
STATUTORY INSTRUMENTS

2012 No. 3038

The Greenhouse Gas Emissions
Trading Scheme Regulations 2012

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).