
STATUTORY INSTRUMENTS

2009 No. 2301

CLIMATE CHANGE

**The Aviation Greenhouse Gas Emissions
Trading Scheme Regulations 2009**

Made - - - - 25th August 2009
Laid before Parliament 27th August 2009
Coming into force - - 17th September 2009

The Secretary of State is a Minister designated ^{M1} for the purposes of section 2(2) of the European Communities Act 1972 ^{M2} in relation to the environment.

These Regulations make provision for a purpose mentioned in that section and it appears to the Secretary of State that it is expedient for the references to European Community instruments in these Regulations to be construed as references to those instruments as amended from time to time.

The Secretary of State, in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972 ^{M3} and subsection (1) of section 2 of the Pollution Prevention and Control Act 1999 ^{M4} (the “1999 Act”), having, in accordance with subsection (4) of section 2 of the 1999 Act, consulted the Environment Agency, the Scottish Environment Protection Agency, 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, hereby makes the following Regulations:

Marginal Citations

- M1** [S.I. 2008/301](#).
- M2** [1972 c. 68](#). Under section 57 of the [Scotland Act 1998 \(c. 46\)](#), despite the transfer to Scottish Ministers of functions in relation to implementing obligations under Community law in respect of devolved matters, the function of the Secretary of State in relation to implementing those obligations continues to be exercisable by the Secretary of State as regards Scotland.
- M3** [Paragraph 1A](#) of Schedule 2 was inserted by section 28 of the [Legislative and Regulatory Reform Act 2006 \(c. 51\)](#).
- M4** [1999 c.24](#).

[^{F1}PART 1

General

Textual Amendments

- F1** Regulations revoked (31.8.2010) by [The Aviation Greenhouse Gas Emissions Trading Scheme Regulations 2010 \(S.I. 2010/1996\)](#), **regs. 1, 60** (with savings and transitional provisions in reg. 60(2)-(12))

Citation and commencement

1. These Regulations may be cited as the Aviation Greenhouse Gas Emissions Trading Scheme Regulations 2009 and come into force on 17th September 2009.

Interpretation

2. In these Regulations—
 - “additional daily penalty” has the meaning given by regulation 21(1)(b);
 - “address” means, in relation to electronic communications, any number or address used for the purpose of such communication;
 - “affected party” has the meaning given by paragraph 8(a) of Schedule 2;
 - “aircraft operator” has the meaning given by regulation 3;
 - “allowance” means an allowance issued to aircraft operators under Article 3e of the EU ETS Directive;
 - “appeal body” has the meaning given by regulation 36(6);
 - “area”, in relation to a regulator, means—
 - (a) in respect of the Environment Agency, England and Wales;
 - (b) in respect of the Scottish Environment Protection Agency, Scotland;
 - (c) in respect of the chief inspector, Northern Ireland;
 - “authority” has the meaning given by regulation 7;
 - “aviation activity” means the category of aviation activity listed in Annex I to the EU ETS Directive but with the reference to 1st January 2012 omitted;
 - “aviation emissions” means emissions from an aviation activity;
 - “benchmarking plan” means a plan issued under regulation 10(1)(a);
 - “chief inspector” means the chief inspector constituted under regulation 8(3) of the Northern Ireland Regulations;
 - “Commission list” means the list of operators specified 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 ^{M5}, as amended from time to time;
 - “electronic communication” has the same meaning as in the Electronic Communications Act 2000 ^{M6};
 - “emissions” means the release of greenhouse gases into the atmosphere;
 - “emissions plan” means a plan issued under regulation 15;

“EU ETS 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](#)^{M7}, as amended from time to time;

“greenhouse gases” has the meaning given by Article 3(c) of the EU ETS Directive;

“independent verifier” means a person or body accredited or endorsed by UKAS to carry out the verification requirements of Article 15 of the EU ETS Directive;

“interested party” has the meaning given by paragraph 8(b) of Schedule 2;

“Monitoring and Reporting Decision” means Commission Decision [2007/589/EC](#) establishing guidelines for the monitoring and reporting of greenhouse gas emissions pursuant to Directive [2003/87/EC](#) of the European Parliament and of the Council^{M8}, as amended from time to time;

“Northern Ireland Regulations” means the Pollution Prevention and Control Regulations (Northern Ireland) 2003^{M9};

“Planning Appeals Commission” means the Planning Appeals Commission established under Article 110 of the Planning (Northern Ireland) Order 1991^{M10};

“registered office” means the address that is required under section 86 of the Companies Act 2006^{M11};

“regulator” has the meaning given by regulations 4, 5 and 6;

“tonne-kilometre data” has the meaning given by Part B of Annex IV to the EU ETS Directive;

“trading period” means one of the following periods—

- (a) 2012;
- (b) 2013 to 2020; or
- (c) subsequent periods of eight calendar years;

“UK operator” means a person who is—

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

“UKAS” means the United Kingdom Accreditation Service^{M12}.

Marginal Citations

M5 OJ No L 219, 22.08.09, p.1.

M6 [2000 c.7](#); the definition of electronic communication in section 15(1) was amended by the [Communications Act 2003 \(c. 21\)](#), [section 406\(1\)](#) and Schedule 17, paragraph 158.

M7 OJ No. L 275, 25.10.03, p.32. The Directive is amended by Directive 2004/101/EC, OJ No. L 338, 13.11.2004, p.18.

M8 OJ No. L 59, 26.02.04, p.1.

M9 S.R. (NI) 2003 No 46, amended by [S.I. 2003/496](#), [S.I. 2003/3311](#); there is another amending instrument which is not relevant.

M10 [S.I. 1991/1220 \(N.I.11\)](#); relevant amending instruments are [S.I. 1999/660 \(N.I.4\)](#), [2003/430 \(N.I.8\)](#).

M11 2006 c..46.

M12 The United Kingdom Accreditation Service Limited (company number 03076190) is a company limited by guarantee and which operates under a memorandum of understanding made on 1st August 1995 between it and the then Secretary of State for Trade and Industry.

Aircraft operator

3. A person is an “aircraft operator” in relation to each calendar year from 1st January 2009 where in respect of that calendar year that person—

- (a) is a UK operator; and
- (b) performs an aviation activity.

Regulator: general

4. Subject to regulations 5 and 6, the regulator of a UK operator is—

- (a) the Environment Agency, where the UK operator—
 - (i) has its registered office in England or Wales; or
 - (ii) does not have a registered office in the United Kingdom;
- (b) the Scottish Environment Protection Agency, where the UK operator has its registered office in Scotland;
- (c) the chief inspector, where the UK operator has its registered office in Northern Ireland.

Regulator: assessment of emissions

5.—(1) Where the regulator is satisfied that the relevant data is available to it, the regulator (“A”) must—

- (a) assess whether the highest percentage of aviation emissions of an aircraft operator without a registered office in the United Kingdom (“B”) are attributable to the area of a different regulator (“C”);
- (b) do so by 14th December in the final year of each trading period; and
- (c) make this assessment taking into account data from the trading period to the date of the assessment.

(2) Where that assessment shows that the highest percentage of emissions is attributable to the area of C, A must give notice to B and C by 21st December in the final year of the trading period.

(3) Where—

- (a) A has given notice under paragraph (2); and
- (b) the regulator for the trading period following that notice is not determined under regulation 6,

C is the regulator of B from the beginning of that trading period.

Regulator: registered office changes

6.—(1) Where—

- (a) a UK operator changes its registered office to the area of a different regulator (“A”); and
- (b) the UK operator gives notice of the change to A and its existing regulator,

A is the regulator of the UK operator from the beginning of the trading period following the service of the notice.

(2) Where—

- (a) a UK operator which did not have a registered office in the United Kingdom acquires such a registered office;
- (b) that registered office is in the area of a regulator (“A”) that is not the regulator (“B”) of the UK operator in the trading period; and

(c) the UK operator gives notice of the acquisition to A and B,
A is the regulator of the UK operator from the beginning of the trading period following the service of the notice.

Authority

7. In regulations 21, 38 and 39 the authority is—
- (a) the Welsh Ministers, where the UK operator—
 - (i) has its registered office in Wales; and
 - (ii) is regulated by the Environment Agency;
 - (b) the Scottish Ministers, where the regulator is the Scottish Environment Protection Agency;
 - (c) the Northern Ireland Department of the Environment, where the regulator is the chief inspector;
 - (d) otherwise, the Secretary of State.

PART 2

Application for a free allocation

Application of this Part

8. The requirements of this Part apply where a UK operator wishes to apply for allowances to be issued to it under Article 3e of the EU ETS Directive.

Application for a benchmarking plan

9.—(1) Where this paragraph applies a UK operator must apply to the regulator for a benchmarking plan by 31st December 2009.

- (2) That application must contain—
- (a) the name, telephone number and—
 - (i) the postal address (including postcode) in the United Kingdom for service; or
 - (ii) the address for service using electronic communication,
of the UK operator;
 - (b) a proposed plan to monitor tonne-kilometre data from its aviation activity in accordance with the Monitoring and Reporting Decision; and
 - (c) a fee of £830.

Issue of a benchmarking plan

10.—(1) Where a UK operator has applied for a benchmarking plan under regulation 9 the regulator must, by notice to the UK operator—

- (a) issue to the UK operator a plan setting how it must monitor tonne-kilometre data (“a benchmarking plan”); or
- (b) refuse to issue a plan where it is not satisfied that the proposed plan to monitor tonne-kilometre data complies with the Monitoring and Reporting Decision or the EU ETS Directive.

(2) A notice under paragraph (1) must be served as soon as is reasonably practicable and in any event within 4 months of the date of the application under regulation 9.

(3) Where the regulator by notice refuses to issue a benchmarking plan under paragraph (1)(b) it must state in that notice what changes must be made to the application under regulation 9.

(4) Where the regulator fails to give notice in accordance with paragraph (2) the application is deemed to be refused.

Monitoring tonne-kilometre data

11. Where this regulation applies a UK operator must monitor tonne-kilometre data from its aviation activity carried out in 2010 in accordance with the benchmarking plan issued to it and the Monitoring and Reporting Decision.

Reporting tonne-kilometre data

12. Where this regulation applies a UK operator must—

- (a) prepare a report of its tonne-kilometre data monitored in accordance with regulation 11;
- (b) ensure that report—
 - (i) complies with the Monitoring and Reporting Decision and Annex IV to the EU ETS Directive; and
 - (ii) is verified by an independent verifier in accordance with the Monitoring and Reporting Decision and Annex V to the EU ETS Directive; and
- (c) submit that report to the regulator by 31st March 2011.

Submission of the report to the Secretary of State and the European Commission

13.—(1) Where a UK operator has submitted a report under regulation 12(c) the regulator must, by 30th April 2011—

- (a) submit that report to the Secretary of State; or
- (b) subject to paragraph (2), refuse to do so where it is not satisfied that the UK operator has complied with the requirements of this Part,

and give notice to the UK operator of the submission or the refusal.

(2) The regulator may submit a report to the Secretary of State under paragraph (1)(a) where a UK operator has otherwise complied with the requirements of this Part but failed to meet the period for compliance in regulation 9(1) or 12(c).

(3) Where the regulator by notice refuses to submit the report under paragraph (1)(b) it must state in that notice its reasons for doing so.

(4) Where the regulator fails to submit or refuse to submit the report under paragraph (1) by 30th April 2011 the submission of the report is deemed to be refused.

(5) The Secretary of State must submit a report submitted to it under paragraph (1)(a) to the European Commission by 30th June 2011.

PART 3

Monitoring and reporting aviation emissions

Application for an emissions plan

- 14.**—(1) An aircraft operator must apply to the regulator for an emissions plan—
- (a) where a person is an aircraft operator when these regulations come into force, by 12th November 2009;
 - (b) subject to paragraph (3), where a person becomes an aircraft operator after that date, within 8 weeks of becoming an aircraft operator.
- (2) An application for an emissions plan under paragraph (1) must contain—
- (a) the name, telephone number and—
 - (i) the postal address (including postcode) in the United Kingdom for service; or
 - (ii) the address for service using electronic communication,of the aircraft operator;
 - (b) a proposed plan to monitor the emissions from its aviation activity in accordance with the Monitoring and Reporting Decision; and
 - (c) a fee of £750.
- (3) An aircraft operator must not apply for an emissions plan under paragraph (1)(b) where it has previously been issued such a plan under regulation 15.

Issue of an emissions plan

- 15.**—(1) Where an aircraft operator has applied for an emissions plan under regulation 14 the regulator must, by notice to the aircraft operator—
- (a) issue to the aircraft operator a plan setting out how it must monitor emissions from the aircraft operator's aviation activity (“an emissions plan”); or
 - (b) refuse to do so where it is not satisfied that the proposed plan complies with the Monitoring and Reporting Decision or Annex IV to the EU ETS Directive.
- (2) A notice under paragraph (1) must be served as soon as is reasonably practicable and in any event within 4 months of the date of the application under regulation 14.
- (3) Where the regulator by notice refuses to issue an emissions plan under paragraph (1)(b) it must state in that notice what changes must be made to the application under regulation 14.
- (4) Where an application for an emissions plan is refused under paragraph (1) the aircraft operator must resubmit the application within 31 days of the refusal.
- (5) Following the resubmission of an application under paragraph (4), the regulator must within 24 days comply with paragraph (1).
- (6) Where the regulator fails to give notice by the deadline specified under paragraph (1) or (5) the application for an emissions plan is deemed to be refused.

Monitoring emissions

- 16.** From the date it is issued with an emissions plan, an aircraft operator must, in each calendar year from 1st January 2010, monitor its aviation emissions in accordance with—
- (a) that plan; and
 - (b) the Monitoring and Reporting Decision.

Reporting emissions

- 17.**—(1) An aircraft operator must for each calendar year from 1st January 2010—
- (a) prepare a report of its aviation emissions; and
 - (b) ensure that report—
 - (i) complies with the Monitoring and Reporting Decision and Annex IV of the EU ETS Directive; and
 - (ii) is verified by an independent verifier in accordance with and the Monitoring and Reporting Decision and Annex V to the EU ETS Directive.
- (2) An aircraft operator must submit a report prepared and verified in accordance with paragraph (1) to the regulator by 31st March in the following year.

Monitoring and Reporting Decision requirements

- 18.** An aircraft operator must—
- (a) keep the information specified in section 9 of Annex I to the Monitoring and Reporting Decision for at least 10 years after the submission of a report under regulation 17(2); and
 - (b) in a timescale specified by the regulator, address any non-conformities and misstatements identified by the independent verifier under regulation 17(1)(b)(ii).

Duty of the regulator to determine emissions

- 19.**—(1) Where an aircraft operator fails to comply with regulation 17, the regulator must determine the aviation emissions of the aircraft operator that have not been reported in accordance with that regulation.
- (2) Where the regulator is required to make a determination under paragraph (1) it—
- (a) must, if an aircraft operator submits a report that complies with regulation 17 late but before the regulator makes a determination under paragraph (1), use the emissions reported for its determination;
 - (b) must, so far as possible, ensure that determination complies with the Monitoring and Reporting Decision and Annexes IV and V to the EU ETS Directive;
 - (c) must give notice of any determination under paragraph (1) to the aircraft operator; and
 - (d) may recover the cost of making that determination from the aircraft operator.

PART 4

Information

Information

- 20.**—(1) The regulator may serve a notice on an aircraft operator requiring the aircraft operator to provide information.
- (2) A notice under paragraph (1)—
- (a) must set out the information required;
 - (b) may state the form in which that information is to be provided;
 - (c) must state the deadline for the provision of that information;

- (d) may only be served for the purpose of discharging the regulator's functions under these Regulations.

PART 5

Civil penalties

Procedure

21.—(1) Where a person is liable to a civil penalty under regulations 24 to 29 the regulator must—

- (a) give notice to the person liable to the civil penalty; and
- (b) state in that notice whether or not the person is liable to a daily penalty in accordance with regulation 24(2), 25(2), 26(2), 28(2) or 29(2) (“additional daily penalty”).

(2) Where a person is liable to an additional daily penalty the regulator must, when the amount of the additional daily penalty can be determined, give notice to the person liable to the penalty of the total amount due under this Part.

(3) Where a civil penalty does not include an additional daily penalty that penalty is due one month after notice is given under paragraph (1).

(4) Where a civil penalty includes an additional daily penalty that penalty is due on the date one month after notice is given under paragraph (2).

(5) A civil penalty must be paid to the regulator.

(6) Any civil penalty imposed is recoverable—

- (a) as a civil debt; and
- (b) where appropriate, in accordance with regulation 30.

(7) The regulator must—

- (a) give notice to the authority of any notice of a civil penalty given under paragraph (1) or (2); and
- (b) pass any civil penalty paid to it to the authority.

Variable amounts

22.—(1) Where an aircraft operator is liable to a civil penalty under regulation 25, 28 or 29 the regulator may, in a notice given under regulation 21, substitute a lower amount than specified in those regulations.

(2) Before substituting a lower amount under paragraph (1) the regulator must—

- (a) take into account the seriousness of the failure to comply; and
- (b) ensure that the new amount provides for an effective and dissuasive penalty.

Waiver and modification

23.—(1) Paragraph (2) applies where—

- (a) the person liable to a civil penalty or upon whom a civil penalty has been imposed demonstrates to the satisfaction of the regulator, within 8 weeks of the service of a notice under regulation 21(1), that the person exercised all due diligence and took all steps possible—
 - (i) to comply with the provision of the Regulations giving rise to the penalty; or

- (ii) to rectify any failure in compliance as soon as it came to that person's notice, provided that the person was acting reasonably in being unaware of the failure in compliance; and
 - (b) in all the circumstances it is reasonable to exercise the powers set out in paragraph (2).
- (2) The regulator may—
- (a) waive a civil penalty;
 - (b) impose or substitute a lower civil penalty;
 - (c) allow the person a period of no more than 31 days to rectify any failure in compliance before it imposes a civil penalty, subject to such conditions (if any) as it considers appropriate;
 - (d) extend the time for payment.

Failure to submit or resubmit an application for an emissions plan

- 24.**—(1) The civil penalties in paragraph (2) apply where an aircraft operator—
- (a) fails to submit or submits late an application for an emissions plan, contrary to regulation 14;
 - (b) fails to resubmit or resubmits late an application for an emissions plan under regulation 15(4).
- (2) The civil penalties are—
- (a) for a failure before 1st January 2012—
 - (i) £500; and
 - (ii) £50 for each day that the application or resubmission of an application is provided late following the service of a notice under regulation 21(1), up to a maximum of £4,500;
 - (b) for a failure on or after 1st January 2012—
 - (i) £1,500; and
 - (ii) £150 for each day that the application or resubmission of an application is provided late following the service of a notice under regulation 21(1), up to a maximum of £13,500.

Failure to monitor aviation emissions

- 25.**—(1) The civil penalties in paragraph (2) apply where an aircraft operator fails to monitor aviation emissions, contrary to regulation 16.
- (2) The civil penalties are—
- (a) for a failure before 1st January 2012—
 - (i) £500; and
 - (ii) £50 for each day that the aircraft operator fails to monitor aviation emissions following the service of a notice under regulation 21(1), up to a maximum of £4,500;
 - (b) for a failure on or after 1st January 2012—
 - (i) £1,500; and
 - (ii) £150 for each day that the aircraft operator fails to monitor aviation emissions following the service of a notice under regulation 21(1), up to a maximum of £13,500.

Failure to report aviation emissions

26.—(1) The civil penalties in paragraph (2) apply where an aircraft operator fails to report or reports late aviation emissions, contrary to regulation 17.

(2) The civil penalties are—

(a) for a failure before 1st January 2012—

(i) £1,250; and

(ii) £125 for each day that the aircraft operator fails to report or reports late aviation emissions following the service of a notice under regulation 21(1), up to a maximum of £11,250;

(b) for a failure on or after 1st January 2012—

(i) £3,750; and

(ii) £375 for each day that the aircraft operator fails to report or reports late aviation emissions following the service of a notice under regulation 21(1), up to a maximum of £33,750.

Making false or misleading statements

27.—(1) The civil penalty is £1,000 where a UK operator makes a statement which is false or misleading in a material particular in a report submitted under regulation 12.

(2) The civil penalty is £1,000 where an aircraft operator makes a statement which is false or misleading in a material particular in a report submitted under regulation 17.

Failure to comply with requirements of the Monitoring and Reporting Decision

28.—(1) The civil penalties in paragraph (2) apply where an aircraft operator fails to comply with regulation 18.

(2) The civil penalties are—

(a) for a failure before 1st January 2012—

(i) £500; and

(ii) £50 for each day that the aircraft operator fails to comply with regulation 18 following the service of a notice under regulation 21(1), up to a maximum of £4,500;

(b) for a failure on or after 1st January 2012—

(i) £1,500; and

(ii) £150 for each day that the aircraft operator fails to comply with regulation 18 following the service of a notice under regulation 21(1), up to a maximum of £13,500.

Failure to comply with information notices

29.—(1) The civil penalties in paragraph (2) apply where an aircraft operator fails to comply with an information notice, contrary to regulation 20.

(2) The civil penalties are—

(a) for a failure before 1st January 2012—

(i) £500; and

- (ii) £50 for each day that the aircraft operator complies late or fails to comply with an information notice following the service of a notice under regulation 21(1) up to a maximum of £4,500;
- (b) for a failure on or after 1st January 2012—
 - (i) £1,500; and
 - (ii) £150 for each day that the aircraft operator fails to comply with an information notice following the service of a notice under regulation 21(1), up to a maximum of £13,500.

PART 6

Detention and sale of aircraft for unpaid civil penalties

General

30.—(1) Where an aircraft operator has not paid a civil penalty which is due under regulation 21(3) or (4) within 6 months of the due date, the regulator may detain, pending payment, any aircraft of which the aircraft operator in default is the operator.

(2) Where an aircraft has been detained under paragraph (1) and the civil penalty is not paid within—

- (a) 56 days of the date when the detention begins; or
- (b) if later, 21 days of the date of service of a notice under paragraph 2(1) of Schedule 1,

the regulator may, subject to the following regulations, apply to the court for leave to sell that aircraft in order to satisfy the civil penalty.

(3) Paragraphs (1) and (2) do not apply in relation to a failure to comply with these Regulations before 1st January 2012.

Release of aircraft

31. The regulator must not detain, or continue to detain, or sell an aircraft under regulation 30 if—

- (a) the aircraft operator has made an appeal under regulation 36 in respect of the civil penalty for which the aircraft has been detained and gives to the regulator, pending the determination of the appeal, sufficient security for the payment of that civil penalty; or
- (b) where appropriate, the aircraft operator or any other person claiming an interest demonstrates to the satisfaction of the regulator that the aircraft operator is no longer the lessee of the detained aircraft or any part of it.

Court procedures

32.—(1) The regulator must not sell an aircraft under regulation 30(2) without the leave of the court.

(2) The court must not give leave under paragraph (1) except where it is satisfied—

- (a) that a civil penalty is due to the regulator;
- (b) that the aircraft operator has not paid the civil penalty to the regulator; and
- (c) that the regulator is entitled to sell the aircraft.

(3) Before applying to the court for leave under paragraph (1) the regulator must, in accordance with Schedule 1—

- (a) take such 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.
- (4) Where leave is given under paragraph (1) the regulator must sell the aircraft for the best price that can be reasonably obtained.
- (5) Failure to comply with paragraph (3) or (4) does not make a sale under regulation 30(2) void or voidable.

Proceeds of sale

33.—(1) The proceeds of any sale under these Regulations 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 the expenses incurred by the regulator in detaining, keeping and selling the aircraft, including its expenses in connection with the application to the court;
- (c) in payment of any charges in respect of any aircraft operated by the aircraft operator which the court has found to be due by virtue of section 73(1) of the Transport Act 2000 ^{M13};
- (d) in payment of any airport charges incurred in respect of the aircraft which are due from the aircraft operator to the person entitled to levy charges in respect of the aerodrome at which the aircraft was detained under regulation 30(1);
- (e) 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 aircraft operator has not paid which is due under regulation 21(3) or (4), even where the failure giving rise to that civil penalty arose before 1st January 2012.

(2) The regulator must, after making the payments under 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.

Marginal Citations

M13 2000 c. 38.

Equipment and documents

34.—(1) The power to detain and sell an aircraft under regulation 30 includes the power to detain and sell equipment and stores carried in the aircraft provided it is the property of the aircraft operator, and references to the aircraft in regulations 30 to 33 include references to any such equipment and stores.

(2) The power of detention under regulation 30(1) 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.

Interpretation

35. In this Part—

- (a) “aircraft documents” has the meaning given by section 88(10) of the Civil Aviation Act 1982 ^{M14};

- (b) “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;
- (c) “the court” means—
 - (i) in relation to England, Wales and Northern Ireland, the High Court; and
 - (ii) in relation to Scotland, the Court of Session.

Marginal Citations

M14 1982 c. 16.

PART 7

Appeals

General

- 36.**—(1) A UK operator may appeal to the appeal body where the regulator has—
- (a) refused the UK operator's application for a benchmarking plan by—
 - (i) notice under regulation 10(1); or
 - (ii) deemed refusal under regulation 10(4);
 - (b) refused to submit the UK operator's report to the Secretary of State by—
 - (i) notice under regulation 13(1)(b); or
 - (ii) deemed refusal under regulation 13(4);
 - (c) served the UK operator a notice under regulation 21(1) in relation to a civil penalty under regulation 27(1).
- (2) An aircraft operator may appeal to the appeal body where the regulator has—
- (a) refused the aircraft operator's application for an emissions plan by—
 - (i) notice under regulation 15(1) or (5); or
 - (ii) deemed refusal under regulation 15(6);
 - (b) served the aircraft operator a notice under regulation 19(2)(c), 20 or 21.
- (3) In determining an appeal under this regulation the appeal body may—
- (a) affirm the notice or deemed refusal;
 - (b) quash all or part of the notice or deemed refusal;
 - (c) vary the notice;
 - (d) give directions to the regulator in relation to the subject matter of the appeal;
 - (e) substitute a deemed refusal by the regulator with a decision of the appeal body.
- (4) An appeal brought under paragraph (1)(a), (b) or (2)(a) does not suspend the operation of the notice or deemed refusal.
- (5) An appeal brought under paragraph (1)(c) or (2)(b) suspends the operation of the notice pending the final determination or the withdrawal of the appeal.
- (6) The “appeal body” means—
- (a) in respect of an appeal against a notice or deemed refusal of the Environment Agency—

- (i) the Welsh Ministers, where the UK operator making the appeal has its registered office in Wales;
- (ii) otherwise, the Secretary of State;
- (b) in respect of an appeal against a notice or deemed refusal of the Scottish Environment Protection Agency, the Scottish Ministers;
- (c) in respect of an appeal against a notice or deemed refusal of the chief inspector, the Planning Appeals Commission.

Procedure and appointment

37.—(1) Except where paragraph (4) applies, Schedule 2 has effect in relation to the making and determination of appeals under regulation 36.

(2) Except where paragraph (4) applies, the appeal body may—

- (a) appoint any person to exercise on its behalf, with or without payment, the function of determining an appeal under regulation 36 or any matter or question involved in such an appeal; or
- (b) refer any matter or question involved in an appeal under regulation 36 to such person as it may appoint for the purpose, with or without payment.

(3) Schedule 3 has effect with respect to appointments under paragraph (2)(a).

(4) Where an appeal under regulation 36 is made to the Planning Appeals Commission, Schedule 4 has effect in relation to the making and determination of the appeal.

PART 8

Directions and guidance to regulators

Directions to regulators

38.—(1) The authority may give a direction to the regulator of a general or specific character with respect to the carrying out of any of the regulator's functions under these Regulations.

(2) A direction under paragraph (1) may direct a regulator—

- (a) to exercise any of its powers under these Regulations or to do so in such circumstances as may be specified in the directions or in such manner as may be so specified; or
- (b) not to exercise those powers, or not to do so in such circumstances or such manner as may be specified in the directions.

(3) Any direction given under these Regulations must be in writing and may be varied or revoked.

(4) The regulator must comply with any direction addressed to it.

Guidance to regulators

39.—(1) The authority may issue guidance to the regulator with respect to the carrying out of any of its functions under these Regulations.

(2) The regulator must have regard to any guidance issued by the authority under paragraph (1).

PART 9

Miscellaneous

Notices

40. Schedule 5 (service of notices) has effect.

Submission of reports and applications for plans

41.—(1) The regulator may require the submission of any reports or applications for any plans under these Regulations to be made in such form as the regulator specifies.

(2) Any submission of a report or application for a plan made under these Regulations—

- (a) must, unless the regulator agrees otherwise, be sent to the regulator electronically;
- (b) may, if agreed by the regulator, be withdrawn at any time.

Functions of the regulator: Northern Ireland

42. Any functions conferred or imposed by these Regulations on the chief inspector may be delegated by the chief inspector to any inspector appointed under regulation 8(1) of the Northern Ireland Regulations.

Assistance and advice to be provided by the Civil Aviation Authority

43.—(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 these Regulations.

(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).

Department of Energy and Climate Change]

David Kidney
Parliamentary Under Secretary of State

[^{F1}SCHEDULE 1

Regulation 32

Steps to be taken before applying for leave to sell an aircraft

1. The steps in this Schedule apply where the regulator proposes to apply to the court for leave to sell an aircraft under regulation 32.

2.—(1) At least 21 days before applying to the court the regulator must, unless it is impracticable to so do, serve a notice in accordance with paragraph 4 on—

- (a) the person in whose name the aircraft is registered;
- (b) the person, if any, 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 be the operator of the aircraft;
- (e) 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 ^{M15} or who appears to the regulator to be a mortgagee of the aircraft under the law of any country other than the United Kingdom;
- (f) any other person who appears to the regulator to have a proprietary interest in the aircraft.

(2) Where a person who has been served with a notice in accordance with sub-paragraph (1) informs the regulator within 14 days of the 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.

Marginal Citations

M15 1982 c. 16.

3. At the same time as serving any notice under paragraph 2(1), the regulator must publish a copy of that notice—

- (a) in the London Gazette and also, if the aircraft is detained in Scotland, the Edinburgh Gazette, or, if it is detained in Northern Ireland, in the Belfast Gazette; and
- (b) in one or more local newspapers circulating in the locality in which the aircraft is detained.

4. A notice under paragraph 2(1) must—

- (a) state the nationality and registration marks of the aircraft;
- (b) state the type of aircraft;
- (c) state that by reason of default in the payment of a civil penalty under these Regulations, the regulator, on a date which is specified in the notice, detained the aircraft under these Regulations;
- (d) state that, unless payment of the sum so due is made within—
 - (i) a period of 56 days from the date when the detention began, or
 - (ii) if later, 21 days of the date of service of the notice,the regulator will apply to the court for leave to sell the aircraft;
- (e) invite the person to whom the notice is given to inform the regulator within 14 days of the service of the notice if the person wishes to become a party to the proceedings on the application.

5.—(1) A notice under paragraph 2(1) must be served by the regulator—

- (a) by delivering it to the person to whom it is to be sent;
- (b) by leaving it at that person's usual or last known place of business or abode;
- (c) by 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, by 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.

(2) Any notice which is sent by a postal service in accordance with the preceding paragraph to a place outside the United Kingdom must be sent by air mail or by some other equally expeditious means.

(3) In this Schedule “registered post service” and “postal service” have the meaning given in section 125(1) of the Postal Services Act 2000^{M16}.

Marginal Citations

M16 2000 c.26.

SCHEDULE 2

Regulation 37

Appeals (other than appeals to which Schedule 4 applies)

1.—(1) A UK operator or aircraft operator that wishes to appeal to the appeal body under regulation 36 must give to the appeal body written notice of the appeal together with the documents specified in sub-paragraph (2) and must 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 for a benchmarking plan or emissions plan;
- (c) a copy of any relevant benchmarking plan or emissions plan;
- (d) a copy of any relevant correspondence between the appellant and the regulator;
- (e) a copy of any decision or notice 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 of the decision, deemed decision or the notice 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 it is 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 from the date of the notice;
- (b) must, when making those representations, state whether or not its civil rights will be determined in the appeal, and, if so, which civil rights will be determined.

(5) A copy of any representations made under paragraph (4) will be provided 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 it (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 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.

(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 4(5) and (6) of Schedule 3 apply to hearings held under this paragraph as if references to the appointed person in those paragraphs were references to the person holding the hearing under this paragraph.

5.—(1) Where an appeal under regulation 36 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 it 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 later time limits than those mentioned in this paragraph;
- (b) require or permit exchanges of representations between the parties in addition to those mentioned in paragraphs (1) and (2).

6.—(1) The appeal body must give notice to the appellant of its 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 its 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.—(1) Where a determination of the appeal body on an appeal is quashed in proceedings before any court, the appeal body—

- (a) must send to the persons notified of its determination under paragraph 6 a statement of the matters with respect to which further representations are invited for the purposes of its 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 it 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.

8. In this Schedule and Schedule 3—

- (a) “affected party” means an interested party—
 - (i) that has stated in representations under paragraph 3(4) that its civil rights will be determined in an appeal; and
 - (ii) whom the appeal body is satisfied that its civil rights will be so determined;
- (b) “interested party” means a person notified under paragraph 3(1).

SCHEDULE 3

Regulation 37(3)

Delegation of Appellate Functions

1. In this Schedule—

“appointed person” means a person appointed under regulation 37(2)(a);

2. 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.

3. Subject to the provisions of this Schedule, 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.

4.—(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 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 Schedule, 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 paragraphs (5) and (6), the costs of a local inquiry held under this Schedule must be defrayed by the appeal body.

(5) Subject to sub-paragraph (6), subsections (2) to (5) of section 250 of the Local Government Act 1972 ^{M17} (local inquiries: evidence and costs) apply to hearings held under this Schedule by an appointed person as they apply to inquiries caused to be held under that section by a Minister, but with the following modifications, that is to say—

- (a) with the substitution in subsection (2) (evidence) 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) (recovery of costs of holding the inquiry) for the references to the Minister causing the inquiry to be held of references to the appeal body;
- (c) with the substitution for the reference in that subsection to a local authority of a reference to the regulator;
- (d) with the substitution in subsection (5) (orders as to the costs of the parties) for the reference to the Minister causing the inquiry to be held of a reference to the appeal body.

(6) In the case of an appeal to the Scottish Ministers, subsections (3) to (8) of section 210 of the Local Government (Scotland) Act 1973 ^{M18} (which relates to the costs of and holding of local inquiries) apply to hearings held under this Schedule 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.

Marginal Citations

- M17** 1972 c. 70; section 250 has been amended by the Statute Law (Repeals) Act 1989 (c. 43), **Schedule 1**, Part IV, the Criminal Justice Act 1982 (c. 48), **sections 37, 38 and 46** and the Housing and Planning Act 1986 (c. 63), **Schedule 12**, Part III.
- M18** 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.

5.—(1) Where under paragraph 2(c) the appointment of the appointed person is revoked in respect of any appeal, matter or question, the appeal body must, unless it proposes to determine the appeal, matter or question itself, appoint another person under regulation 37(2)(a) to determine the appeal, matter or question instead.

(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.

6.—(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 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 4

Regulation 37(4)

Appeals (Northern Ireland)

1.—(1) A UK operator or aircraft operator that wishes to appeal to the Planning Appeals Commission (“the appeals commission”) under regulation 36 must give to the appeals commission written notice of the appeal together with a statement of the grounds of appeal and the appeals commission must as soon as is reasonably practicable send to the regulator a copy of that notice together with the statement of the grounds of appeal.

(2) 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.

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 of the decision, deemed decision or the notice 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^{M19} 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.

Marginal Citations

M19 [S.I. 1991/1220 \(N.I.11\)](#); relevant amending instruments are [S.I. 1999/660 \(N.I.4\)](#), 2003/430 (N.I.8).

4. An appeal under this Schedule must be accompanied by a fee of £126.

SCHEDULE 5

Regulation 40

Service of notices

1. The provisions of this Schedule apply to the service of a notice except where a contrary provision applies under Schedule 1.

2. A notice must be in writing.

3. A notice may be served on or given to a person by—

- (a) delivering it to that person in person;
- (b) sending it to a postal address or address for service using electronic communication provided in an application—
 - (i) for a benchmarking plan under regulation 9; or
 - (ii) for an emissions plan under regulation 14;
- (c) leaving it at that person's proper address, or
- (d) sending it by post or electronic means to that person's proper address.

4. In the case of a body corporate, a notice may be served on or given to the secretary or clerk of that body.

5. In the case of a partnership, a notice may be served on or given to a partner or a person having control or management of the partnership business.

6. If a person to be served with or given a notice has specified an address in the United Kingdom (other than that person's proper address) at which that person or someone on that person's behalf will accept notices of that description, that address must instead be treated as that person's proper address.

7. For the purposes of this Schedule, “proper address” means—

- (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 of a partner or a person having that control or management;
- (c) in any other case, a person's last known address, which includes an email address.

8. For the purposes of paragraph 7, the principal office of a company registered outside the United Kingdom or of a partnership established outside the United Kingdom is its principal office in the United Kingdom.

9. Where an electronic address for submission of a notice is provided under these Regulations, it may be submitted electronically to that address.]

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations transpose parts of Directive [2008/101/EC](#) of the European Parliament and of the Council amending Directive [2003/87/EC](#) so as to include aviation activities in the scheme for greenhouse gas emission allowance trading within the Community (OJ No L 8, 13.1.2009, p. 3). The Regulations apply in the United Kingdom. First, they establish a procedure to allow UK operators to apply for a free allocation of allowances for their participation in the emissions trading scheme. Secondly, they impose obligations on an aircraft operator to apply for an emissions plan; monitor emissions in each year from 2010; and to verify and report those emissions by 31st March in the following year.

Regulations 3 to 7 define aircraft operator, regulator and authority under these Regulations. Regulations 8 to 13 apply where a UK operator wishes to apply for a free allocation of allowances. Under these Regulations provision is made for the regulator to issue a plan to a UK operator and the UK operator must monitor its tonne-kilometre data in accordance with that plan in 2010 and submit a verified report of that data to the regulator.

Regulations 14 to 17 require aircraft operators to submit an application to the regulator for an emissions plan; to monitor emissions in accordance with a plan approved by the regulator in each calendar year from 1st January 2010; and to submit a verified report to the regulator of the monitored emissions by 31st March in the following year.

Regulation 18 makes provision for requiring aircraft operators to retain information and address non-conformities and misstatements identified by an independent verifier.

Regulation 19 gives the regulator the power to determine the emissions of an aircraft operator where the aircraft operator has failed to comply with its obligations to submit a report containing its verified emissions to the regulator.

Regulation 20 makes provision for the regulator to serve notices on aircraft operators requiring information to enable the regulator to discharge its functions under the Regulations.

Regulations 21 to 29 provide that where an aircraft operator or UK operator do not comply with their obligations they will be liable to a civil penalty.

Regulations 30 to 35 make provision for the detention and sale of aircraft by the regulator where a UK operator has not paid a civil penalty imposed on it. Schedule 1 sets out the steps that the regulator must take before applying to the court for leave to sell an aircraft.

Regulation 36 and 37 make provision to allow UK operators and aircraft operators to appeal various notices or deemed refusals of the regulator. Schedules 2, 3 and 4 contain provisions relating to the procedure for appeals and for delegating appellate functions under the Regulations. Regulations 38 and 39 give the authority the power to issue directions and guidance to the regulator relating to the discharge of the regulator's functions under the Regulations.

Regulation 40 makes provision for the service of documents under the Regulations. Schedule 5 contains detailed provisions on how notices may be served.

Regulation 41 makes provision relating to the submission of plans and reports.

Regulation 42 makes provision for the functions of the regulator in Northern Ireland, the chief inspector, to be delegated.

Regulation 43 requires the Civil Aviation Authority to provide assistance and advice to the regulator where requested.

A full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the Department of Energy and Climate Change's Climate and Energy: Europe Division (telephone 0300 060 4000) and is annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website (www.opsi.gov.uk).

Changes to legislation:

There are currently no known outstanding effects for the The Aviation Greenhouse Gas Emissions Trading Scheme Regulations 2009.