

2014 No. 3125

CLIMATE CHANGE

**The Greenhouse Gas Emissions Trading Scheme (Amendment)
Regulations 2014**

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

In accordance with section 2(4) of the Pollution Prevention and Control Act 1999 (“the 1999 Act”)(c), the Secretary of State has consulted the Environment Agency, the Natural Resources Body for Wales, 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 section 2 and 7(9) of and Schedule 1 to the 1999 Act(d), 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(e), makes the following Regulations(f):

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Greenhouse Gas Emissions Trading Scheme (Amendment) Regulations 2014 and come into force on 22nd December 2014.

(2) In these Regulations a reference to a numbered regulation or a numbered Schedule is to that regulation of, or Schedule to, the Greenhouse Gas Emissions Trading Scheme Regulations 2012(g).

Amendments to definitions

2. In regulation 3(1)—

(a) for the definition of “aviation activity”, substitute—

““aviation activity”—

(a) in respect of paragraphs (2) to (9) of Schedule 7, has the meaning given in paragraph 1A of that Schedule; or

(b) otherwise, means an activity listed in the table in Annex I to the Directive under the section titled ‘Aviation’, excluding the activities listed under—

(a) S.I. 2008/301.

(b) 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).

(c) 1999 c. 24.

(d) 1999 c. 24; section 2(4) was amended by paragraph 395 of Schedule 2 to the Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755 (W. 90)).

(e) 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).

(f) 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 EU 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.

(g) S.I. 2012/3038; those Regulations are amended by Schedule 4 to W.S.I. 2013/755 (W. 90) (see in particular paragraph 425), by S.I. 2013/1037 and by S.I. 2013/3135.

- (i) points (a) to (j) of that section; and
 - (ii) point (k) of that section, but as if the reference to “1 January 2013” is to “1 January 2015”;
- (b) for the definition of “aviation emissions”, substitute—
- ““aviation emissions” means emissions of carbon dioxide arising from an aviation activity;”;
- (c) after the definition of “chief inspector”, insert—
- ““commercial air transport operator” has the meaning given in Article 3(p) of the Directive;”;
- (d) after the definition of “excluded installation emissions permit”, insert—
- ““exempt non-commercial air transport operator” means a UK administered operator who—
- (a) is a non-commercial air transport operator; and
 - (b) has annual reportable emissions of less than 1,000 tonnes;”;
- (e) after the definition of “new operator”, insert—
- ““non-commercial air transport operator” means any UK administered operator who is not a commercial air transport operator;” and
- (f) for the definition of “the Offshore Regulations”, substitute—
- ““the Offshore Regulations” means the Offshore Combustion Installations (Pollution Prevention and Control) Regulations 2013;”(a).

Powers of entry: offshore installations

3. For paragraphs (2) and (3) of regulation 17, substitute—
- “(2) The powers exercisable under paragraph (1) are the powers in regulation 25 of the Offshore Regulations (but subject to regulation 26 of those Regulations).
- (3) Regulations 34(2)(d) and (e) of the Offshore Regulations apply to a failure to comply with an obligation imposed pursuant to a power exercisable under paragraph (1) as they apply to a failure to comply with an obligation imposed pursuant to regulation 25 of the Offshore Regulations.”.

Amendments to definitions: aviation

4. In regulation 20—
- (a) after the definition of “emissions plan”, insert—
- ““Eurocontrol” means the European organisation for air safety navigation;
- “excluded aviation activity” means—
- (a) in respect of the scheme year 2013, an activity consisting in—
 - (i) a flight departing from, or arriving in, an aerodrome situated in any country other than an EEA state or Croatia; or
 - (ii) an outermost region flight;
 - (b) in respect of any other scheme year, an activity consisting in—
 - (i) a flight departing from, or arriving in, an aerodrome situated in any country other than an EEA state; or
 - (ii) an outermost region flight;

(a) S.I. 2013/971.

“excluded aviation emissions” means aviation emissions arising from an excluded aviation activity;”;

(b) after the definition of “member State”, insert—

““non-UK operator” has the meaning given in regulation 24(2);

“outermost region” means—

(a) in respect of the scheme year 2013, the Canary Islands, French Guiana, Guadeloupe, Martinique, Réunion, Saint-Martin, the Azores, or Madeira;

(b) in respect of any other scheme year, the Canary Islands, French Guiana, Guadeloupe, Martinique, Mayotte, Réunion, Saint-Martin, the Azores, or Madeira;

“outermost region flight” means—

(a) in respect of the scheme year 2013, a flight between an aerodrome located in an outermost region and an aerodrome located in—

(i) a different outermost region;

(ii) an area of an EEA state which is not an outermost region; or

(iii) Croatia;

(b) in respect of any other scheme year, a flight between an aerodrome located in an outermost region and an aerodrome located in—

(i) a different outermost region; or

(ii) an area of an EEA state which is not an outermost region;”;

(c) after the definition of “registered office”, insert—

““Small Emitters Tool Regulation” means Commission Regulation (EU) No 606/2010 on the approval of a simplified tool developed by the European organisation for air safety navigation (Eurocontrol) to estimate the fuel consumption of certain small emitting aircraft operators(a), as amended from time to time;”.

Application for an emissions plan by a UK administered operator

5.—(1) This regulation applies to regulation 32.

(2) For paragraph (1), substitute—

“(1) Subject to paragraphs (3), (4), (6) and (7), a UK administered operator (“A”) must apply to the regulator for a monitoring plan where required by Article 51(1) and within the period of time required by that Article.”.

(3) In paragraph (2), before “plan”, insert “draft”.

(4) After paragraph (6) insert—

“(7) This regulation does not apply to a UK administered operator who commences aviation activities during the scheme years 2015 or 2016.”.

Application for an emissions plan by a UK administered operator: 2015 activities, 2016 activities and post-2016 activities

6. After regulation 32, insert—

“Application for an emissions plan by a UK administered operator: 2015 activities and 2016 activities

32A.—(1) This regulation applies to a UK administered operator (“B”) who commences aviation activities other than excluded aviation activities during the scheme years 2015 (“the 2015 activities”) or 2016 (“the 2016 activities”).

(a) OJ No L 175, 10.7.2010, p 25.

(2) Subject to paragraphs (3) to (7), B must apply to the regulator for a monitoring plan by the application date.

(3) Where B is unable to foresee the date on which B is due to commence, as appropriate, the 2015 activities or the 2016 activities, B must—

- (a) apply to the regulator for a monitoring plan without delay after B is aware that B will commence, as appropriate, the 2015 activities or the 2016 activities and in any event by a date no later than 6 weeks after the date on which the 2015 activities or the 2016 activities commence; and
- (b) include with the application a written explanation of why B was unable to comply with paragraph (2).

(4) Paragraph (5) applies where B is unable to comply with paragraph (2) by reason only that B's administering member State, referred to in Article 18a of the Directive, is not known by the application date.

(5) Where this paragraph applies B must—

- (a) apply to the regulator for a monitoring plan in respect of, as appropriate, the 2015 activities or the 2016 activities, without delay once information on B's administering member State becomes available; and
- (b) include with the application a written explanation of why B was unable to comply with paragraph (2).

(6) Paragraph (7) applies where B was a non-UK operator and becomes a UK administered operator after the transferred operator cut-off date.

(7) Where this paragraph applies, B must apply to the regulator for a monitoring plan by the transferred operator application date.

(8) In this regulation—

- (a) "application date" means—
 - (i) in the case of 2015 activities, the later of 31st January 2015 or the date which is 4 months before the date on which the 2015 activities are due to commence; and
 - (ii) in the case of 2016 activities, the date which is 4 months before the date on which the 2016 activities are due to commence;
- (b) "transferred operator application date" means—
 - (i) in the case of 2015 activities, the later of 31st January 2015 or the last day of the 8 week period beginning with the date on which B becomes a UK administered operator; and
 - (ii) in the case of 2016 activities, the last day of the 8 week period beginning with the date on which B becomes a UK administered operator; and
- (c) "transferred operator cut-off date" means the date which is 6 months before the date on which the 2015 activities, or 2016 activities, as appropriate, are due to commence.

Application for an emissions plan by a UK administered operator: post-2016 activities

32B.—(1) This regulation applies—

- (a) to a UK administered operator ("C") who commences only excluded aviation activities during the scheme years 2015 or 2016; and
- (b) where C carries out aviation activities after 31st December 2016 ("post-2016 activities").

(2) Subject to paragraphs (3) to (7), C must apply to the regulator for a monitoring plan in respect of C's post-2016 activities by a date which is no later than 4 months before the date on which C's post-2016 activities are due to commence ("the application date").

(3) Where C is unable to foresee the date on which C is due to commence post-2016 activities, C must—

- (a) apply to the regulator for a monitoring plan in respect of C’s post-2016 activities without delay after C is aware that C will commence the post-2016 activities and in any event by a date no later than 6 weeks after the date on which the post-2016 activities commence; and
- (b) include with the application a written explanation of why C was unable to comply with paragraph (2).

(4) Paragraph (5) applies where C is unable to comply with paragraph (2) by reason only that C’s administering member State, referred to in Article 18a of the Directive, is not known by the application date.

(5) Where this paragraph applies, C must—

- (a) apply to the regulator for a monitoring plan in respect of C’s post-2016 activities without delay once information on C’s administering member State becomes available; and
- (b) include with the application a written explanation of why C was unable to comply with paragraph (2).

(6) Paragraph (7) applies where C was a non-UK operator and becomes a UK administered operator after the transferred operator cut-off date.

(7) Where this paragraph applies, C must apply to the regulator for a monitoring plan by the transferred operator application date.

(8) In this regulation—

- (a) “transferred operator application date” means the last day of the 8 week period beginning with the date on which C becomes a UK administered operator; and
- (b) “transferred operator cut-off date” means the date which is 6 months before the post-2016 activities are due to commence.

Application for an emissions plan by a UK administered operator: general

32C.—(1) An application for a monitoring plan under regulation 32A or 32B must include a draft plan to monitor the UK administered operator’s aviation emissions, together with the supporting documents which are required to be submitted under Article 12(1).

(2) If a UK administered operator has previously been issued with an emissions plan (“the existing plan”)—

- (a) an application under regulation 32A or 32B may not be made without the agreement of the regulator; and
- (b) any plan issued under regulation 34(1)(a) replaces the existing plan.”.

Requirement to notify the regulator if no application is made for an emissions plan

7.—(1) This regulation applies to regulation 33.

(2) In the heading to the regulation, at the end, insert “before 1st January 2015”.

(3) In paragraph (1), for “Without”, substitute “Subject to paragraph (4), without”.

(4) After paragraph (3), insert—

“(4) This regulation does not apply after 31st December 2014.”.

Requirement to notify the regulator if an emissions plan is not applied for on or after 1st January 2015

8. After regulation 33, insert—

“Requirement to notify the regulator if an emissions plan is not applied for on or after 1st January 2015

33A.—(1) Where a person (“B”)—

- (a) becomes a UK administered operator on or after 1st January 2015; but
- (b) is not required to apply for a monitoring plan under regulation 32 or 32A,

B must, by the relevant date, notify the regulator in accordance with paragraph (2).

(2) Where—

- (a) the relevant date is before 1st September 2016, the notification must state that—
 - (i) B does not expect to commence an aviation activity within the four-month period beginning with the relevant date; or
 - (ii) B does expect to commence an aviation activity within the four-month period beginning with the relevant date, but B expects to carry out only excluded aviation activities within that four-month period;
- (b) the relevant date is on or after 1st September 2016, 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

9. In regulation 34(1), for “regulation 32”, substitute “regulation 32, 32A or 32B,”.

Monitoring and reporting emissions

10.—(1) This regulation applies to regulation 35.

- (2) In paragraph (1), for “Once” substitute “Subject to paragraph (5), once”.
- (3) In paragraph (2), for “Monitoring” substitute “Subject to paragraph (5), monitoring”.
- (4) In paragraph (3), before “A” insert “Subject to paragraphs (6) and (7),”.
- (5) In paragraph (4), for “The report” substitute “Subject to paragraphs (6) to (8), the report”.
- (6) After paragraph (4), insert—

“(5) The obligation to monitor aviation emissions does not apply in respect of excluded aviation emissions for the scheme years 2015 and 2016.

(6) The obligation to prepare and to submit to the regulator a verified report of aviation emissions does not apply—

- (a) in respect of excluded aviation emissions, for the scheme years beginning with 2013 and ending with 2016; or
- (b) where, for the scheme years 2013 or 2014, A was an exempt non-commercial air transport operator.

(7) The obligation for the report to be verified in accordance with the Verification Regulation does not apply where—

- (a) A has annual reportable emissions of less than 25,000 tonnes; and
- (b) A has determined its emissions using the small emitters tool approved under the Small Emitters Tool Regulation and populated with data by Eurocontrol.

(8) The verified report for the scheme year 2013 must be submitted to the regulator by 31st March 2015.”.

Variation of an emissions plan

11. In regulation 37, after paragraph (3), insert—

“(3A) The regulator may, by giving notice to a UK administered operator, vary an emissions plan in order to take account of any amendments to the Directive which may be made from time to time.”.

Revocation of regulation 42

12.—(1) Regulation 42 is revoked.

(2) Where—

- (a) regulation 42 applied to a person (“P”) before its revocation; and
- (b) P did not comply with regulation 42,

no civil penalty applies to P in respect of the non-compliance.

Surrender of allowances: UK aircraft operators

13. After regulation 42, insert—

“Surrender of allowances: UK aircraft operators: 2013, 2014 and subsequent scheme years

42A.—(1) Subject to paragraphs (3) and (4), by 30th April 2015, a UK administered operator (“A”) must surrender a number of allowances or aviation allowances equal to the sum of A’s annual reportable emissions in the scheme years 2013 and 2014.

(2) Subject to paragraph (3) and regulation 42B, for each scheme year beginning with 2015, A must, by the following 30th April, surrender a number of allowances or aviation allowances equal to A’s annual reportable emissions in that scheme year.

(3) For each scheme year beginning with 2013 and ending with 2016, the duty in paragraphs (1) and (2) does not apply in respect of A’s excluded aviation emissions.

(4) The duty in paragraph (1) does not apply for a scheme year in which A was an exempt non-commercial air transport operator.

Surrender of a deficit of allowances: UK administered operators

42B.—(1) Paragraphs (2) and (3) apply where a deficit arises in respect of compliance by a UK administered operator with regulation 42A(1) or 42A(2) for a scheme year (the “non-compliance year”).

(2) Where the deficit does not result from an error in the verified emissions report submitted by the UK administered operator, the amount of allowances or aviation allowances that the UK administered operator is required to surrender under regulation 42A(2) for the recovery year is increased by an amount of allowances or aviation allowances equal to the deficit.

(3) Where the deficit results from an error in the verified emissions report submitted by the UK administered operator, the amount of annual reportable emissions of the UK administered operator in the year in which the error is discovered, for the purpose of regulation 42A(2), is increased by an amount of annual reportable emissions equal to the deficit.

(4) In this regulation—

- (a) “deficit” means a shortfall in the number of allowances or aviation allowances(a) surrendered, calculated as—

(a) An allowance is an allowance to emit one tonne of carbon dioxide equivalent, see Article 3(a) of the Directive.

- (i) where the non-compliance year is any scheme year beginning with 2013 and ending with 2016, $x - y - z$, where—

‘x’ is the amount of annual reportable emissions arising in the non-compliance year;

‘y’ is the amount of excluded aviation emissions arising in the non-compliance year (expressed in tonnes of carbon dioxide equivalent); and

‘z’ is the amount of allowances or aviation allowances which the UK administered operator surrendered for the non-compliance year; and

- (ii) where the non-compliance year is any scheme year beginning with 2017, $x - y$, where—

‘x’ is the amount of annual reportable emissions arising in the non-compliance year; and

‘y’ is the amount of allowances or aviation allowances which the UK administered operator surrendered for the non-compliance year; and

- (b) the “recovery year” means, in respect of a failure to comply with—

(i) regulation 42A(1), the scheme year 2015; or

(ii) regulation 42A(2), the scheme year following the non-compliance year.”.

Failure to surrender allowances

14. In regulation 54(1), for “regulation 42”, substitute “regulation 42A”.

Failure to submit an application for an emissions plan

15.—(1) This regulation applies to regulation 60.

(2) In paragraph (1), for “A UK administered operator”, substitute “Subject to paragraphs (3) and (4), a UK administered operator”.

(3) In paragraph (1)(a), for “regulation 32(1)”, substitute “regulation 32(1), 32A(2) or 32B(2)”.

(4) In paragraph 1(b), for “regulation 32(4)”, substitute “regulation 32(4), 32A(3)(b), 32A(5)(b), 32B(3)(b) or 32B(5)(b)”.

(5) After paragraph (2), insert—

“(3) A is not liable to a civil penalty for a failure to apply to the regulator for a monitoring plan, contrary to regulation 32(1), in so far as the duty to apply arose—

(a) before 1st January 2015; and

(b) only in relation to excluded aviation activities.

(4) To the extent that A was required to apply to the regulator for a monitoring plan under regulation 32(1), A is not liable to a civil penalty for a failure to apply where—

(a) the duty to apply arose before 1st January 2015; and

(b) when the duty arose, A was an exempt non-commercial air transport operator.”.

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

16.—(1) This regulation applies to regulation 61.

(2) In paragraph (1), for “A UK administered operator”, substitute “Subject to paragraph (3), a UK administered operator” and after “regulation 33(1)”, insert “or regulation 33A(1)”.

(3) After paragraph (2), insert—

“(3) A is not liable to a civil penalty for a failure to comply with regulation 33(1), where the duty under that regulation arose before 1st January 2015 and, at the time the duty arose—

- (a) A carried out only excluded aviation activities; or
- (b) A was an exempt non-commercial air transport operator.”.

Failure to monitor aviation emissions

17.—(1) This regulation applies to regulation 63.

(2) In paragraph (1), for “A UK administered operator”, substitute “Subject to paragraph (3), a UK administered operator”.

(3) After paragraph (2), insert—

“(3) A is not liable to a civil penalty for a failure to monitor aviation emissions for the scheme years 2013 or 2014 in so far as—

- (a) the duty to monitor arose in respect of excluded aviation activities; or
- (b) in that scheme year, A was an exempt non-commercial air transport operator.”.

Failure to report aviation emissions

18.—(1) This regulation applies to regulation 64.

(2) For paragraph (1), substitute—

“(1) Subject to paragraph (3), 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—

- (a) for the scheme year 2013, regulation 35(8); or
- (b) for any other scheme year, regulation 35(4).”.

(3) After paragraph (2), insert—

“(3) A is not liable for a civil penalty for a failure to report, by 31st March 2014, aviation emissions for the scheme year 2013.”(a).

Savings and transitional provisions: the 2010 Regulations

19.—(1) In regulation 87(5), for “Regulations”, substitute “Subject to regulation 87AA, regulations”.

(2) After regulation 87A insert—

“Obligations in relation to aviation emissions arising before 2013: deficits

87AA.—(1) Paragraph (2) applies where—

- (a) a duty is imposed on a person (“P”) under regulation 26 of the 2010 Regulations;
- (b) the condition in regulation 87A(3) is satisfied; and
- (c) P fails to surrender sufficient allowances or project credits, contrary to regulation 26(1) of the 2010 Regulations.

(2) Where this paragraph applies, no duty arises to surrender allowances or project credits equal to the deficit to which regulation 26(2) of the 2010 Regulations applies, in so far as the duty to surrender arises in respect of P’s international emissions.

(3) Paragraph (4) applies where—

- (a) the regulator has given a person (“Q”)—
 - (i) a 2012 excess emissions penalty notice; and
 - (ii) a deficit notice; and

(a) Regulation 35(4) of S.I. 2013/3038 is amended by regulation 10. Prior to its amendment, regulation 35(4) required aircraft operators, by 31st March 2014, to submit to the regulator a report of aviation emissions for the scheme year 2013.

- (b) Q brings a 2012 excess emissions penalty notice appeal.
- (4) Where this paragraph applies—
 - (a) the 2012 excess emissions penalty appeal is deemed to include an appeal against the deficit notice; and
 - (b) the bringing of the 2012 excess emissions penalty appeal suspends the operation of the deficit notice pending the final determination or withdrawal of the appeal.
- (5) Where paragraph (4) applies, the appeal body may, in respect of the deficit notice—
 - (a) affirm it;
 - (b) quash all or part of it;
 - (c) vary it; or
 - (d) give directions to the regulator in relation to it.
- (6) In this regulation—
 - (a) “2012 excess emissions penalty appeal” means an appeal under regulation 52(3)(b) of the 2010 Regulations, against a 2012 excess emissions penalty notice;
 - (b) “2012 excess emissions penalty notice” means a notice under regulation 30(1)(a) of the 2010 Regulations that P is liable to a civil penalty under regulation 38(1)(a) of the 2010 Regulations, for a failure to surrender sufficient allowances or project credits for the calendar year beginning on 1st January 2012;
 - (c) “deficit notice” means a notice given under regulation 26(2)(a) of the 2010 Regulations; and
 - (d) “international emissions” has the meaning given in regulation 87A(1).”.

Allocation of allowances: interpretation

20. After paragraph 1 of Schedule 7, insert—

“Interpretation

1A. For the purpose of paragraphs (2) to (9) of this Schedule, “aviation activity” means an activity listed in the table in Annex I to the Directive under the section titled ‘Aviation’, but—

- (a) excluding the activities listed under points (a) to (j) of that section, and
- (b) disapplying the exclusion in point (k) of that section.”.

Allocation of aviation allowances from the special reserve

21.—(1) This regulation applies to Schedule 8.

(2) In paragraph 5, for “benchmarking year”, substitute “second calendar year in the trading period”.

(3) In paragraph 8, after “Article 3f(7)”, insert “and Article 28a(2)”.

(4) After paragraph 8 of Schedule 8, insert—

“Maximum allocation of aviation allowances from the special reserve

9. An allocation of allowances to be issued from the special reserve under Article 3f of the Directive in any trading period must not exceed 1,000,000 allowances.”.

Aircraft operator bans

22. After paragraph 1(4) of Schedule 10, insert—

“(5) A request from the Secretary of State to the European Commission under Article 16(5) of the Directive must include—

- (a) evidence that A has not complied with its obligations under these Regulations;
- (b) details of any enforcement action against A that has been taken by the regulator;
- (c) a justification for the imposition of an operating ban under Article 16(5) of the Directive; and
- (d) a recommendation for the scope of the operating ban and any conditions that should be applied.”.

20th November 2014

Amber Rudd
Parliamentary Under Secretary of State
Department of Energy and Climate Change

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Regulation No 421/2014 of the European Parliament and of the Council amending Directive 2003/87/EC establishing a scheme for greenhouse gas allowance trading with the Community (“the EU Regulation”)(a). Directive 2003/87/EC (“the Directive”) is currently implemented in the UK by the Greenhouse Gas Emissions Trading Scheme Regulations 2012 (“the 2012 Regulations”)(b). The 2012 Regulations require aircraft operators which are administered by the UK to monitor and report their aviation emissions each calendar year and then to surrender sufficient emissions trading allowances to cover those emissions. These Regulations amend the 2012 Regulations.

The 2012 Regulations consolidated (with amendments) and replaced the previous implementing regulations, in particular the Aviation Greenhouse Gas Emissions Trading Scheme Regulations 2010 (“the 2010 Regulations”)(c). The 2010 Regulations were revoked, with savings and transitional provisions, by Part 11 of the 2012 Regulations. By virtue of regulation 87 of that Part, the obligations of aircraft operators under regulation 26 of the 2010 Regulations (and the corresponding civil penalties) continue to apply in respect of aviation emissions arising before 2013, but subject to amendments made by the Greenhouse Gas Emissions Trading Scheme (Amendment) Regulations 2013(d), which implemented Decision No 377/2013/EU of the European Parliament and of the Council of 24 April 2013 derogating temporarily from Directive 2003/87/EC establishing a scheme for greenhouse gas allowance trading with the Community (the “2013 EU Decision”)(e).

The EU Regulation provides for a temporary derogation from the obligation to monitor and report emissions and to surrender allowances in respect of flights between an aerodrome in the European Economic Area (“the EEA”) and an aerodrome in a country outside the EEA in the calendar years from 2013 to 2016. For these purposes, flights between Croatia and an EEA state are treated as flights between states of the EEA for the whole of this period. The derogation also covers flights between an area of the EEA which is not an outermost region and an outermost region(f). In

(a) OJ No L 129, 30.4.2012, p 1.

(b) S.I. 2013/3038.

(c) S.I. 2010/1996.

(d) S.I. 2013/1037.

(e) OJ No L 113, 25.4.2013, p 1.

(f) The outermost regions are listed in Article 349 of the Treaty on the Functioning of the European Union.

addition, the EU Regulation provides that flights of non-commercial air transport operators with total annual emissions of less than 1,000 tonnes of carbon dioxide are not “aviation activities” which are covered by the Directive from 2013 to 2020.

The EU Regulation also provides that 2013 emissions are required to be reported by 31st March 2015 (and not 31st March 2014), and allowances in respect of 2013 emissions are required to be surrendered by 30th April 2015 (and not 30th April 2014). It also provides a derogation from the obligation for the report of aviation emissions to be verified, where the operator has total annual emissions of less than 25,000 tonnes of carbon dioxide and the operator has determined its emissions using the small emitters tool^(a).

Definitions

Regulation 2 amends the definitions in regulation 3 of the 2012 Regulations. In particular, it amends the definition of “aviation activities” to refer to the new exemption in the EU Regulation in respect of flights by non-commercial air transport operators with total annual emissions of less than 1,000 tonnes of carbon dioxide, to apply from 2015 to 2020. The amended definition means that these flights will not be covered by the scheme over this period. *Regulation 2* also includes a definition of “exempt non-commercial air transport operator”, which is used in the Regulations in relation to the exemption of operators of such flights from duties and liabilities in respect of 2013 and 2014.

Regulation 4 amends the definitions in regulation 20 of the 2012 Regulations. In particular, it includes a new definition of “excluded aviation activities”, which relates to flights between an EEA state and a country outside the EEA, and flights between a region of the EEA which is not an outermost region, and an outermost region.

Offshore installations

Regulation 3 updates the powers of entry exercisable by the Secretary of State in relation to offshore installations. It provides that the Secretary of State may exercise powers under the Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2013^(b).

Application for an emissions plan

Regulations 5 and 6 amend regulation 32 of the 2012 Regulations and add regulations 32A, 32B and 32C to implement the derogation from the duty to apply to the regulator for a monitoring plan for aviation operators which carry out only excluded aviation activity. Regulation 32A requires an operator which commences aviation activities other than excluded aviation activities in 2015 or 2016 to apply for a monitoring plan. Regulation 32B provides that an operator which has only carried out excluded aviation activity in 2015 and 2016 must apply for a monitoring plan before carrying out aviation activities after 2016. Regulation 32C sets out the requirements of an application for a monitoring plan and provides that if the operator has previously been issued with an emissions plan, any new plan issued replaces the existing emissions plan. The term “emissions plan” includes a plan issued under regulation 34 of the 2012 Regulations, under the 2010 Regulations or under the Aviation Greenhouse Gas Emissions Trading Scheme Regulations 2009^(c).

Regulation 15 amends the penalty in regulation 60 of the 2012 Regulations for a failure to submit an application for an emissions plan. No penalty arises for a failure to submit an application where the duty arose in 2013 or 2014 and either the operator carried out only excluded aviation activities, or the operator was an exempt non-commercial air transport operator. There is also a penalty for failing to comply with regulation 32A or 32B. *Regulation 9* amends regulation 34 to

(a) See regulation 4, which amends regulation 20 of the 2012 Regulations.

(b) S.I. 2013/971.

(c) S.I. 2009/2301. See the definition of “emissions plan” in regulation 20 of the 2012 Regulations.

provide for the issue of an emissions plan when an application is made under regulation 32A or 32B.

Regulations 7 and 8 replace the duty in regulation 33 of the 2012 Regulations to notify the regulator that a monitoring plan is not applied for. A new duty applies from 1st January 2015 (in regulation 33A). The new duty implements the derogation from the duty to apply for a monitoring plan in respect of an operator who carries out only excluded aviation activities for the years 2015 and 2016. *Regulation 16* amends the penalty in regulation 61 of the 2012 Regulations (a failure to notify the regulator if an emissions plan is not applied for) to refer to a failure to comply with the new duty in regulation 33A. No liability to a penalty arises where the duty arose before 2015 and the operator only carried out excluded aviation activities or the operator was an exempt non-commercial air transport operator.

Duty to monitor and report aviation emissions

Regulations 10, 17 and 18 together implement the derogations for monitoring and reporting aviation emissions. *Regulation 10* amends regulation 35 of the 2012 Regulations to provide that the duty to monitor aviation emissions does not apply for excluded aviation emissions in 2015 and 2016 and the duty to report aviation emissions does not apply to excluded aviation emissions between 2013 and 2016, or to exempt non-commercial air transport operators for 2013 and 2014 aviation activity. *Regulation 10* also provides that the verified report for 2013 must be submitted by 31st March 2015, and not 31st March 2014. It also implements the derogation from the obligation for a report of emissions to be verified for aviation operators with annual emissions of less than 25,000 tonnes of carbon dioxide, where the operator has determined their emissions using the small emitters tool. *Regulation 17* amends regulation 63 of the 2012 Regulations to provide that an operator is not liable to a civil penalty for a failure to monitor aviation emissions in respect of excluded aviation activities in 2013 and 2014 and that an operator which was an exempt non-commercial air transport operator in 2013 or 2014 is not liable to a penalty for a failure to monitor emissions for those years. *Regulation 18* amends the penalty for failing to report aviation emissions in regulation 64 to reflect that 2013 aviation emissions are required to be reported by 31st March 2015 (and not 31st March 2014).

Amendment of an emissions plan

By *Regulation 11*, the regulator may amend an emissions plan to take account of any changes to the Directive.

Duty to surrender allowances in respect of aviation emissions from 2013

Regulations 12 and 13 revoke regulation 42 of the 2012 Regulations and replace it with new regulations 42A and 42B. Regulation 42A provides that allowances in respect of 2013 emissions and 2014 emissions must be surrendered by 30th April 2015. For subsequent years from 2015 onwards, sufficient allowances to cover aviation emissions for the year must be surrendered by 30th April the following year. Regulation 42A also provides that for 2013 to 2016, there is no duty to surrender allowances in respect of emissions from excluded aviation activities and there is no duty to surrender allowances if the operator was an exempt non-commercial air transport operator in 2013 or 2014. For 2015 to 2020, this exemption is implemented by virtue of the definition of “aviation activities”, which is amended to exclude flights of exempt non-commercial air transport operators. Regulation 42B provides that where an insufficient number of allowances are surrendered, the deficit is added to the amount of allowances to be surrendered in the following year.

Duty to surrender a deficit of allowances in respect of aviation emissions in 2012

Regulation 19 amends the saving provisions in regulation 87 of the 2012 Regulation in respect of regulation 26(2) of the 2010 Regulations. It inserts regulation 87AA into the 2012 Regulations. Regulation 26(2) of the 2010 Regulations requires an operator who did not surrender sufficient allowances or project credits by 30th April 2013 to cover 2012 emissions, to surrender allowances

or project credits equal to the deficit, by the year following the year in which notice is given. Regulation 87AA amends the application of the duty in regulation 26(2) to implement the derogation under the 2013 EU Decision. It also provides that an appeal against a penalty for failing to surrender a deficit of allowances or project credits for 2012 emissions is an appeal against the notice requiring surrender of the deficit.

Amendments to Schedules

Regulation 20 amends the definition of “aviation activities” where it arises in Schedule 7.

Regulation 21 amends Schedule 8 to the 2012 Regulations, to provide that an allocation of allowances from the special reserve must not exceed 1,000,000 allowances, and corrects an error relating to the year for which operators are required to monitor tonne-kilometre data when making an application for an allocation of allowances from the special reserve.

Regulation 22 amends Schedule 10 to the 2012 Regulations to set out the requirements where the Secretary of State requests the European Commission to impose an operating ban under Article 16(5) of the Directive.

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 the Explanatory Memorandum on <http://www.legislation.gov.uk>. A transposition note setting out how these Regulations implement the relevant provisions of the EU Regulation is annexed to the Explanatory Memorandum.

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