking an overachieved emissions target**

7.—(1) Subject to sub-paragraph (2), in this paragraph “bankable amount” in relation to a scheme year means the difference between—

- (a) the emissions target for that year; and
- (b) the amount of reportable emissions stated in the emissions report for that year.

(2) Where the carrying out of regulated activities at an excluded installation has been suspended for a period, in circumstances where the installation would be deemed to have permanently ceased the carrying out of regulated activities were it an installation to which Schedule 6 applied, the bankable amount is zero in relation to any scheme year in which that period (or any part of that period) falls.

(3) For the purposes of deciding whether the circumstances mentioned in sub-paragraph (2) apply, the operator may make an application under paragraph 7(2) of Schedule 6.

(4) Subject to sub-paragraph (5), where for any scheme year (“S”) the bankable amount is greater than zero the regulator—

- (a) may increase the emissions target for the installation for the following scheme year by the bankable amount; and
- (b) must in that case vary the permit by substituting that increased emissions target for the existing target.

(5) Except where the excluded installation primarily provides services to a hospital, if increasing the emissions target under sub-paragraph (4) would result in an emissions target which exceeds the maximum amount, the increased emissions target must instead be equal to the maximum amount.

(6) Where the amount of reportable emissions stated in the emissions report for S is amended following a determination of emissions under regulation 44(3), the regulator must—

- (a) calculate the bankable amount using the data as so determined; and
- (b) where an increased emissions target has been substituted under sub-paragraph (4)(b), make a further variation of the permit to substitute a revised emissions target.

(7) Where an increased emissions target for a scheme year has been substituted following an application under paragraph 6(1), but the application was determined in the following year, the regulator must—

- (a) calculate any bankable amount for the scheme year using that increased target; and
- (b) vary the permit to substitute a revised emissions target for the following year, based on the amount so calculated.

### **Termination of an excluded installation emissions permit**

**8.—**(1) Where the regulator is satisfied that—

- (a) the annual reportable emissions from an excluded installation which does not primarily provide services to a hospital have exceeded the maximum amount, or
- (b) an excluded installation has ceased to primarily provide services to a hospital,

the regulator must, as soon as is reasonably practicable, give a notice to the operator.

(2) A notice under sub-paragraph (1) must state that, from the beginning of the scheme year following the year in which the notice is given—

- (a) the installation will not be treated as an excluded installation; and
- (b) the operator will be required to comply with the conditions of a greenhouse gas emissions permit in respect of the installation.

(3) This sub-paragraph applies where the regulator is satisfied that the operator of an excluded installation has—

- (a) committed a sufficiently serious breach of the conditions of the excluded installation emissions permit, or
- (b) failed to pay to the regulator the penalty imposed under regulation 56 within one month after the date specified in the penalty notice.

(4) Where sub-paragraph (3) applies the regulator may revoke the permit under regulation 14 or give a notice to the operator in accordance with sub-paragraph (5).

(5) The notice must state that, from the beginning of the scheme year following the year in which notice is given—

- (a) the installation will not be treated as an excluded installation; and
- (b) the operator will be required to comply with the conditions of a greenhouse gas emissions permit in respect of the installation.

(6) Where notice is given under sub-paragraph (1) or (4), the regulator must vary the excluded installation emissions permit, with effect from the 1st January in the scheme year following the year in which the notice was given (“the date of conversion”), so that the provisions of the permit that satisfy the requirements of paragraph 3 are replaced by provisions satisfying the requirements of paragraph 2 of Schedule 4.

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(7) In varying a permit under sub-paragraph (6), the regulator may make only such variations as appear to the regulator to be necessary in consequence of the installation ceasing to be treated as an excluded installation.

(8) A variation of a permit under sub-paragraph (6) does not affect any obligations of the operator under the permit in respect of emissions arising from activities prior to the date of conversion.

(9) Where—

(a) notice is given under sub-paragraph (1) or (4), and

(b) the operator holds a registry account with excluded status in respect of the installation, the regulator must give notice to the registry administrator, in accordance with the Registries Regulation 2011, to change the status of the account to open from the year beginning with the date of conversion.

(10) Where sub-paragraph (3) applies and the permit is revoked, the regulator must give notice to the registry administrator in accordance with the Registries Regulation 2011 to close the account.

#### **End of excluded installation status**

**9.—**(1) By 1st July 2020 the regulator must give a notice to each operator of an excluded installation stating that, from 1st January 2021—

(a) the installation will not be treated as an excluded installation; and

(b) the operator will be required to comply with the conditions of a greenhouse gas emissions permit in respect of the installation.

(2) Sub-paragraphs (6) to (9) of paragraph 8 apply in respect of a notice given under sub-paragraph (1) of this paragraph as they apply to in respect of a notice given under paragraph 8(1).

## SCHEDULE 6

Regulation 16(3)

### Allocation and adjustment of allowances

#### **Interpretation**

**1.—**(1) In this Schedule—

(a) “the allocation table” has the meaning given by regulation 79(2);

(b) “new entrant reserve” means the reserve of allowances provided for under Article 10a(7) of the Directive;

(c) “preliminary total annual amount of allowances” is that amount as calculated in accordance with Article 19(3) of the Free Allocation Decision;

(d) “verified” means verified as satisfactory in accordance with Article 8 of the Free Allocation Decision (except that the reference to Decision [2007/589/EC](#) in Article 8(3) is to be read as a reference to the Verification Regulation);

(e) “year” means a scheme year in the trading period 2013 to 2020.

(2) In this Schedule, the following expressions have the meanings given to them in Article 3 of the Free Allocation Decision—

“added capacity” (see Article 3(l));

“incumbent installation” (see Article 3(a));

“reduced capacity” (see Article 3(m));

“significant capacity extension” (see Article 3(i));

“significant capacity reduction” (see Article 3(j));

“start of changed operation” (see Article 3(o));

“start of normal operation” (see Article 3(n)).

(3) This Schedule does not apply to—

(a) an excluded installation (see regulation 15(3)(b)); or

(b) an installation that, by virtue of Article 10a(3) of the Directive, is not eligible for an allocation.

### **Application for an allocation from the new entrant reserve: new entrants**

2.—(1) Subject to sub-paragraph (2), where—

(a) the permit for an installation was granted on or after 30th June 2011, or

(b) the permit was granted before 30th June 2011, but the start of normal operation was on or after that date,

the operator of the installation may apply to the regulator for an allocation of allowances in respect of that installation from the new entrant reserve.

(2) Such an application may not be made where—

(a) the start of normal operation was before 30th June 2011; or

(b) the installation has already been included in the list referred to regulation 16(2).

(3) Any application under sub-paragraph (1) must be made—

(a) before the end of the period of twelve months beginning with the start of normal operation of the installation, or

(b) if that period expired before 1st February 2013, by that date.

(4) The application must contain—

(a) all relevant information regarding each parameter listed in Annex 5 to the Free Allocation Decision for each separate sub-installation;

(b) the initial installed capacity for each sub-installation calculated by the operator in accordance with Article 17(4) of the Free Allocation Decision; and

(c) subject to paragraph (5), a statement that the data referred to in paragraphs (a) and (b) have been verified.

(5) If the date for the submission of the application in accordance with sub-paragraph (3) falls before 30th May 2013, the statement may be submitted separately from the application and by the latter date.

(6) If the regulator approves the calculations of initial installed capacity the regulator must calculate—

(a) the activity levels of the installation in accordance with Article 18(1) and (2) of the Free Allocation Decision;

(b) the preliminary annual number of allowances to be allocated as from the start of normal operation of the installation for each sub-installation in accordance with Article 19(1) to (3) of the Free Allocation Decision; and

(c) the preliminary total annual amount of allowances to be allocated to the installation.

(7) The result of any calculation under sub-paragraph (6) must be included in the notice of the determination of an application under sub-paragraph (1).

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**Application for an allocation from the new entrant reserve: significant capacity extensions**

3.—(1) Where an installation had a significant capacity extension—

- (a) after 30th June 2011, or
- (b) on or before that date, but where the added capacity was capable of determination only after 30th September 2011,

the operator of the installation may (subject to sub-paragraph (2)) apply to the regulator for an allocation of allowances from the new entrant reserve.

(2) Any application under sub-paragraph (1) must be made—

- (a) before the end of the period of twelve months beginning with—
  - (i) the start of changed operation of the installation, or
  - (ii) in the case mentioned in paragraph (1)(b), the date of determination of added capacity; or
- (b) if that period expired before 1st February 2013, by that date.

(3) The application must contain—

- (a) all relevant information regarding each parameter listed in Annex 5 to the Free Allocation Decision for each separate sub-installation;
- (b) the installed capacity, and a calculation of the added capacity, for each such sub-installation;
- (c) any other evidence necessary to demonstrate that the criteria for a significant capacity extension have been met; and
- (d) subject to sub-paragraph (4), a statement that the data referred to in paragraphs (a) to (c) have been verified.

(4) If the date for the submission of the application in accordance with sub-paragraph (2) falls before 30th May 2013, the statement may be submitted separately from the application and by the latter date.

(5) If the regulator approves the calculation of added capacity the regulator must calculate—

- (a) the activity levels (for the added capacity only) of the sub-installations to which the significant capacity extension applies in accordance with Article 18(1) and (2) of the Free Allocation Decision;
- (b) the preliminary number of allowances to be allocated for each sub-installation insofar as the extension is concerned in accordance with Articles 19(1) to (3) and 20 of the Free Allocation Decision; and
- (c) the preliminary total annual amount of allowances to be allocated to the installation insofar as the extension is concerned.

(6) The result of any calculation under sub-paragraph (5) must be included in the notice of the determination of an application under sub-paragraph (1).

**Notification of preliminary annual number of allowances: new entrants and significant capacity extensions**

4.—(1) The regulator must, within 28 days after the date of the notice referred to in paragraph 2(6) or 3(5) notify the preliminary total annual amount calculated under paragraph 2(5)(c) or 3(4)(c) to—

- (a) the authority;
- (b) the Secretary of State (where the Secretary of State is not the authority); and
- (c) the European Commission, pursuant to Article 19(4) of the Free Allocation Decision.

(2) Where the European Commission notifies the regulator that the preliminary total annual amount is rejected the regulator must, as soon as is reasonably practicable, notify the operator giving the reasons for rejection provided by the European Commission.

#### **Calculation of final total annual amount of allowances allocated free of charge: new entrants and significant capacity extensions**

5.—(1) Where the European Commission approves the preliminary total annual amount notified under paragraph 4(1), the regulator must calculate the final total annual amount of allowances allocated to the installation concerned.

(2) The regulator must, as soon as is reasonably practicable, notify the final total annual amount to—

- (a) the operator;
- (b) the authority;
- (c) the registry administrator; and
- (d) the Secretary of State (where the Secretary of State is not the authority).

(3) For the purpose of this paragraph, the final total annual amount is the preliminary total annual amount, adjusted annually by the linear reduction factor referred to in Article 10a(7) of the Directive (using the preliminary total annual amount for 2013 as a reference).

#### **Adjustment of allocation: significant capacity reductions**

6.—(1) This sub-paragraph applies where a sub-installation has had a significant capacity reduction—

- (a) after 30th June 2011, or
- (b) on or before that date, but the extent of the reduction could not be determined before 30th September 2011.

(2) Where sub-paragraph (1) applies the operator of the installation must, by the relevant date, submit to the regulator a notice containing—

- (a) a statement of the reduced capacity, and of the installed capacity of the sub-installation after taking into account the capacity reduction; and
- (b) a statement that the data submitted under paragraph (a) have been verified.

(3) For that purpose—

- (a) the relevant date is the later of—
  - (i) the last day of the period of 7 months following the date of the change of capacity;
  - (ii) 31st December in the year in which that change occurred; or
  - (iii) 1st February 2013; but
- (b) where the relevant date falls before 30th May 2013, the statement referred to in sub-paragraph (2)(b) need only be submitted by the latter date.

(4) Once the operator has submitted the information required by sub-paragraph (2) the regulator must—

- (a) in accordance with Article 18 of the Free Allocation Decision, calculate the activity levels for the reduced capacity of the sub-installation to which the significant capacity reduction relates in accordance with Article 18(3) of the Free Allocation Decision;
- (b) in accordance with Article 21(2) of the Free Allocation Decision, reduce the preliminary annual number of allowances allocated to each sub-installation by the preliminary annual

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number of allowances allocated to the sub-installation concerned calculated in accordance with Article 19(1) of the Free Allocation Decision insofar as the significant capacity reduction is concerned; and

- (c) in accordance with Article 21(2) of the Free Allocation Decision, revise the preliminary total annual amount for the installation concerned in accordance with the methodology applied to determine the preliminary total annual amount prior to the significant capacity reduction.
- (5) The regulator must request the registry administrator to withhold the allocation of allowances to the operator of an installation for as long as any of the following circumstances obtains—
- (a) the regulator is investigating whether or not there has been a significant capacity reduction in relation to the installation;
  - (b) the information required under sub-paragraph (2)—
    - (i) has not been submitted in accordance with that sub-paragraph; or
    - (ii) has been submitted but is insufficient;
  - (c) the operator has submitted a notice under sub-paragraph (2)(a), but has not yet submitted the statement under sub-paragraph (2)(b);
  - (d) the regulator is carrying out functions under sub-paragraph (4);
  - (e) a notification has been given to the European Commission pursuant to paragraph 9(3) (d) and the notified amount of allowances has not yet been approved by the European Commission; or
  - (f) a notification has been made to the registry administrator under regulation 80(11) but the necessary changes to the national allocation table have not yet been made.
- (6) The registry administrator must comply with a request made under sub-paragraph (5).
- (7) Where the regulator makes a request under sub-paragraph (5) the regulator—
- (a) must notify the operator of the decision to do so as soon as is reasonably practicable; and
  - (b) may, if the regulator considers it appropriate to do so, subsequently notify the operator that—
    - (i) the allocation of allowances will be permanently reduced; or
    - (ii) the allowances (or a proportion of them) will be issued.
- (8) Where the European Commission approves the preliminary total annual amount of allowances notified under paragraph 9(1), the regulator must treat the installed capacity of the sub-installation after having had a significant capacity reduction as the sub-installation's initial installed capacity when assessing any subsequent significant capacity change.

#### **Adjustment of allocation to an installation: permanent cessations of regulated activities**

7.—(1) For the purposes of this paragraph, an installation permanently ceases the carrying out of regulated activities where any of the following conditions are met—

- (a) the permit or a licence for the installation has been surrendered or revoked, or otherwise ceased to have effect;
- (b) the operation of regulated activities at the installation is technically impossible;
- (c) the installation was, but is no longer, carrying out regulated activities and it is technically impossible for it to resume doing so;
- (d) subject to sub-paragraphs (2) and (3), the operator—
  - (i) has suspended the carrying out of regulated activities at the installation, and



(ii) the carrying out of regulated activities has not recommenced within the period of 6 months following the date of the suspension.

(2) The operator may apply to the regulator for the period of 6 months mentioned in sub-paragraph (1)(d) to be extended to a period not exceeding 18 months, on the ground that the carrying out of regulated activities at the installation cannot be recommenced within that period of 6 months due to exceptional and unforeseeable circumstances that could not have been avoided even if all due care had been exercised, and were beyond the control of the operator.

(3) Sub-paragraph (1)(d) does not apply to an installation if it is kept in reserve or on standby, or is operated on a seasonal basis, provided that—

- (a) the operator holds a permit and a licence for the installation;
- (b) it is technically possible to commence the carrying out of regulated activities without making physical changes to the installation; and
- (c) regular maintenance of the installation is carried out.

(4) Subject to sub-paragraph (5), no allocation of allowances to an installation may be made for any year following the year in which the installation has permanently ceased the carrying out of regulated activities.

(5) Notwithstanding the provisions of paragraph 2(2)(b), where regulated activities at the installation recommence after the expiry of the period of 6 months following the date of suspension or any longer period allowed pursuant to sub-paragraph (2) (“the relevant period”), the operator may apply for an allocation of allowances under paragraph 2.

(6) This sub-paragraph applies where the operator—

- (a) has suspended the carrying out of regulated activities at the installation; and
- (b) intends to recommence regulated activities before the expiry of relevant period.

(7) Where sub-paragraph (6) applies, the operator may within a period of one month beginning with the date of suspension apply to the regulator for the suspension to be treated as temporary; and if the application is granted—

- (a) allowances may be issued to the installation notwithstanding that the relevant period has not expired; but
- (b) such an issue of allowances is without prejudice to sub-paragraph (4) and paragraph 11(1).

(8) An application under sub-paragraph (7) must provide evidence that the carrying out of regulated activities will recommence within the relevant period.

(9) The regulator must request the registry administrator to withhold the allocation of allowances to the operator of an installation for as long as any of the following circumstances obtains—

- (a) the regulator is investigating whether or not the installation has permanently ceased the carrying out of regulated activities;
- (b) an application under sub-paragraph (7) has been made but the application—
  - (i) has not yet been determined, or
  - (ii) has been refused and the relevant period has not yet expired;
- (c) an application under regulation 12(1) has been made but has not yet been determined;
- (d) a notice of surrender or revocation notice has been given but has not yet taken effect;
- (e) an appeal against such a notice has been made but has not been determined or withdrawn;
- (f) a notification has been made to the registry administrator under regulation 80(11) but the necessary changes to the allocation table have not yet been made.

(10) The registry administrator must comply with a request made under sub-paragraph (9).

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- (11) Where the regulator makes a request under sub-paragraph (9) the regulator—
- (a) must notify the operator of the decision to do so as soon as is reasonably practicable; and
  - (b) may, if the regulator considers it appropriate to do so, subsequently notify the operator that—
    - (i) the allocation of allowances will be permanently reduced; or
    - (ii) the allowances (or a proportion of them) will be issued.
- (12) In this paragraph—
- (a) a “licence” for an installation is a permit in force issued in relation to that installation in accordance with—
    - (i) Directive 2008/1/EC of the European Parliament and of the Council concerning integrated pollution prevention and control<sup>(51)</sup>, as amended for time to time; or
    - (ii) Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions (integrated pollution prevention and control)<sup>(52)</sup>, as amended for time to time;
  - (b) “relevant period” has the meaning given in sub-paragraph (5).

#### **Adjustment of allocation to an installation: partial cessation of regulated activities**

**8.—**(1) For the purposes of this paragraph, an installation partially ceases regulated activities where sub-paragraph (2) applies in relation to that installation.

(2) This sub-paragraph applies where one sub-installation of the installation which contributes to—

- (a) at least 30% of the final annual amount of allowances allocated to the installation, or
- (b) the allocation of more than 50,000 allowances,

reduces its activity level in a given year by at least 50% compared to the activity level originally used for calculating the sub-installation’s allocation (“initial activity level”).

- (3) However, following a partial transfer, sub-paragraph (2) applies as follows—
- (a) the amount of allowances transferred to the transferred units, in accordance with paragraph 3(2) of Schedule 4, is to be treated as the final annual amount of allowances allocated to the installation for the purposes of this paragraph; and
  - (b) the activity level calculated in accordance with paragraph 3(2)(b)(i) of Schedule 4 is to be treated as the initial activity level for the purposes of this paragraph.
- (4) Where an installation partially ceases regulated activities—
- (a) the operator must notify the regulator that such a reduction in activity level has occurred, stating the amount of that reduction and the sub-installation to which it applies—
    - (i) by 31st December in the year in which the reduction occurred, or
    - (ii) within one month after the date on which it occurred, if later; and
  - (b) the regulator must—
    - (i) adjust the allocation of allowances in accordance with sub-paragraph (6),
    - (ii) revise the preliminary annual number of allowances allocated to each sub-installation; and

<sup>(51)</sup> OJ No L 24, 29.1.2008, p 8.

<sup>(52)</sup> OJ No L 334, 17.12.2010, p 17.

- (iii) revise the preliminary total annual amount of allowances to be allocated, commencing with the year following the year in which the reduction in activity level occurred.
- (5) Where a sub-installation of an installation that contributes as described in sub-paragraph (2)
  - (a) or (b) reduced its activity level in 2012 by at least 50% compared to the initial activity level—
    - (a) the operator must by 1st February 2013 notify the regulator that such a reduction in activity level has occurred, stating the amount of that reduction and the sub-installation to which it applies; and
    - (b) the regulator must take the action described in sub-paragraph (4)(b).
- (6) Where the activity level of a sub-installation is reduced—
  - (a) by 50% or more but less than 75% compared to the initial activity level, the operator is entitled to receive a quantity of allowances representing half of the final annual amount of allocated allowances in respect of that sub-installation, commencing with the year following the year during which the reduction took place;
  - (b) by 75% or more but less than 90% compared to the initial activity level, the operator is entitled to receive a quantity of allowances representing 25% of the final annual amount of allocated allowances in respect of that sub-installation, commencing with the year following the year during which the reduction took place;
  - (c) by 90% or more, the operator is entitled to no allowances in respect of that sub-installation, commencing with the year following the year during which the reduction took place.
- (7) Where, following such reduction, the activity level of a sub-installation subsequently reaches more than—
  - (a) 50% compared to the initial activity level, the operator is entitled to receive a quantity of allowances equal to the full quantity of the final annual amount of allowances allocated in respect of that sub-installation, commencing with the year following the year during which the activity level exceeded 50%;
  - (b) 25% compared to the initial activity level, the operator is entitled to receive a quantity of allowances equal to half of the final annual amount of allowances allocated in respect of that sub-installation, commencing with the year following the year during which the activity level exceeded 25%.
- (8) Where sub-paragraph (7) applies—
  - (a) the operator must take the action described in sub-paragraph (4)(a) in relation to the subsequent change; and
  - (b) the regulator must—
    - (i) adjust the allocation of allowances in accordance with sub-paragraph (7);
    - (ii) revise the preliminary annual number of allowances allocated to each sub-installation; and
    - (iii) revise the preliminary total annual amount of allowances to be allocated, commencing with the year following the year in which the subsequent change occurred.
- (9) The regulator must request the registry administrator to withhold the allocation of allowances to the operator of an installation for as long as any of the following circumstances obtains—
  - (a) the regulator is investigating whether or not the installation has partially ceased regulated activities;
  - (b) the information required under sub-paragraph (4)—
    - (i) has not been submitted in accordance with that sub-paragraph; or

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- (ii) has been submitted but is insufficient;
  - (c) the regulator is carrying out functions under sub-paragraph (4)(b);
  - (d) a notification has been given to the European Commission pursuant to paragraph 9(3)(d) and the notified amount of allowances has not yet been approved by it;
  - (e) a notification has been made to the registry administrator under regulation 80(11) but the necessary changes to the allocation table have not yet been made.
- (10) The registry administrator must comply with a request made under sub-paragraph (9).
- (11) Where the regulator has made a request under sub-paragraph (9) the regulator—
- (a) must notify the operator of the decision to do so as soon as is reasonably practicable; and
  - (b) may, if the regulator considers it appropriate to do so, subsequently notify the operator that—
    - (i) the allocation of allowances will be permanently reduced; or
    - (ii) the allowances (or a proportion of them) will be issued.
- (12) In this paragraph “activity level” means (subject to sub-paragraph (3)(b)) the activity level used for calculating the sub-installation’s allocation in accordance with Article 9 of the Free Allocation Decision (or, where applicable, Article 18).

**Notification of preliminary annual number of allowances: significant capacity reductions and partial cessation of regulated activities**

- 9.—(1) The regulator must, within 28 days after the date of making a calculation under—
- (a) paragraph 6(4)(c) (significant capacity reductions); or
  - (b) paragraph 8(4)(b) or (8)(b) (partial cessation of regulated activities),
- notify the revised preliminary total annual amount of allowances to the persons mentioned in sub-paragraph (3).
- (2) A notice given to the operator under paragraph (1) may specify a period within which a fee for making the calculation must be paid.
- (3) Those persons are—
- (a) the operator;
  - (b) the authority;
  - (c) the Secretary of State (where the Secretary of State is not the authority); and
  - (d) the European Commission, pursuant to Article 24(2) of the Free Allocation Decision.
- (4) Where the European Commission notifies the regulator that the revised preliminary total annual amount of allowances is rejected the regulator must, as soon as is reasonably practicable, notify the operator giving the reasons for rejection provided by the European Commission.

**Calculation of final total annual amount of allowances: significant capacity reductions and partial cessation of regulated activities**

- 10.—(1) Where the European Commission approves the revised preliminary total annual amount of allowances notified under paragraph 9(1), the regulator must calculate the revised final total annual amount of allowances allocated to the installation concerned.
- (2) For the purposes of sub-paragraph (1) the final total annual amount is—
- (a) the revised preliminary total annual amount notified under paragraph 9(1), but

- (b) in the case of a significant capacity reduction, that amount as adjusted by multiplying that number of allowances by the cross-sectoral correction factor under Article 10(9) of the Free Allocation Decision.
- (3) The regulator must, as soon as is reasonably practicable, notify the final total annual amount to—
  - (a) the operator;
  - (b) the registry administrator;
  - (c) the authority; and
  - (d) the Secretary of State (where the Secretary of State is not the authority).

### **Recovery of allowances**

**11.**—(1) This sub-paragraph applies where an operator (“P”) has been issued allowances to which P is not entitled as a result, in particular, of—

- (a) a failure to notify the regulator of any change to an installation’s capacity, activity level or operation;
- (b) the installation’s allocation not being adjusted in sufficient time to prevent such an over-allocation of allowances;
- (c) the installation having permanently ceased the carrying out of regulated activities despite allowances having been issued under paragraph 7(7); or
- (d) an error of the regulator or registry administrator.

(2) Where sub-paragraph (1) applies, the regulator must give a notice to P instructing P to return a sum of allowances equal to those to which P is not entitled.

(3) The notice under sub-paragraph (1) must specify—

- (a) the number of allowances to which the operator is not entitled;
- (b) the reasons why the operator is not entitled to those allowances;
- (c) the process by which those allowances must be returned; and
- (d) the date by which those allowances must be returned.

(4) An operator must comply with a notice given under sub-paragraph (2).

## SCHEDULE 7

Regulation 30(a)

### Allocation of aviation allowances

#### **Purpose of this Schedule**

**1.**—(1) This Schedule sets out the requirements that must be satisfied by a UK administered operator (“P”) who wishes to apply for an allocation of aviation allowances issued under Article 3e of the Directive in any trading period other than 2013 to 2020.

(2) Paragraph 10 provides for the recovery of aviation allowances to which a UK administered operator is not entitled, and applies to aviation allowances issued following an application made under Schedule 8 as well as one made under this Schedule.

### **Application for a benchmarking plan**

2.—(1) P must apply to the regulator for a plan in accordance with Article 51(2) of the Monitoring and Reporting Regulation (a “benchmarking plan”).

(2) That application must contain a plan to monitor tonne-kilometre data from P’s aviation activity (together with supporting documents) submitted under Article 12(1) of the Monitoring and Reporting Regulation.

### **Issue of a benchmarking plan**

3.—(1) Where P has made an application under paragraph 2 the regulator must, by notice given to P—

- (a) issue a benchmarking plan to P; or
- (b) where sub-paragraph (2) applies, refuse the application.

(2) This sub-paragraph applies where—

- (a) the regulator is not satisfied that the plan proposed in the application complies with the Monitoring and Reporting Regulation; and
- (b) P has not agreed to amendments of the plan that so satisfy the regulator.

(3) Where the regulator by notice refuses to issue a benchmarking plan under sub-paragraph (1) (b), the notice must state what changes must be made to the proposed plan for the purposes of any fresh application under paragraph 2.

### **Amendment of a benchmarking plan**

4.—(1) P must apply to the regulator to vary P’s benchmarking plan where any significant modifications of that plan are necessary by virtue of Articles 14 and 15 of the Monitoring and Reporting Regulation.

(2) Where the regulator varies the plan following an application under paragraph (1), any reference in this paragraph or in paragraph 5 to a benchmarking plan is a reference to the plan as so varied.

### **Monitoring tonne-kilometre data**

5. P must monitor tonne-kilometre data from P’s aviation activity carried out in the benchmarking year in accordance with—

- (a) the benchmarking plan issued under paragraph 3 (including the written procedures supplementing that plan); and
- (b) the Monitoring and Reporting Regulation.

### **Reporting tonne-kilometre data**

6. P must—

- (a) prepare a verified report of tonne-kilometre data monitored in accordance with paragraph 5;
- (b) ensure that the report complies with the Monitoring and Reporting Regulation and the Verification Regulation; and
- (c) make an application for an allocation by submitting the report to the regulator by 31st March in the year after the benchmarking year.

### **Submission of the report to the Secretary of State and the European Commission**

7.—(1) Where P has made an application under paragraph 6(c) the regulator must—

- (a) grant the application and submit the report to the Secretary of State; or
- (b) subject to sub-paragraph (2), refuse the application where the regulator is not satisfied that P has complied with the requirements of this Schedule.

(2) The regulator may grant the application under sub-paragraph (1)(a) where P has otherwise complied with the requirements of this Schedule but failed to comply with the deadline in Article 51(2) of the Monitoring and Reporting Regulation or in paragraph 6(c).

(3) Where the regulator refuses the application under sub-paragraph (1)(b), the notice of determination must state the regulator's reasons for doing so.

(4) The Secretary of State must, by 30th June in the year after the benchmarking year, submit to the European Commission any report submitted under sub-paragraph (1)(a).

### **Publication of aviation allowances**

8.—(1) Within the period of 3 months beginning with the date on which the Commission adopts a decision under Article 3e(3) of the Directive in respect of a trading period, the Secretary of State must (in accordance with Article 3e(4)) calculate and publish—

- (a) the total allocation of aviation allowances for the period to each UK administered operator whose report was submitted under paragraph 7(4); and
- (b) the allocation of aviation allowances to each such UK administered operator for each year of the period.

(2) Sub-paragraph (1) is subject to regulation 47 (national security).

### **Force majeure**

9.—(1) Paragraphs 4 to 8 are subject to the provisions of Article 68 of the Monitoring and Reporting Regulation (which apply where a person cannot monitor and report tonne-kilometre data because of serious and unforeseeable circumstances outside that person's control).

(2) The Secretary of State must notify to the registry administrator any revised allocation of aviation allowances published by the Secretary of State under Article 68(3) of that Regulation.

### **Recovery of allowances**

10.—(1) This sub-paragraph applies where a UK administered operator ("Q")—

- (a) has a duty to return excess aviation allowances under Article 68(3) of the Monitoring and Reporting Regulation; or
- (b) has otherwise been issued aviation allowances to which Q is no longer entitled as a result, in particular, of—
  - (i) Q having ceased to perform an aviation activity; or
  - (ii) an error of the regulator or registry administrator.

(2) Where sub-paragraph (1) applies, the regulator must give notice to Q instructing Q to return a sum of aviation allowances equal to those to which Q is not entitled.

(3) The notice under sub-paragraph (2) must specify—

- (a) the number of aviation allowances to which Q is not entitled;
- (b) the reason why Q is not entitled to them;
- (c) the process by which they must be returned; and

- (d) the date by which they must be returned.
- (4) Q must comply with a notice given under sub-paragraph (2).

## SCHEDULE 8

Regulation 30(b)

### Allocation of aviation allowances from the special reserve

#### **Purpose of this Schedule**

1.—(1) This Schedule sets out the requirements that must be satisfied by an eligible person (“R”) who wishes to apply for an allocation of allowances issued from the special reserve under Article 3f of the Directive in any trading period.

(2) For that purpose, and subject to sub-paragraphs (3) and (4), an eligible person in a trading period is—

- (a) a person who becomes a UK aircraft operator after the benchmarking year for that trading period; or
- (b) a UK aircraft operator whose tonne-kilometre data in the second calendar year in the trading period exceeds by more than 93.9% its tonne-kilometre data in the benchmarking year for that trading period.

(3) A person is not an eligible person by virtue of sub-paragraph (2)(a) if that person has previously received an allocation of aviation allowances for that trading period.

(4) A person within sub-paragraph (2)(a), or a UK aircraft operator within sub-paragraph (2)(b), who would otherwise qualify as an eligible person by virtue of performing an aviation activity does not so qualify where that aviation activity is in whole or part a continuation of an activity previously performed by another person who is or has been a person falling within the definition of “aircraft operator” in Article 3(o) of the Directive.

#### **Application for a benchmarking plan**

2.—(1) R must apply to the regulator for a benchmarking plan in accordance with Article 51(2) of the Monitoring and Reporting Regulation.

(2) That application must contain a plan to monitor tonne-kilometre data from R’s aviation activity (together with supporting documents) submitted under Article 12(1) of the Monitoring and Reporting Regulation.

#### **Issue of a benchmarking plan**

3.—(1) Where R has made an application under paragraph 2 the regulator must, by notice given to R—

- (a) issue a benchmarking plan to R; or
- (b) where sub-paragraph (2) applies, refuse to issue such a plan.

(2) This sub-paragraph applies where—

- (a) the regulator is not satisfied that the plan proposed in the application complies with the Monitoring and Reporting Regulation; and
- (b) P has not agreed to amendments of the plan that satisfy the regulator.



(3) Where the regulator by notice refuses to issue a benchmarking plan under sub-paragraph (1) (b), the notice must state what changes must be made to the proposed plan for the purposes of any fresh application under paragraph 2.

#### **Amendment of a benchmarking plan**

4.—(1) R must apply to the regulator to vary the benchmarking plan where any significant modifications of that plan are necessary by virtue of Articles 14 and 15 of the Monitoring and Reporting Regulation.

(2) Where the regulator varies the plan following an application under sub-paragraph (1), any reference in this paragraph or in paragraph 5 to a benchmarking plan is a reference to the plan as so varied.

#### **Monitoring tonne-kilometre data**

5. R must monitor tonne-kilometre data from R's aviation activity carried out in the benchmarking year in accordance with—

- (a) the benchmarking plan issued under paragraph 3 (including the written procedures supplementing that plan); and
- (b) the Monitoring and Reporting Regulation.

#### **Application for an allocation of allowances**

6.—(1) R must apply to the regulator by 30th June in the third year of a trading period.

(2) That application must—

- (a) contain evidence that R is an eligible person under paragraph 1(2);
- (b) include a verified report of R's tonne-kilometre data monitored in accordance with paragraph 5;
- (c) ensure that the report complies with the Monitoring and Reporting Regulation and the Verification Regulation; and
- (d) where R is eligible by virtue of paragraph 1(2)(b), include evidence of—
  - (i) the percentage increase in R's tonne-kilometres from the benchmarking year to the second calendar year in the trading period;
  - (ii) the increase in R's tonne-kilometres from the benchmarking year to the second calendar year in the trading period; and
  - (iii) the amount in tonne-kilometres by which R exceeds the percentage in paragraph 1(2) (b) in the second calendar year in the trading period.

#### **Submission of an application to the Secretary of State and to the European Commission**

7.—(1) Where R has made an application under paragraph 6 the regulator must—

- (a) grant the application and forward it to the Secretary of State; or
- (b) subject to sub-paragraph (2), refuse the application where the regulator is not satisfied that R has complied with the requirements of this Schedule.

(2) The regulator may grant the application under sub-paragraph (1)(a) where R has otherwise complied with the requirements of this Schedule but failed to comply with the deadline in Article 51(2) of the Monitoring and Reporting Regulation or in paragraph 6(1).

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(3) Where the regulator refuses the application under sub-paragraph (1)(b), the notice of determination must state the regulator's reasons for doing so.

(4) The Secretary of State must submit an application received under sub-paragraph (1)(a) to the European Commission within 6 months of the deadline in paragraph 6(1).

### **Publication of aviation allowances from the special reserve**

**8.**—(1) Within the period of 3 months beginning with the date on which the Commission adopts a decision under Article 3f(5) of the Directive in respect of a trading period, the Secretary of State must (in accordance with Article 3f(7)) calculate and publish—

- (a) the total allocation of aviation allowances for the period from the special reserve to each UK administered operator whose application was submitted under paragraph 7(4); and
  - (b) the allocation of aviation allowances to each such UK administered operator for each remaining year of the period.
- (2) Sub-paragraph (1) is subject to regulation 47 (national security).

## SCHEDULE 9

Regulation 39(3)

### Detention and sale of aircraft

#### **Interpretation**

**1.** In this Schedule—

“aerodrome” has the meaning given to it in section 105(1) of the Civil Aviation Act 1982<sup>(53)</sup>;

“aerodrome operator” means the person for the time being having the management or control of an aerodrome;

“aircraft documents” has the meaning given by section 88(10) of the Civil Aviation Act 1982<sup>(54)</sup>;

“airport charges” means charges payable to the owner or manager of an aerodrome for the use of, or for services provided at, an aerodrome (but does not include charges payable by virtue of section 73 of the Transport Act 2000<sup>(55)</sup>);

“civil penalty” means any civil penalty which is due under regulation 50, under regulation 21 of the 2009 Regulations or regulation 30 of the 2010 Regulations (even where the failure giving rise to that civil penalty arose before 1st January 2012);

“the court” means—

- (a) in relation to England, Wales and Northern Ireland, the High Court; and
- (b) in relation to Scotland, the Court of Session;

“defaulting operator” means a person who falls under regulation 39(1)(a) or (b);

“operating ban” means an operating ban imposed under Article 16(10) of the Directive;

“regulator expenses” means any expenses incurred by the regulator in detaining, keeping or selling an aircraft, including—

<sup>(53)</sup> 1982 c. 16; there are amendments to section 105(1) that are not relevant.

<sup>(54)</sup> There are amendments to section 88(10) that are not relevant.

<sup>(55)</sup> 2000 c. 38.

- (a) any sums recovered from the regulator under paragraph 7(2) or regulation 21(2), or any sums under paragraph 2(4)(b) of Schedule 10 that have not been recovered under paragraph 2(5) of that Schedule;
- (b) any expenses in connection with the application to the court under paragraph 4; and
- (c) any regulator expenses that are deemed to be added by virtue of paragraph 3(2).

### **Sale following detention of aircraft**

#### **2. Where an aircraft has been detained—**

- (a) under regulation 39(1)(a) and the defaulting operator has not paid the civil penalty and regulator expenses within the period of—
  - (i) 56 days beginning with the date on which the detention began; or
  - (ii) 21 days beginning with the date of service of a notice under paragraph 8(2), if later; or
- (b) under regulation 39(1)(b) and—
  - (i) the operating ban has not been lifted within the period of 56 days beginning with the date on which the detention began; and
  - (ii) the defaulting operator has not paid the regulator expenses,

the regulator may, subject to the following provisions of this Schedule, sell that aircraft.

### **Release of aircraft**

#### **3.—(1) The regulator must not detain, or continue to detain, or sell an aircraft if—**

- (a) following detention, the regulator no longer has reason to believe the defaulting operator is the operator of the aircraft;
- (b) in relation to a detention under regulation 39(1)(a), the defaulting operator—
  - (i) has exercised a right of appeal in respect of the civil penalty for which the aircraft has been detained;
  - (ii) gives to the regulator, pending the determination or withdrawal of the appeal, sufficient security for the payment of that civil penalty and any other civil penalty that the defaulting operator has not paid; and
  - (iii) pays to the regulator the regulator expenses;
- (c) the defaulting operator or any other person claiming an interest in the aircraft demonstrates to the satisfaction of the regulator that the defaulting operator is no longer entitled to possession of the detained aircraft, or no longer entitled to possession of a part of it, in particular by virtue of the termination of any lease of the aircraft or of any part;
- (d) in relation to a detention under regulation 39(1)(a), the defaulting operator pays to the regulator—
  - (i) the civil penalty for which the aircraft has been detained;
  - (ii) any other civil penalty that the defaulting operator has not paid; and
  - (iii) the regulator expenses;
- (e) in relation to a detention under regulation 39(1)(b)—
  - (i) the operating ban imposed on the defaulting operator is lifted; and
  - (ii) the defaulting operator pays to the regulator any regulator expenses; or
- (f) in relation to a detention under regulation 39(1)(b)—

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- (i) the regulator is satisfied that the aircraft will not be flown from the aerodrome in contravention of the operating ban; and
- (ii) the defaulting operator pays to the regulator any regulator expenses.

(2) Where an aircraft has been detained, but subsequently released under sub-paragraph (1)(c), any unpaid regulator expenses incurred in relation to that detention are deemed to be added to any regulator expenses that may subsequently be incurred in relation to an aircraft of which the defaulting operator is the operator.

### **Court procedures**

4.—(1) The regulator must not sell an aircraft under paragraph 2 without the leave of the court.

(2) The court must not give leave under sub-paragraph (1) in relation to a detention under regulation 39(1)(a) except where it is satisfied that—

- (a) a civil penalty is due to the regulator;
- (b) the UK administered operator has not paid the civil penalty to the regulator; and
- (c) the regulator is entitled to apply to the court for leave to sell the aircraft.

(3) The court must not give leave under sub-paragraph (1) in relation to a detention under regulation 39(1)(b) except where it is satisfied that—

- (a) an operating ban has been imposed on the person who is the operator of the aircraft;
- (b) the operating ban has not been lifted before the expiry of the period mentioned in paragraph 2(b); and
- (c) the regulator is entitled to apply to the court for leave to sell the aircraft.

(4) Before applying to the court for leave under sub-paragraph (1) the regulator must, in accordance with the procedure set out in paragraph 8—

- (a) take steps for bringing the proposed application to the notice of any person who may have an interest in the aircraft; and
- (b) afford those persons an opportunity of becoming a party to the proceedings.

(5) Where leave is given under sub-paragraph (1) the regulator must sell the aircraft for the best price that can be reasonably obtained.

(6) Failure to comply with sub-paragraph (4) or (5) does not make a sale void or voidable.

### **Proceeds of sale**

5.—(1) The proceeds of any sale under this Schedule must be applied by the regulator in the following order—

- (a) in payment of any customs duty which is due in consequence of the aircraft having been brought into the United Kingdom;
- (b) in payment of any regulator expenses that remain unpaid;
- (c) in payment of any charges in respect of any aircraft operated by the defaulting operator which the court has found to be due by virtue of section 73(1) of the Transport Act 2000;
- (d) in payment of any airport charges incurred in respect of the aircraft which are due from the defaulting operator to the person entitled to levy charges in respect of the aerodrome at which the aircraft was detained under regulation 39(1);
- (e) in relation to a detention under regulation 39(1)(a), in payment of the civil penalty in respect of which the aircraft was detained and sold;
- (f) in payment of any other civil penalty that the defaulting operator has not paid.

(2) The regulator must, after making the payments under sub-paragraph (1), pay any residue from the proceeds of sale to the person or persons whose interests have been divested by reason of the sale.

### **Equipment and documents**

6.—(1) The power to detain and sell an aircraft under regulation 39 and this Schedule includes the power to detain and sell equipment and stores carried in the aircraft provided it is the property of the defaulting operator; and for that purpose references to the aircraft include references to any such equipment and stores.

(2) The power of detention under regulation 39 extends to any aircraft documents carried in the aircraft, and any such documents may, if the aircraft is sold under these Regulations, be transferred by the regulator to the purchaser.

### **Assistance of aerodrome operator**

7.—(1) An aerodrome operator must provide such reasonable assistance and advice as the regulator may require in connection with any of the regulator's functions under this Schedule.

(2) An aerodrome operator is entitled to recover from the regulator a sum equal to any expense reasonably incurred in providing the regulator with assistance or advice under sub-paragraph (1).

### **Procedure for applying for leave to sell an aircraft**

8.—(1) The following procedure applies where the regulator proposes to apply to the court for leave to sell an aircraft under paragraph 4.

(2) At least 21 days before applying to the court the regulator must, unless it is impracticable to do so, serve a notice in accordance with sub-paragraph (5) on—

- (a) the person in whose name the aircraft is registered;
- (b) any person who appears to the regulator to be the owner of the aircraft;
- (c) any person who appears to the regulator to be a charterer of the aircraft whether or not by demise;
- (d) any person who appears to the regulator to have the management of the aircraft for the time being;
- (e) any person who appears to the regulator to be the operator of the aircraft;
- (f) any person who is registered as a mortgagee of the aircraft under an Order in Council made under section 86 of the Civil Aviation Act 1982<sup>(56)</sup> or who appears to the regulator to be a mortgagee of the aircraft under the law of any country other than the United Kingdom;
- (g) any other person who appears to the regulator to have a proprietary interest in the aircraft or any part of it.

(3) Where a person who has been served with a notice in accordance with sub-paragraph (2) informs the regulator within the period of 14 days beginning with the day following service of the notice of the person's desire to become a party to the proceedings, the regulator must make that person a party to the application.

(4) At the same time as serving any notice under sub-paragraph (2), the regulator must publish a copy of that notice—

- (a) in the London Gazette and—
  - (i) if the aircraft is detained in Scotland, the Edinburgh Gazette, or

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(56) 1982 c. 16.

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- (ii) if it is detained in Northern Ireland, the Belfast Gazette; and
  - (b) in one or more local newspapers circulating in the locality in which the aircraft is detained.
- (5) A notice under sub-paragraph (2) must—
  - (a) state the nationality and registration marks of the aircraft;
  - (b) state the type of aircraft;
  - (c) state, as the case may be, the matters mentioned in sub-paragraph (6) or (7);
  - (d) invite the person to whom the notice is given to inform the regulator within 14 days after the date of service of the notice if the person wishes to become a party to the proceedings on the application.
- (6) The matters mentioned in this sub-paragraph are that—
  - (a) by reason of default in the payment of a civil penalty, the regulator, on a date specified in the notice, detained the aircraft under these Regulations; and
  - (b) unless payment of the sum so due is made within a period of—
    - (i) 56 days beginning with the date when the detention began, or
    - (ii) 21 days after the date of service of the notice, if later,the regulator may (subject to the provisions of this Schedule) apply to the court for leave to sell the aircraft.
- (7) The matters mentioned in this sub-paragraph are that—
  - (a) by reason of an operating ban having been imposed on the operator of the aircraft under Article 16(10) of the Directive the regulator, on a date specified in the notice, detained the aircraft under these Regulations; and
  - (b) unless the operating ban has been lifted within the period of 56 days beginning with the date on which the detention began and the operator of the aircraft has paid the regulator expenses by a date specified in the notice, the regulator may (subject to the provisions of this Schedule) apply to the court for leave to sell the aircraft.
- (8) A notice under sub-paragraph (2) must be served by the regulator—
  - (a) delivering it to the person to whom it is to be sent;
  - (b) leaving it at that person’s usual or last known place of business or abode;
  - (c) sending it, addressed to that person at that person’s usual or last known place of business or abode, by a registered post service or by a postal service which provided for the delivery of the notice by post to be recorded; or
  - (d) if the person to whom it is to be sent is an incorporated company or body, delivering it to the secretary, clerk or other appropriate officer of the company or body at its registered or principal office or sending it, addressed to the secretary, clerk or other officer of the company or body at that office, by a registered post service or by a postal service which provides for the delivery of the notice by post to be recorded.
- (9) In sub-paragraph (8), “registered post service” and “postal service” have the meaning given in section 125(1) of the Postal Services Act 2000<sup>(57)</sup>; and any notice which is sent by a postal service in accordance with that sub-paragraph to a place outside the United Kingdom must be sent by air mail or by some other equally expeditious means.

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(57) 2000 c. 26.

## SCHEDULE 10

Regulation 40

### Aircraft operating bans

#### **Application for an operating ban**

1.—(1) Where the Secretary of State intends to make a request to the European Commission under Article 16(5) of the Directive to impose an operating ban on a UK administered operator (“A”), the Secretary of State must first—

- (a) receive consent from—
  - (i) the Scottish Ministers, where SEPA is the regulator;
  - (ii) the Welsh Ministers, where A’s registered office is in Wales;
  - (iii) the Department of the Environment in Northern Ireland, where the chief inspector is the regulator; and
- (b) give notice to the regulator.

(2) A notice under sub-paragraph (1)(b) may require relevant information to be provided to the Secretary of State by a deadline specified in the notice, and may require in particular—

- (a) evidence that A has not complied with obligations under these Regulations; and
- (b) details of any enforcement action against A that has been taken by the regulator.

(3) Following the giving of notice under sub-paragraph (1)(b) and, where applicable, the provision of information under sub-paragraph (2), the Secretary of State must give notice to A.

(4) A notice under sub-paragraph (3) must—

- (a) include a copy of any information provided under sub-paragraph (2);
- (b) include a copy of the request that the Secretary of State intends to send to the European Commission;
- (c) give A an opportunity to make representations before the Secretary of State makes the request; and
- (d) set out the deadline by which those representations must be made.

#### **Enforcement of an operating ban**

2.—(1) Where the European Commission has adopted a decision to impose an operating ban on a person (“P”) under Article 16(10) of the Directive, the regulator must take all reasonable steps to ensure that P does not operate a flight that departs from or arrives in the United Kingdom.

(2) The steps a regulator may take under sub-paragraph (1) include—

- (a) subject to sub-paragraph (3), issuing to aerodrome operators (or to any other person) any direction that the regulator deems necessary to enforce the ban;
- (b) detaining and selling any aircraft of which P is the operator, in accordance with regulation 39(1)(b) and Schedule 9.

(3) Before issuing a direction under sub-paragraph (2)(a) the regulator must receive approval from the authority and (where different) the relevant authority.

(4) A person to whom a direction is issued under sub-paragraph (2)(a)—

- (a) must comply with that direction, but
- (b) is entitled to recover from the regulator a sum equal to any expense reasonably incurred by that person in complying with the direction.

(5) The regulator is entitled to recover as a civil debt from the operator concerned all sums incurred under sub-paragraph (4).

(6) In sub-paragraph (3) “relevant authority” means, where the principal place of business of the person to be directed is—

- (a) in Wales, the Welsh Ministers;
- (b) in Scotland, the Scottish Ministers;
- (c) in Northern Ireland, the Department of the Environment in Northern Ireland;
- (d) not in Wales, Scotland or Northern Ireland, the Secretary of State.

## SCHEDULE 11

Regulation 78(1) and (3)

### Appeals to the Scottish Ministers

## PART 1

**1.—**(1) Any person who wishes to appeal to the Scottish Ministers (“the appeal body”) under regulation 73(1) against a decision of SEPA must—

- (a) give to the appeal body written notice of the appeal together with the documents specified in sub-paragraph (2); and
- (b) at the same time, send to the regulator a copy of that notice together with copies of the documents specified in sub-paragraph (2)(a) and (e).

(2) The documents mentioned in sub-paragraph (1) are—

- (a) a statement of the grounds of appeal;
- (b) a copy of any relevant application;
- (c) a copy of any relevant monitoring plan, aviation emissions plan, or benchmarking plan (as defined by regulation 20);
- (d) a copy of any relevant correspondence between the appellant and the regulator;
- (e) a copy of any notice (or particulars of any deemed refusal) which is the subject matter of the appeal; and
- (f) a statement indicating whether the appellant wishes the appeal to be in the form of a hearing or to be disposed of on the basis of written representations.

(3) An appellant may withdraw an appeal by notifying the appeal body in writing and must send a copy of that notification to the regulator.

**2.—**(1) Subject to sub-paragraph (2), notice of appeal in accordance with paragraph 1 is to be given before the expiry of the period of 24 days beginning with the date that the decision takes effect.

(2) The appeal body may in a particular case allow notice of appeal to be given after the expiry of the period in sub-paragraph (1) where they are satisfied that there was good reason for the applicant’s failure to bring the appeal in time.

**3.—**(1) The regulator must, within 16 days of receipt of the copy of the notice of appeal sent in accordance with paragraph 1, give notice of it to any person who appears to the regulator to have a particular interest in the subject matter of the appeal.

(2) A notice under sub-paragraph (1) must—



- (a) state that notice of appeal has been given;
  - (b) state the name of the appellant;
  - (c) describe the decision or notice to which the appeal relates;
  - (d) state that if a hearing is to be held wholly or partly in public, an interested party will be notified of the date of the hearing; and
  - (e) state that an affected party may request to be heard at a hearing.
- (3) An interested party may request the regulator to provide a copy of the documents set out in paragraph 1(2) for the purposes of the appeal only and where such a request is made the regulator must provide the documents as soon as is reasonably practicable.
- (4) An interested party—
- (a) may make representations with respect to the appeal to the appeal body in writing within 16 days beginning with the date of the notice under sub-paragraph (1);
  - (b) must, when making those representations, state whether or not their civil rights will be determined in the appeal, and, if so, which civil rights will be determined.
- (5) The appeal body must provide a copy of any representations made under sub-paragraph (4) to the appellant and the regulator.
- (6) The regulator must, within 8 days of sending a notice under sub-paragraph (1), notify the appeal body of the persons to whom and the date on which the notice was sent.
- (7) The appeal body must, as soon as possible after receiving representations under sub-paragraph (4), determine whether an interested party is an affected party.
- (8) In the event of an appeal being withdrawn, the regulator must give notice of the withdrawal to all interested parties.
- 4.—(1)** Before determining an appeal, the appeal body may afford the appellant, the regulator and any affected party an opportunity of appearing before and being heard by a person appointed by the appeal body (the “person holding the hearing”) and it must do so in any case where a request is made by the appellant, the regulator or any affected party.
- (2) A hearing held under sub-paragraph (1) may, if the person holding the hearing so decides, be held wholly or partly in private.
- (3) Where the appeal body causes a hearing to be held under sub-paragraph (1) it must give the appellant, the regulator and any affected party at least 24 days notice (or such shorter period of notice as they may agree) of the date, time and place fixed for the holding of the hearing.
- (4) In the case of a hearing which is to be held wholly or partly in public, the appeal body must, at least 24 days before the date fixed for the holding of the hearing—
- (a) publish a copy of the notice referred to in sub-paragraph (3) in a newspaper circulating in the locality in which the installation is operated, or (as the case may be) in an appropriate international aviation publication; and
  - (b) serve a copy of that notice on every interested party who has made representations in writing to the appeal body.
- (5) The appeal body may vary the date fixed for the holding of any hearing and sub-paragraphs (3) and (4) apply to the variation of a date as they applied to the date originally fixed.
- (6) The appeal body may vary the time or place for the holding of a hearing and must give such notice of any such variation as appears to the appeal body to be reasonable.
- (7) The persons entitled to be heard at a hearing are the appellant, the regulator and any affected party.

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(8) Nothing in sub-paragraph (7) prevents the person holding the hearing from permitting any other persons to be heard at the hearing and such permission must not be unreasonably withheld.

(9) After the conclusion of a hearing, the person holding the hearing must make a report in writing to the appeal body which must include that person's conclusions and recommendations, or decision not to make any recommendation and in all cases the reasons supporting the report.

(10) Paragraph 13(5) applies to hearings held under this paragraph as if references to the appointed person in that paragraph were references to the person holding the hearing under this paragraph.

**5.—(1)** Where an appeal under regulation 73(1) is to be disposed of on the basis of written representations, the regulator must submit any written representations to the appeal body not later than 24 days after receiving a copy of the documents mentioned in paragraph 1(2)(a) and (e).

(2) The appellant must make any further representations by way of reply to any representations from the regulator not later than 16 days after the date of submission of those representations by the regulator.

(3) Any representations made by the appellant or the regulator must bear the date on which they are submitted to the appeal body.

(4) When the regulator or the appellant submits any representations to the appeal body they must at the same time send a copy of them to the other party.

(5) The appeal body must send to the appellant and the regulator a copy of any representations made to the appeal body by any interested party and must allow the appellant and the regulator a period of not fewer than 16 days in which to make representations on them.

(6) The appeal body may in a particular case—

- (a) set earlier or later time limits than those mentioned in this Part;
- (b) require or permit exchanges of representations between the parties in addition to those mentioned in sub-paragraphs (1) and (2).

**6.—(1)** The appeal body must give notice to the appellant of the determination of the appeal and must provide the appellant with a copy of any report mentioned in paragraph 4(9).

(2) The appeal body must at the same time send—

- (a) a copy of the documents mentioned in sub-paragraph (1) to the regulator; and
- (b) a copy of the determination of the appeal to any interested party who made representations to the appeal body and, if a hearing was held, to any other person who made representations at the hearing.

**7.** Where an appeal is made against the refusal of an application for an allocation under Schedule 7 or Schedule 8, the appeal body must, where practicable, determine the appeal before the deadline in paragraph 7(4) of Schedule 7 or Schedule 8, as appropriate.

**8.** Where the appeal body's determination of an appeal is quashed in proceedings before any court, the appeal body—

- (a) must send to the persons notified of the determination under paragraph 6 a statement of the matters with respect to which further representations are invited for the purposes of the further consideration of the appeal;
- (b) must afford to those persons the opportunity of making, within 31 days of the date of the statement, written representations in respect of those matters; and
- (c) may, as the appeal body thinks fit, cause a hearing to be held or reopened and, if it does so, paragraphs 4(2) to (10) apply to the hearing or the reopened hearing as they apply to a hearing held under paragraph 4(1),

and paragraph 6 applies to the re-determination of the appeal as it applies to the determination of an appeal.

**9. In this Part—**

- (a) “affected party” means an interested party—
  - (i) who has stated in representations under paragraph 3(4) that their civil rights will be determined in an appeal; and
  - (ii) whose civil rights the appeal body is satisfied will be so determined;
- (b) “interested party” means a person notified under paragraph 3(1).

## PART 2

**10. In this Part—**

- “appointed person” means a person appointed under regulation 78(2)(a);
- “appointment”, in the case of any appointed person, means appointment under regulation 78(2)(a).

**11. An appointment must be in writing and—**

- (a) may relate to any particular appeal, matters or questions specified in the appointment or to appeals, matters or questions of a description so specified;
- (b) may provide for any function to which it relates to be exercisable by the appointed person either unconditionally or subject to the fulfilment of such conditions as may be specified in the appointment; and
- (c) may, by notice in writing to the appointed person, be revoked at any time by the appeal body in respect of any appeal, matter or question which has not been determined by the appointed person before that time.

**12. Subject to the provisions of this Part, an appointed person, in relation to any appeal, matter or question to which the appointed person’s appointment relates, has the same powers and duties as the appeal body, other than any function of appointing a person for the purpose—**

- (a) of enabling persons to appear before and be heard by the person so appointed; or
- (b) of referring any question or matter to that person.

**13.—(1) If the appellant, the regulator or any person whose civil rights are to be determined in the appeal expresses a wish to appear before and be heard by the appointed person, the appointed person must give them an opportunity of appearing and being heard.**

**(2) Whether or not a person under sub-paragraph (1) has asked for an opportunity to appear and be heard, the appointed person—**

- (a) may hold a local inquiry or other hearing in connection with the appeal, matter or question; and
- (b) must if the appeal body so directs, hold a local inquiry in connection with an appeal, matter or question.

**(3) Where an appointed person holds a local inquiry or other hearing by virtue of this Part, an assessor may be appointed by the appeal body to sit with the appointed person at the inquiry or hearing and advise the appeal body on any matters arising, notwithstanding that the appointed person is to determine the appeal, matter or question.**

**(4) Subject to sub-paragraphs (5) and (6), the costs of a local inquiry held under this Part must be defrayed by the appeal body.**

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(5) Subsections (3) to (8) of section 210 of the Local Government (Scotland) Act 1973<sup>(58)</sup> (which relates to the costs of and holding of local inquiries) apply to hearings held under this Part by an appointed person as they apply to inquiries held under that section, but with the following modifications, that is to say—

- (a) with the substitution in subsection (3) (notice of inquiry) for the reference to the person appointed to hold the inquiry of a reference to the appointed person;
- (b) with the substitution in subsection (4) (evidence) for the reference to the person appointed to hold the inquiry and, in paragraph (b), the reference to the person holding the inquiry of references to the appointed person;
- (c) with the substitution in subsection (6) (expenses of witnesses etc) for the references to the Minister causing the inquiry to be held of a reference to the appointed person or the Scottish Ministers;
- (d) with the substitution in subsection (7) (expenses)—
  - (i) for the first reference to the Minister of a reference to the Scottish Ministers; and
  - (ii) for the second reference to the Minister of a reference to the appointed person or the Scottish Ministers;
- (e) with the substitution in subsection (7A) (recovery of entire administrative expense)—
  - (i) for the first reference to the Minister of a reference to the appointed person or the Scottish Ministers;
  - (ii) in paragraph (a), for the reference to the Minister of a reference to the Scottish Ministers; and
  - (iii) in paragraph (b), for the reference to the Minister holding the inquiry of a reference to the Scottish Ministers;
- (f) with the substitution in subsection (7B) (power to prescribe daily amount)—
  - (i) for the first reference to the Minister of a reference to the Scottish Ministers;
  - (ii) in paragraphs (a) and (c), for the references to the person appointed to hold the inquiry of references to the appointed person; and
  - (iii) in paragraph (d), for the reference to the Minister of a reference to the appointed person or the Scottish Ministers; and
- (g) with the substitution in subsection (8) (certification of expenses)—
  - (i) for the words “the Minister has”, of the words “the Scottish Ministers have”;
  - (ii) for the reference to him and the reference to the Crown of references to the appointed person or the Scottish Ministers.

14.—(1) Where—

- (a) under paragraph 11(c) the appointment of the appointed person is revoked in respect of any appeal, matter or question, and
  - (b) the appeal body does not itself propose to determine that appeal, matter or question,
- the appeal body must appoint another person under regulation 78(2)(a) to determine the appeal, matter or question.

(2) Where such a new appointment is made, the consideration of the appeal, matter or question, or any hearing in connection with it, must be begun afresh.

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<sup>(58)</sup> 1973 c. 65, section 210 was amended by the Criminal Procedure (Scotland) Act 1975 (c. 21), sections 289F and 289G (which were inserted into that Act by the Criminal Justice Act 1982 (c. 48), section 54) and the Housing and Planning Act 1986, Schedule 11, paragraph 39.

**15.**—(1) Anything done or omitted to be done by an appointed person in, or in connection with, the exercise of any function to which the appointment relates is for all purposes to be treated as done or omitted to be done by the appeal body in its capacity as such.

(2) Sub-paragraph (1) does not apply—

- (a) for the purposes of so much of any contract made between the appeal body and the appointed person as relates to the exercise of the function; or
- (b) for the purposes of any criminal proceedings brought in respect of anything done or omitted to be done by an appointed person in, or in connection with, the exercise or purported exercise of any function to which the appointment relates.

## SCHEDULE 12

Regulation 78(4)

### Appeals (Northern Ireland)

**1.**—(1) A person who wishes to appeal to the Planning Appeals Commission (“the appeals commission”) under regulation 73(1) against a decision of the chief inspector must give to the appeals commission written notice of the appeal together with a statement of the grounds of appeal.

(2) The appeals commission must as soon as is reasonably practicable send to the regulator a copy of that notice and that statement.

(3) An appellant may withdraw an appeal by notifying the appeals commission; and the appeals commission must as soon as is reasonably practicable notify the regulator of that withdrawal.

**2.** Notice of appeal in accordance with paragraph 1 is to be given before the expiry of the period of 47 days beginning with the date on which the decision takes effect.

**3.**—(1) The appeals commission must determine the appeal and paragraphs (1), (3), (4) and (5) of Article 111 of the Planning (Northern Ireland) Order 1991<sup>(59)</sup> apply in relation to the determination of the appeal as they apply in relation to the determination of an appeal under that Order.

(2) The appeals commission must determine the process for determining appeals taking into account any requests of either party to the appeal.

**4.** An appeal under this Schedule must be accompanied by a fee; and Article 127(2)(b) of the Planning (Northern Ireland) Order 1991 has effect as if the reference to an appeal under that Order included a reference to an appeal under these Regulations.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations implement Directive [2003/87/EC](#) of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive [96/61/EC](#) (“the Directive”). In particular, they implement the

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<sup>(59)</sup> [S.I. 1991/1220 \(N.I. 11\)](#); relevant amending instruments are [S.I. 1999/660 \(N.I. 4\)](#), [2003/430 \(N.I. 8\)](#) and [2006/1252 \(N.I. 7\)](#).

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amendments to the Directive made by Directive [2009/29/EC](#) of the European Parliament and of the Council. These Regulations also consolidate, with amendments, and replace previous sets of implementing regulations ([S.I. 2005/925](#) and [S.I. 2010/1996](#)) and their amending instruments.

Under the EU emissions trading scheme for greenhouse gases (“EU ETS”) an overall cap is set for emissions of greenhouse gases from specified activities. Operators must monitor and report emissions, and surrender sufficient emissions trading allowances to cover their emissions for each year. A proportion of the total number of allowances is issued free of charge to operators, and the remainder is auctioned. Operators may also buy and sell allowances on the secondary market. Following the amendments made by Directive [2008/101/EC](#) of the European Parliament and of the Council, EU ETS has been extended to cover certain aviation activities (limited to flights arriving in or departing from the European Economic Area).

The Regulations also contain provisions implementing, where necessary, a number of instruments made under the Directive by the European Commission, in particular—

Commission Regulation (EU) No 920/2010 for a standardised and secured system of registries pursuant to Directive [2003/87/EC](#) of the European Parliament and of the Council and Decision No [280/2004/EC](#) of the European Parliament and of the Council;

Commission Regulation (EU) No 1193/2011 establishing a Union Registry for the trading period commencing on 1 January 2013, and subsequent trading periods, of the Union emissions trading scheme (“the Registries Regulation 2011”);

Commission Regulation (EU) No 601/2012 on the monitoring and reporting of greenhouse gas emissions pursuant to Directive [2003/87/EC](#) (“the Monitoring and Reporting Regulation”);

Commission Regulation (EU) No 600/2012 on the verification of greenhouse gas emission reports and tonne-kilometre reports and the accreditation of verifiers pursuant to Directive [2003/87/EC](#); and

Commission Decision 2011/278/EU determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of Directive [2003/87/EC](#).

Certain installations with low emissions (as well as installations primarily providing services to a hospital) are permitted to opt out of the emissions trading system, provided that equivalent measures are put in place to limit their emissions. These Regulations accordingly provide for equivalent measures in the case of such “excluded installations”.

These Regulations extend to the whole of the United Kingdom. However, greenhouse gas emissions trading is a devolved matter in Scotland, a transferred matter in Northern Ireland, and in Wales is an area where the Welsh Ministers exercise a wide range of executive functions. The Regulations accordingly provide for distinct “regulators” or “authorities” in relation to those different parts of the United Kingdom. The “regulator” may be the Environment Agency, the Scottish Environment Protection Agency, or the chief inspector in Northern Ireland; and the corresponding “authority” will be the Secretary of State or the Welsh Ministers, the Scottish Ministers, or the Department of the Environment in Northern Ireland. In the case of certain offshore installations, including those on the United Kingdom Continental Shelf, the Secretary of State is the regulator as well as the authority.

*Regulation 2* requires the Secretary of State to review the operation and effect of these Regulations and publish a report within five years after they come into force and within every five years after that. Following a review it will fall to the Secretary of State to consider whether the Regulations should remain as they are, be revoked, or be amended. A further instrument would be needed to revoke the Regulations or to amend them.

*Regulation 3* contains definitions of various expressions used in the Regulations. In particular, this regulation defines who are the “regulator” and the corresponding “authority” in relation to an installation.

*Regulation 4 and Schedule 1* provide that the Regulations bind the Crown, subject to the power of the Secretary of State to certify that powers of entry may not be exercised in relation to particular Crown premises, and to provisions regarding the service of documents.

*Regulation 5 and Schedule 2* provide rules for the service of notices and other documents under the Regulations.

*Regulation 6 and Schedule 3* lay down requirements for the submission of applications, notices or reports under the Regulations (and under permits or aviation emissions plans), and for the determination of applications by the regulator.

*Regulation 7* enables the chief inspector in Northern Ireland to delegate functions under these Regulations to other inspectors appointed under the Pollution Prevention and Control Regulations (Northern Ireland) 2003, and enables the Department of the Environment in Northern Ireland to give directions with respect to the exercise of functions under these Regulations.

*Regulation 8* provides for the implementation of a number of European Commission Regulations, by designating the appropriate authorities to perform functions under those instruments (which are otherwise directly applicable in United Kingdom law). See also *regulation 74 and regulation 80(2) to (4)*.

*Part 2*, together with *Schedules 4 to 6*, contains provisions that relate solely to stationary installations (as opposed to aircraft operators).

*Regulation 9* requires a permit to be held by the operator of an installation before a regulated activity is carried out at the installation. “Permit”, “regulated activity” and “installation are defined in *regulation 3(1)*, and “operator” is defined by *regulation 3(2)*. A permit may be either a greenhouse gas emissions permit or an excluded installation emissions permit, and may be granted in respect of part only of an installation.

*Regulation 10(1) and (3) to (5) and paragraphs 1 and 2 of Schedule 4* make provision for the application for, and the grant of, a greenhouse gas emissions permit. *Regulation 10(2) and (3) to (5), paragraph 1 of Schedule 4 and paragraph 3 of Schedule 5* make provision for the application for, and the grant of, an excluded installation emissions permit. In certain circumstances a greenhouse gas emissions permit must be converted into an excluded installation emissions permit.

*Regulation 11* provides for the review, variation and consolidation of permits.

*Regulation 12 and paragraph 3 of Schedule 4* make provision for the transfer of permits. A transfer may relate to all the installations covered by the permit, or may be a “partial transfer” that relates to some only of the installations covered (or to parts only of an installation).

*Regulation 13* requires a permit to be surrendered if regulated activities cease to be carried out at the installation (as defined by *regulation 3(3)*), and *paragraph 4 of Schedule 4* imposes further requirements in respect of such a surrender.

*Regulation 14* allows the regulator to revoke a permit, and requires the regulator to do so where the permit has not been surrendered as required by *regulation 13(1)*. *Paragraph 5 of Schedule 4* imposes further requirements in respect of such revocations.

*Regulation 15 and Schedule 5* make further provision for excluded installations. Certain requirements of these Regulations do not apply to such installations, and others apply in a modified form. Although the requirement to surrender allowances under *regulation 41* does not apply in the case of an excluded installation emissions permit, *Schedule 5* contains equivalent measures limiting the emission of greenhouse gases. Thus an excluded installation emissions permit sets a target for emission reduction in each year, and the operator is liable to a penalty for exceeding such a target.

*Regulation 6 and Schedule 6* make provision for the free allocation of allowances to those installations that are entitled to such an allocation.

*Regulations 17 to 19* make provision for the exercise of powers of entry, and the charging of fees, in relation to an offshore installation (as defined in *regulation 3(1)*).

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*Part 3*, together with *Schedules 7 to 10*, contains provisions that relate solely to aircraft operators. These replace provisions previously contained in the Aviation Greenhouse Gas Emissions Trading Scheme Regulations 2010. This Part imposes obligations on operators defined as “UK administered operators” (previously known as “UK operators”), and on a subset of those operators defined as “UK aircraft operators” (previously known as “aircraft operators”). Subject to the qualifications noted below, a “UK administered operator” is a person who is specified as an aircraft operator to be administered by the United Kingdom in the list published by the European Commission under Article 18a(3) of the Directive; and a “UK aircraft operator” is a UK administered operator who has carried out aviation activities in the relevant calendar year. All UK administered operators are assigned to a “regulator” for the purposes of these Regulations (see *regulations 27 to 29*). For the purposes of this Part, a reference to a “member State” of the EU includes a reference to an EEA state (and therefore includes Norway, Iceland and Liechtenstein).

*Regulation 21* requires the Civil Aviation Authority to provide any assistance or advice that may be requested by the regulator (but in doing so it may recover its reasonable expenses).

*Regulation 22* requires the Secretary of State in certain circumstances to designate a person as a person to whom these Regulations apply, where that person has been omitted from the Commission’s list under Article 18a(3) of the Directive. *Regulation 23* allows such a person to apply to the Secretary of State to be so designated. Once designated, the person concerned will then be treated as a “UK administered operator” for the purposes of these Regulations.

*Regulation 24* allows the regulator to deem a person to be a UK administered operator for the whole of a calendar year, even though that person was administered for a part of that year by another member State. However, this does not allow a civil penalty to be imposed in respect of a failure to comply with these Regulations that occurred while the person was not administered by the United Kingdom.

*Regulation 25* allows the Secretary of State to designate a UK administered operator as a “Gibraltar operator”, where the Secretary of State is satisfied that the operator is regulated for the purposes of the Directive under Gibraltar legislation. The consequence is that the operator will no longer be a “UK administered operator” for the purposes of these Regulations.

*Regulation 26* defines who, in a given calendar year, is to be regarded as a “UK aircraft operator” for the purposes of these Regulations. The person concerned must be a UK administered operator who has performed an aviation activity (within the meaning of Annex 1 to the Directive) in that year, or (in certain circumstances) who is the owner of the aircraft used to perform that activity.

*Regulations 27 to 29* define who, for purposes of these Regulation, is the “regulator” of a UK administered operator. Where the operator is a United Kingdom company, the regulator is either the Environment Agency, the Scottish Environment Protection Agency, or the chief inspector in Northern Ireland, depending upon the location of the company’s registered office. Otherwise the operator will in the first instance be regulated by the Environment Agency, with provision for a transfer to different regulator for the subsequent eight-year trading period, following an assessment of the proportion of emissions that are attributable to the relevant part of the United Kingdom.

*Regulation 30* and *Schedules 7* and *8* deal with the free allocation of aviation allowances. For each trading period, an existing UK administered operator is able to apply for such an allocation after monitoring and reporting their activity in the relevant benchmarking year. New UK aircraft operators, or those who have increased their activity by a specified percentage since the benchmarking year, may apply for an allocation to the special reserve set aside for that purpose. Applications are submitted to, and eventually decided by, the European Commission under the rules laid down by the Directive.

*Chapter 4* of this Part deals with the monitoring and reporting of emissions from aviation activities.

*Regulations 32 to 34* provide for applications to be made for a plan (“emissions plan”) setting out how emissions are to be monitored in accordance with the Monitoring and Reporting Regulation.

*Regulation 32(1)* requires a UK administered operator to apply for a such a plan in accordance with



the Article 51(1) that Regulation. This requires an application to be made 4 months before beginning aviation activity, although that deadline can be relaxed in certain circumstances. Where the less stringent deadline is relied upon, the operator must provide a satisfactory explanation for doing so (*regulation 32(4)*). The operator may at any time take the precaution of applying for an emissions plan (*regulation 32(5)*), and on first becoming a UK administered operator must either so apply or notify the regulator under *regulation 33*.

*Regulation 35* requires emissions to be monitored each year, and a verified emissions report to be submitted to the regulator by 31st March in the following year. As in the case of stationary installations, the rules for monitoring, reporting and verification are laid down by the Monitoring and Reporting Regulation and the Verification Regulation.

*Regulation 36* requires that the emission plans issued by the various regulators contain the appropriate conditions, and imposes a duty to comply with the conditions in an emissions plan. *Regulation 37* provides for the variation of an emissions plan, either on application by the operator or otherwise.

*Chapter 5*, together with *Schedules 9* and *10*, provides for sanctions to be imposed on aircraft operators, in addition to the civil penalties imposed under *Part 7*. These non-pecuniary sanctions are of two kinds: detention (and possibly sale) of an aircraft under *regulation 39* and *Schedule 9*; and the application for, and enforcement of, an EU- wide operating ban under *regulation 40* and *Schedule 10*.

Under *regulation 39(1)* an aircraft that is operated by a UK administered operator may be detained if a civil penalty has not been paid within 6 months of the date that the penalty is due. Aircraft subject to an operating ban may also be detained. Where the aircraft is not required to be released under *paragraph 3* of *Schedule 9*, it may then be sold following an order of the court. The proceeds of sale may be used to discharge unpaid civil penalties, certain duties and charges, and the expenses of detention.

Where all other enforcement measures have failed, a member State may apply for an EU-wide operating ban to be imposed by the European Commission under Article 16(10) of the Directive. *Schedule 10, paragraph 1*, provides for such application to be made by the Secretary of State, and *paragraph 2* provides for the enforcement of a ban imposed as a result of such a request (or as a result of a request made by another member State).

*Part 4* sets out the requirements regarding the surrender of allowances. The operator of an installation (*regulation 41*) or a UK aircraft operator (*regulation 42*) must surrender sufficient allowances to cover annual reportable emissions for each year. In the case of an installation the relevant requirements are conditions of the permit (*paragraph 2(4) of Schedule 4*). The allowances must be surrendered by 30th April in the year following the year in which the emissions arise. Where an insufficient number of allowances are surrendered, the deficit is deemed to be added to the total amount to be surrendered in the following year (*paragraph 2(5) of Schedule 4*, and *regulation 42(2)*). Unlike a UK aircraft operator, the operator of an installation may not surrender for that purpose “aviation allowances” allocated or auctioned under Chapter 2 of the Directive.

*Regulation 43* enables the regulator to serve an enforcement notice in respect of an existing or future breach of these Regulations, of the Monitoring and Reporting Regulation, or of a permit or aviation emissions plan. The notice must specify what is required to be done to ensure compliance.

*Regulation 44* supplements the power to determine the emissions of an installation (or of a UK aircraft operator) given to the regulator by Article 70 of the Monitoring and Reporting Regulation. Thus such a determination may also be made where the operator of an installation has failed to submit a surrender or revocation report under *paragraph 4 or 5 of Schedule 4*, and may be made for the purpose of imposing a civil penalty or enforcing certain requirements of *Schedule 5*. The cost of making a determination may be recovered from the operator or UK aircraft operator concerned.

*Regulation 45* enables the Secretary of State, or an authority, to obtain relevant information from the regulator, and enables the Secretary of State, or an authority, regulator or registry administrator to obtain relevant information from other persons.

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*Regulation 46* limits the circumstances in which information obtained under the Regulations may be published or disclosed, and *regulation 47* imposes restrictions on the publication of certain information where this would (in the opinion of the Secretary of State) be contrary to the interests of national security.

*Part 7* provides for the imposition of civil penalties for the breach of various obligations arising under the Regulations.

*Regulation 49* provides for the setting of a “carbon price” for the purposes of certain of these penalties (see below). The procedure for the service of penalty notices is set out in *regulation 50*, which also provides for a penalty to be recovered as a civil debt. *Regulation 51* gives the regulator a discretion in imposing a penalty (other than the penalty under *regulation 54(1)* for a failure to surrender sufficient allowances).

*Regulations 54 to 70* set out the various penalties that apply, which in some cases require a calculation to be made by the regulator. The carbon price set under *regulation 49* is used in the calculation of the penalties under *regulations 52, 55, 57 and 58*. *Regulation 52(4)* requires authorities to give directions to as to the calculation of a penalty imposed under *regulation 52(1)*.

*Regulation 71* requires the regulator to publish the name of any person on whom a penalty for non-surrender of allowances has been imposed under *regulation 54(1)*.

*Part 8* provides for appeals against decisions taken under the Regulations or under the Registries Regulation 2010 or 2011.

*Regulations 73 and 74* specify which decisions be appealed. There is no limitation of the grounds on which an appeal may be brought. An appeal lies to the appeal body defined by *regulation 75*, which will be either the First-tier tribunal, the Scottish Ministers, or the Planning Appeals Commission in Northern Ireland. *Regulation 76* sets out the circumstances in which the effect of a decision is suspended following the appeal. *Regulation 77* provides for the powers of the appeal body in determining the appeal, which may include substituting a new decision for the decision under these Regulations that is appealed against, or giving directions to the regulator or to the registry administrator.

*Regulation 78*, with *Schedules 11 and 12*, provides the procedure for appeals where the appeal body is the Scottish Ministers or the Planning Appeals Commission. The procedure for appeals to the First-tier Tribunal, on the other hand, is provided by the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009<sup>(60)</sup>. Appeals are assigned to the General Regulatory Chamber of the First-tier Tribunal by virtue of article 3(a) of the First-tier Tribunal and Upper Tribunal (Chambers) Order 2010<sup>(61)</sup>.

*Part 9* supplements, where necessary, the directly applicable provisions of the Registries Regulation 2011. That Commission Regulation implements Article 19(1) of the Directive, which requires all allowances issued from 1 January 2012 to be held in a Union Registry on accounts managed by the member States. *Regulation 8(1)* designates the Environment Agency as the UK “national administrator” for the purposes of that Regulation. When acting in that capacity, the Environment Agency is referred to in these Regulations as the “registry administrator”. The Environment Agency also continues to operate a national registry for the purposes of the United Kingdom’s obligations under the Kyoto Protocol. In that capacity it is known as the “KP registry administrator”.

*Regulation 80(1)* allows the registry administrator to require users of the Union Registry to comply with reasonable terms and conditions. *Regulation 80(2) to (4)* allocates responsibility for certain procedures under the Registries Regulation 2011, and *regulation 80(6), (8) and (9)* provides for circumstances in which a registry account must be blocked. *Regulation 80(15)* enables the registry administrator to refuse to open an account, or to approve an authorised representative, where the

<sup>(60)</sup> S.I. 2009/1976 (L. 20).

<sup>(61)</sup> S.I. 2010/2655.

person concerned is not a fit and proper person. *Regulation 81* makes provision for the UK Registry operated for the purposes of the Kyoto Protocol.

*Regulation 82* provides for the recovery by the regulator of unpaid fees, either through the court in proceedings for the recovery of a civil debt, or by means of the seizure and sale of allowances.

*Regulation 83* provides for the issue of guidance by the authority to the regulator, and by the Secretary of State to the registry (or KP registry) administrator.

*Part 11* provides for revocations, savings and transitional provisions.

A full impact assessment of the costs and benefits of this instrument is available from the Department of Energy and Climate Change's Heat and Industry Division (telephone 0300 060 4000), and is published alongside the instrument and its Explanatory Memorandum on the legislation website of The National Archives (<http://www.legislation.gov.uk>). A transposition note setting out how these Regulations implement the relevant provisions of the Directive is annexed to that Explanatory Memorandum.