

SCHEDULE 1

Regulation 4

Application to the Crown etc.

Crown application

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

Entry to Crown premises

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

(2) In this paragraph—

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

“power of entry” means a power of entry exercisable under section 108 of the Environment Act 1995^{F1} or regulation 27 of the Northern Ireland Regulations, in relation to a function under these Regulations.

Textual Amendments

F1 1995 c. 25; relevant amendments to section 108 were made by [S.I. 2000/1973](#) and [S.S.I. 2000/323](#).

Service on certain Crown operators

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

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

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

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

SCHEDULE 2

Regulation 5

Notices etc.

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

2. An instrument must be in writing.

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

(2) For that purpose, “relevant address” means an address derived from information supplied to the regulator by Eurocontrol (or any other organisation) at the request of the European Commission

F2

Textual Amendments

F2 Article 18b of the Directive enables the Commission to request the assistance of Eurocontrol (or another relevant organisation) in preparing its list of operators; Eurocontrol (the European Organisation for the Safety of Air Navigation) is an intergovernmental organisation of 38 States and the European Union.

10. The provisions of this Schedule do not apply where a contrary provision applies under paragraph 8 of Schedule 9.

SCHEDULE 3

Regulation 6

Applications etc.

Applications etc.: general

1.—(1) This paragraph applies—

(a) to any application, notice or report submitted to the regulator under any provision of—

- (i) these Regulations,
- (ii) a permit, or
- (iii) an aviation emissions plan; and

(b) notwithstanding any further provision made under or by virtue of these Regulations in respect of such application, notice or report.

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

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

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

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

(4) An application, report or notice—

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

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

- (a) the information required by the regulator to determine the application; or
- (b) the matters required to be included in the [F³report or notice].

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

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

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

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

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

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

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

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

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

Textual Amendments

F3 Words in Sch. 3 para. 1(5)(b) substituted (31.1.2014) by [The Greenhouse Gas Emissions Trading Scheme and National Emissions Inventory \(Amendment\) Regulations 2013 \(S.I. 2013/3135\)](#), regs. 1, **6(2)**

Determination of applications

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

SCHEDULE 4

Regulations 10, 12, 13 and 14

Permits

Applications for permits

- 1.—(1) An application for a permit must contain—

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- (a) as well as the address for service required under Schedule 3, any address to which correspondence relating to the application should be sent; and (if the applicant is a body corporate)—
 - (i) its registered number and the postal address of its registered or principal office, and
 - (ii) if that body corporate is a subsidiary of a holding company within the meaning of section 1159 of the Companies Act 2006 ^{F4}, the name of the holding company (other than a holding company which is itself a subsidiary) and the postal address of its registered or principal office;
 - (b) in relation to the site of the installation—
 - (i) the postal address and national grid reference of the site (or equivalent information identifying the installation and its location);
 - (ii) a description of the site and the location of the installation on it; and
 - (iii) the name of any local authority in whose area the site is situated;
 - (c) a description of the installation, including a description of—
 - (i) the regulated activities to be carried out at the installation and the specified emissions from those activities; and
 - (ii) any directly associated activities (within Article 3(e) of the Directive) that are also to be carried out;
 - (d) a description of the raw and auxiliary materials used in carrying out regulated activities in the installation, the use of which is likely to lead to specified emissions;
 - (e) a description of the sources of specified emissions from the regulated activities carried out in the installation;
 - (f) a monitoring plan submitted under Article 12 of the Monitoring and Reporting Regulation, together with—
 - (i) the supporting documents under Article 12(1) of that Regulation;
 - (ii) the summary of a procedure ensuring fulfilment of the requirements referred to in Article 12(3)(a) and (b) of that Regulation; and
 - (iii) the uncertainty assessment carried out under Article 28(1)(a) of that Regulation;
 - (g) a description, including the reference number, of any environmental licence issued in relation to the installation;
 - (h) any additional information which the applicant wishes the regulator to take into account in considering the application; and
 - (i) a non-technical summary of the information referred to in paragraphs (c) to (h).
- (2) For the purposes of sub-paragraph (1)(g), “environmental licence” means—
- (a) an authorisation under Part 1 of the Environmental Protection Act 1990 ^{F5} or the Industrial Pollution Control (Northern Ireland) Order 1997 ^{F6}; or
 - (b) a permit under—
 - (i) the Environmental Permitting (England and Wales) Regulations 2010 ^{F7};
 - (ii) the Pollution Prevention and Control (Scotland) Regulations 2000 ^{F8};
 - (iii) the Offshore Regulations; or
 - (iv) the Northern Ireland Regulations.
- (3) Where an application is for a permit in respect of more than one installation, the application must contain the information required by sub-paragraph (1) in respect of each installation.

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Textual Amendments

- F4** [2006 c. 46](#).
F5 [1990 c. 43](#).
F6 [1997 No. 2777](#) (N.I. 18).
F7 [S.I. 2010/675](#); the Regulations have been amended a number of times, most recently by [S.I. 2012/630](#).
F8 [S.S.I. 2000/323](#); the Regulations have been amended a number of times, most recently by [S.S.I. 2011/265](#).

Content of a greenhouse gas emissions permit

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

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(5) For the purposes of the surrender requirements the amount of the annual reportable emissions of the installation in a recovery year is deemed to be increased by an amount equal to the amount of annual reportable emissions, arising in the non-compliance year, in respect of which the operator failed to comply with the surrender requirements.

(6) For the purposes of sub-paragraph (5)—

- (a) a “non-compliance year” is a scheme year in respect of which an operator fails to comply with the surrender requirements; and
- (b) the “recovery year” is—
 - (i) the scheme year following the non-compliance year; or
 - (ii) where the non-compliance results from an error in the verified emissions report submitted by the operator, the scheme year in which the error is discovered.

(7) The supplementary requirements are—

- (a) notification requirements corresponding to the requirements in paragraphs 6(2) and 8(4) (a) and (5) of Schedule 6 (except in the case of the installations mentioned in [F9 paragraph 1A(1)(a)] of that Schedule);
- (b) any other conditions that the regulator considers necessary to ensure that the operator notifies the regulator of any planned or effective changes to the capacity, activity level or operation of the installation, by 31st December in the year in which the change was planned or has occurred; and
- (c) any other conditions that the regulator considers appropriate to include in the permit.

Textual Amendments

F9 Words in Sch. 4 para. 2(7)(a) substituted (4.12.2015) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2015 \(S.I. 2015/1849\)](#), regs. 1(1), **12**

Transfer of permits

3.—(1) An application under regulation 12 must—

- (a) contain the information mentioned in sub-paragraph (3); and
- (b) identify the installations, or parts of an installation, to which the application relates (“the transferred units”) and the regulated activities authorised to be carried out at them (“the transferred activities”).

(2) In the case of a partial transfer—

- (a) the application must also state—
 - (i) the amount of allowances that are to be transferred to the transferred units; and
 - (ii) the initial installed capacity of all sub-installations to which the permit relates, identifying those that correspond to the transferred units; and
- (b) the application may not be granted unless the regulator is satisfied that—
 - (i) the amount mentioned in paragraph (a)(i) reflects the historical activity levels of the transferred units, calculated in accordance with Article 9 of the Free Allocation Decision; and
 - (ii) the capacities mentioned in paragraph (a)(ii) have been calculated in accordance with Article 7(3) of the Free Allocation Decision.

(3) The information referred to in sub-paragraph (1)(a) is—

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- (a) in relation to each applicant, as well as the address for service required under Schedule 3 any address to which correspondence relating to the application should be sent;
 - (b) in relation to the new operator, the information mentioned in paragraph 1(1)(a)(i) and (ii); and
 - (c) a monitoring plan and other information mentioned in paragraph 1(1)(f) submitted by the new operator, or a specification by that operator of the parts of the existing monitoring plan that it is proposed should be varied and any necessary corresponding updating of that information.
- (4) Where the application relates to a partial transfer, a transfer of the permit is effected by the regulator giving notice—
- (a) granting a permit to the new operator (“the new permit”) which—
 - (i) authorises the carrying out of the transferred activities;
 - (ii) identifies the transferred units at which they may be carried out; and
 - (iii) includes such other provisions as the regulator (subject to sub-paragraph (5)) considers appropriate; and
 - (b) making such corresponding variations to the provisions of the permit held by the current operator (“the original permit”) as the regulator (subject to sub-paragraph (5)) considers appropriate.
- (5) In exercising the powers given by sub-paragraph (4)(a)(iii) and (b), the regulator must ensure that the conditions of the new permit, or the original permit as varied, are (so far as relevant) the same as the conditions that were included in the original permit, subject to such modifications as in the opinion of the regulator are necessary to take account of the transfer.
- (6) For the purposes of sub-paragraph (4) the new permit, and the variations of the original permit, have effect from a date agreed with the applicants and specified in the new permit and in the original permit as so varied.
- (7) Where the application does not relate to a partial transfer, the transfer of the permit is effected by the regulator giving notice varying the permit so that it includes—
- (a) the name and other particulars of the new operator;
 - (b) the date referred to in sub-paragraph (8); and
 - (c) such variations to the monitoring plan as the regulator considers appropriate.
- (8) From a date agreed with the applicants, the new operator is to be treated as the holder of the permit as varied under sub-paragraph (7).
- (9) If the new operator already holds a permit (an “existing permit”) for an installation that is on the same site as the transferred unit the regulator may effect a transfer within sub-paragraph (7) by—
- (a) giving notice of such variations to the existing permit as in the opinion of the regulator are necessary to take account of the transfer; and
 - (b) cancelling the permit held by the current operator.
- (10) For the purposes of sub-paragraph (9)—
- (a) the variations of the existing permit have effect from a date agreed with the applicants and specified in the existing permit as so varied; and
 - (b) the cancelled permit ceases to have effect on that date.
- (11) A regulator who effects the transfer of a permit in accordance with this paragraph must notify the registry administrator of the transfer.

(12) Upon receipt of a notice under sub-paragraph (11) the registry administrator must carry out any necessary changes to the national allocation table pursuant to [^{F10}Article 52(1)(c) or (d) of the Registries Regulation 2013].

Textual Amendments

F10 Words in Sch. 4 para. 3(12) substituted (31.1.2014) by [The Greenhouse Gas Emissions Trading Scheme and National Emissions Inventory \(Amendment\) Regulations 2013 \(S.I. 2013/3135\)](#), regs. 1, **5(12)**

Surrender of permits

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

- (a) submit to the regulator by a date specified in the notice a report (“the surrender report”) specifying the reportable emissions from the beginning of the relevant year until the date on which the notice takes effect;
- (b) ensure that the surrender report is prepared and verified in accordance with the monitoring and reporting requirements of the greenhouse gas emissions permit to which the application to surrender relates (“the permit”); and
- (c) by a date specified in the notice, surrender allowances equal to—
 - (i) the reportable emissions specified in the surrender report;
 - (ii) where an operator has failed to comply with the surrender requirements of the permit imposed in respect of the last scheme year for which the date for surrendering allowances in accordance with those requirements has passed, the annual reportable emissions in respect of which the operator failed so to comply;
 - (iii) where the notice of surrender is served in a scheme year in which an error in the report submitted by an operator under the monitoring and reporting requirements in relation to any earlier scheme year has been discovered, the annual reportable emissions in respect of which, as a result of that error, the operator failed to comply with the surrender requirements of the permit in respect of the scheme year to which the error relates; and
 - (iv) where an operator has failed to comply with regulation 13(2), the total number of allowances which by the date on which the notice of surrender is served have been issued in respect of the installation which would not have been issued if the operator had so complied.

(2) From the date on which the notice of surrender takes effect—

- (a) the permit ceases to have effect to authorise the carrying out of a regulated activity or to require the monitoring of emissions; but
- (b) any conditions of the permit continue to have effect so far as they are not superseded by the requirements of that notice in accordance with sub-paragraphs (5) to (7) until the regulator certifies—
 - (i) that those requirements and any surrender requirements of the permit have been complied with, or
 - (ii) that there is no reasonable prospect of further allowances being surrendered by the operator in respect of the installation to which the notice relates.

(3) From the scheme year following the relevant year, for the purposes of assessing compliance with any surrender requirements of the permit the amount of reportable emissions of the installation (before any increase in accordance with paragraph 2(5)) is deemed to be zero.

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(4) Where the regulator certifies in accordance with sub-paragraph (2)(b)(i) that there is no reasonable prospect of further allowances being surrendered by the operator, the regulator must notify the registry administrator.

(5) The requirements specified in a notice of surrender pursuant to sub-paragraph (1)(a) and (b) are to be treated as if they were monitoring and reporting requirements of the permit.

(6) Subject to paragraph (7), the requirements specified in a notice of surrender pursuant to sub-paragraph (1)(c) are to be treated as if—

- (a) they were surrender requirements of the permit, and
- (b) the number of allowances required to be surrendered by the notice of surrender were the annual reportable emissions of the installation in respect of the scheme year to which the notice relates.

(7) Where the surrender report understates any reportable emissions, the requirement to surrender allowances equal to the amount of the understatement is not superseded by the requirements specified in the notice of surrender.

(8) Where the operator fails to comply with the requirements of a notice of surrender included pursuant to sub-paragraph (1), the regulator must notify the registry administrator.

Revocation of permits

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

- (a) submit to the regulator by a date specified in the notice a report (“the revocation report”) specifying the reportable emissions from the beginning of the relevant year until the date on which the notice takes effect;
- (b) ensure that the revocation report is prepared and verified in accordance with the monitoring and reporting requirements of the greenhouse gas emissions permit to which the revocation notice relates (“the permit”); and
- (c) by a date specified in the notice, surrender allowances equal to—
 - (i) the reportable emissions specified in the revocation report;
 - (ii) where an operator has failed to comply with the surrender requirements of the permit imposed in respect of the last scheme year for which the date for surrendering allowances in accordance with those requirements has passed, the annual reportable emissions in respect of which the operator failed so to comply;
 - (iii) where the revocation notice is served in a scheme year in which an error in the report submitted by an operator under the monitoring and reporting requirements in relation to any earlier scheme year has been discovered, the annual reportable emissions in respect of which, as a result of that error, the operator failed to comply with the surrender requirements of the permit in respect of the scheme year to which the error relates; and
 - (iv) where the notice has been served under regulation 14(1)(b), the total number of allowances which by the date on which the revocation notice is served have been issued in respect of the installation which would not have been issued if the operator had so complied.

(2) A revocation notice must specify a period within which the fee for the revocation of the permit must be paid.

(3) From the date on which the revocation notice takes effect—

- (a) the permit ceases to have effect to authorise the carrying out of a regulated activity or to require the monitoring of emissions; but

- (b) any conditions of the permit continue to have effect so far as they are not superseded by the requirements of that notice in accordance with sub-paragraphs (6) to (8) until the regulator certifies—
 - (i) that those requirements and any surrender requirements of the permit imposed have been complied with, or
 - (ii) that there is no reasonable prospect of further allowances being surrendered by the operator in respect of the installation to which the notice relates.
- (4) From the scheme year following the relevant year, for the purposes of assessing compliance with the surrender requirements of the permit the amount of reportable emissions of the installation (before any increase in accordance with paragraph 2(5)) is deemed to be zero.
- (5) Where the regulator certifies in accordance with sub-paragraph (3)(b)(ii) that there is no reasonable prospect of further allowances being surrendered by the operator, the regulator must notify the registry administrator.
- (6) The requirements specified in a revocation notice pursuant to sub-paragraph (1)(a) and (b) are to be treated as if they were monitoring and reporting requirements of the permit.
- (7) Subject to paragraph (8), the requirements specified in a revocation notice pursuant to sub-paragraph (1)(c) are to be treated as if—
 - (a) they were surrender requirements of the permit, and
 - (b) the number of allowances required to be surrendered by the revocation notice were the annual reportable emissions of the installation in respect of the scheme year to which the notice relates.
- (8) Where the revocation report understates any reportable emissions, the requirement to surrender allowances equal to the amount of the understatement is not superseded by the requirements specified in the revocation notice.
- (9) Where the operator fails to comply with the requirements of a revocation notice included pursuant to sub-paragraph (1), the regulator must notify the registry administrator.
- (10) A regulator who has served a revocation notice may, at any time before the date on which it takes effect, withdraw the notice.

SCHEDULE 5

Regulations 10(7) and 15

Excluded installations

Interpretation

- 1.—(1) In this paragraph, “hospital” means—
- (a) any institution for the reception and treatment of persons suffering from illness;
 - (b) any maternity home;
 - (c) any institution for the reception and treatment of persons during convalescence or persons requiring medical rehabilitation;
 - (d) any clinics, dispensaries or out-patient departments maintained in connection with an establishment mentioned in paragraphs (a) to (c);
 - (e) any research or teaching facility that is associated with an establishment mentioned in paragraphs (a) to (c) which has as its primary purpose medical research or medical teaching;

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- (f) any other facility which has as its primary purpose the provision of such services as are necessary to maintain the proper functioning of any establishment mentioned in paragraphs (a) to (d), including in particular—
- (i) blood transfusion services,
 - (ii) catering services,
 - (iii) laundry services, or
 - (iv) medical sanitisation services.
- (2) For the purposes of sub-paragraph (1), “illness” includes any disorder or disability of the mind and any injury or disability requiring medical or dental treatment or nursing.
- (3) For the purposes of this Schedule, an installation primarily provides services to a hospital in a scheme year—
- (a) where no more than 15% of heat produced by the installation is exported to an establishment other than a hospital in that year; or
 - (b) if the installation is not owned by a hospital, not less than 85% of heat produced by the installation is supplied to one or more hospitals in that year.
- (4) In this Schedule—
- “emissions report” has the meaning given by paragraph 3(8)(b)(i);
- “emissions target”, in relation to a scheme year, means an amount of reportable emissions specified in an excluded installation emissions permit as the target for the excluded installation in that year;
- “maximum amount” means annual reportable emissions of 24,999 tonnes of carbon dioxide equivalent in any scheme year.

Conversion of a greenhouse gas emissions permit

- 2.—(1) Where a greenhouse gas emissions permit has been granted in respect of an installation that is an excluded installation, the regulator must vary the greenhouse gas emissions permit (with effect from a date to be included in the permit) so that the provisions of the permit are replaced by provisions that satisfy the requirements of paragraph 3.
- (2) When a permit is varied under sub-paragraph (1)—
- (a) the regulator may make only such variations as appear to the regulator to be necessary in consequence of the installation being an excluded installation; but
 - (b) that is without prejudice to the duty to vary the permit in accordance with regulation 88(6).
- (3) A variation of a permit under this paragraph does not affect any obligations of the operator under the permit in respect of emissions arising prior to 1st January 2013.

Content of an excluded installation emissions permit

- 3.—(1) An excluded installation emissions permit must contain—
- (a) the name and postal address in the United Kingdom (including postcode) of the operator and any other address for correspondence specified by the operator;
 - (b) the postal address and national grid reference of the installation (or for offshore installations equivalent information identifying the installation and its location);
 - (c) a description of the installation, including—
 - (i) the regulated activities to be carried out at the installation and the specified emissions from those activities; and

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- (ii) the directly associated activities (within Article 3(e) of the Directive) that are also to be carried out;
 - (d) a description of the site and the location of the installation on that site;
 - (e) an emissions target for each scheme year prior to 2021;
 - (f) a monitoring plan (as defined in sub-paragraph (7));
 - (g) the monitoring and reporting conditions (as defined in sub-paragraph (8));
 - (h) the record keeping requirements (as defined in sub-paragraph (9)); and
 - (i) any other conditions that the regulator considers appropriate to include in the permit.
- (2) The authority must exercise powers under section 40 of the Environment Act 1995, [^{F11}article 11 of the NRBW Order] or regulation 37 of the Northern Ireland Regulations ^{F12}, to give the regulator directions as to the calculation of the emissions targets included under sub-paragraph (1)(e).
- (3) If the regulator has been directed to do so under an enactment [^{F13}mentioned] in sub-paragraph (2) before 30th September in any scheme year, the regulator must vary the permit by substituting new emissions targets for the existing targets for each subsequent scheme year in order to take into account (to the extent and in the manner specified in the direction)—
- (a) any amendments to the Directive;
 - (b) any amendments to the list adopted by the European Commission under Article 10a(13) of the Directive;
 - (c) any amendments to Decision No.406/2009/EC of the European Parliament and the Council of 23 April 2009 on the effort of Member States to reduce their greenhouse gas emissions to meet the Community's greenhouse gas emission reduction commitments up to 2020 ^{F14};
 - (d) any measures relating to carbon budgets under the Climate Change Act 2008 ^{F15}; or
 - (e) any other matters mentioned in the direction.
- (4) An excluded installation emissions permit that is granted in respect of an installation which does not primarily provide services to a hospital must contain a condition requiring the operator to give notice to the regulator by the relevant date if the annual reportable emissions from the installation in any scheme year exceed the maximum amount.
- (5) An excluded installation emissions permit granted in respect of an installation which primarily provides services to a hospital must contain a condition requiring the operator to give notice to the regulator by the relevant date if the installation ceases to do so in any scheme year.
- (6) For the purposes of sub-paragraphs (4) and (5), the relevant date is 31st March in the year following the scheme year in question.
- (7) The monitoring plan is the plan approved in accordance with Articles 11 to 13 of the Monitoring and Reporting Regulation.
- (8) The monitoring and reporting conditions are—
- (a) a requirement to monitor the annual reportable emissions of the installation in accordance with—
 - (i) the relevant provisions of the Monitoring and Reporting Regulation; and
 - (ii) the monitoring plan (including the written procedures supplementing that plan);
 - (b) a requirement to submit to the regulator, for each scheme year, by 31st March in the following year a report of the annual reportable emissions from the installation in accordance with the relevant provisions of the Monitoring and Reporting Regulation (“the emissions report”) that is either—
 - (i) verified in accordance with the Verification Regulation, or

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- (ii) accompanied by a notice declaring that—
 - (aa) in preparing the emissions report the operator has complied with the relevant provisions of the Monitoring and Reporting Regulation;
 - (bb) the operator has complied with the monitoring plan for the installation; and
 - (cc) the report is free from material misstatements;
 - (c) a requirement to satisfy the regulator, if an emission factor of zero has been reported in respect of the use of bioliquids, that the sustainability criteria set out in Article 17(2) to (5) of the Renewable Energy Directive have been fulfilled in accordance with Article 18(1) of that Directive; and
 - (d) any further conditions that the regulator considers necessary to ensure that the operator complies with the relevant provisions of the Monitoring and Reporting Regulation.
- (9) The record keeping requirements are any conditions requiring the operator of an installation referred to in sub-paragraph (5) who has not given notice in accordance with that provision to—
- (a) maintain records demonstrating that it continues to primarily provide services to a hospital; and
 - (b) comply with requests from the regulator to inspect those records for the purpose of verifying the accuracy of the records and of the emissions report.
- (10) In this paragraph, “relevant provisions” means the provisions specified in the permit as relevant for the purposes of monitoring and reporting emissions from excluded installations.
- (11) The authority must exercise powers under section 40 of the Environment Act 1995, [F16 article 11 of the NRBW Order] or regulation 37 of the Northern Ireland Regulations, to give the regulator directions as to the provisions that are to be specified in accordance with sub-paragraph (10).

Textual Amendments

- F11** Words in Sch. 5 para. 3(2) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 4 para. 426** (with Sch. 7)
- F12** Regulation 37 is modified by regulation 7(2) of these Regulations.
- F13** Word in Sch. 5 para. 3(3) substituted (31.1.2014) by [The Greenhouse Gas Emissions Trading Scheme and National Emissions Inventory \(Amendment\) Regulations 2013 \(S.I. 2013/3135\)](#), regs. 1, **6(3)**
- F14** OJ L 140, 5.6.2009, p 136.
- F15** [2008 c. 27](#).
- F16** Words in Sch. 5 para. 3(11) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 4 para. 426** (with Sch. 7)

Activities during 2012: duty to notify regulator

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

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

- (3) For the purposes of sub-paragraph (2) an installation is a “relevant installation” if—
 - (a) it is an excluded installation that does not primarily provides services to a hospital; and
 - (b) the operator of the installation was, prior to 2013, not under any obligation to report its annual reportable emissions to the regulator.

Emissions target: duty not to exceed

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

Emissions target: increase in the capacity of an excluded installation

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

- (2) An application under sub-paragraph (1) must be made—
- (a) by 31st December in the year during which the capacity increase occurred or within 3 months of the date of the capacity increase, whichever is later; or
 - (b) where the capacity increase occurred before 1st January 2013, by 30th June 2013.
- (3) The application must contain evidence demonstrating the following—
- (a) the date on which the capacity increase was put into operation;
 - (b) that the increase is not temporary;
 - (c) that the increase is in operation and is required for the purpose of carrying out the operator's primary business activities;
 - (d) in the case of a capacity increase at a heat sub-installation where measurable heat is produced otherwise than within the installation's boundaries, that the increase is solely associated with measurable heat produced at the installation; and
 - (e) any further matters that the regulator is required to take into account by a direction referred to in sub-paragraph (8).

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

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

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

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

(8) The authority must exercise powers under section 40 of the Environment Act 1995, [F17 article 11 of the NRW Order] or regulation 37 of the Northern Ireland Regulations, to give the regulator directions as to—

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

(9) In this paragraph—

- (a) “capacity increase” means an increase in a sub-installation's installed capacity whereby one or more identifiable physical changes relating to its technical configuration and functioning other than a replacement of an existing production line takes place;
- (b) “installed capacity” means—
 - (i) the sub-installation's installed capacity on 30 June 2011; or

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- (ii) in the case of an installation which has had a capacity increase since 30th June 2011, the installed capacity of the sub-installation following the last capacity increase;
- (c) “measurable heat” has the same meaning as in Article 3(e) of the Free Allocation Decision;
- (d) “sub-installation” has the meaning given in Article 3(b), (c), (d) and (h) and Article 6 of the Free Allocation Decision.

Textual Amendments

F17 Words in Sch. 5 para. 6(8) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 4 para. 426** (with Sch. 7)

Banking an overachieved emissions target

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

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

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

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

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

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

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

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

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

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

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

Termination of an excluded installation emissions permit

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

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(a) the annual reportable emissions from an excluded installation which does not primarily provide services to a hospital have exceeded the maximum amount, or
(b) an excluded installation has ceased to primarily provide services to a hospital,
the regulator must, as soon as is reasonably practicable, give a notice to the operator.

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

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

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

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

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

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

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

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

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

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

(9) Where—

- (a) notice is given under sub-paragraph (1) or (4), and
- (b) the operator holds a registry account with excluded status in respect of the installation,

the regulator must give notice to the registry administrator, in accordance with the Registries Regulation [^{F18}2013], to change the status of the account to open from the year beginning with the date of conversion.

(10) Where sub-paragraph (3) applies and the permit is revoked, the regulator must give notice to the registry administrator in accordance with the Registries Regulation [^{F18}2013] to close the account.

Textual Amendments

F18 Word in Sch. 5 para. 8(9)(10) substituted (31.1.2014) by [The Greenhouse Gas Emissions Trading Scheme and National Emissions Inventory \(Amendment\) Regulations 2013 \(S.I. 2013/3135\)](#), regs. 1, **5(13)**

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End of excluded installation status

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

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

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

SCHEDULE 6

Regulation 16(3)

Allocation and adjustment of allowances

Interpretation

1.—(1) In this Schedule—

- (a) “the allocation table” has the meaning given by regulation 79(2);
- (b) “new entrant reserve” means the reserve of allowances provided for under Article 10a(7) of the Directive;
- [^{F19}(ba) “partial cessation” means a reduction in activity levels at a sub-installation of an installation, as described in paragraph 8(2);]
- (c) “preliminary total annual amount of allowances” is that amount as calculated in accordance with Article 19(3) of the Free Allocation Decision;
- (d) “verified” means verified as satisfactory in accordance with Article 8 of the Free Allocation Decision (except that the reference to Decision 2007/589/EC in Article 8(3) is to be read as a reference to the Verification Regulation);
- (e) “year” means a scheme year in the trading period 2013 to 2020.

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

- “added capacity” (see Article 3(l));
- “incumbent installation” (see Article 3(a));
- “reduced capacity” (see Article 3(m));
- “significant capacity extension” (see Article 3(i));
- “significant capacity reduction” (see Article 3(j));
- “start of changed operation” (see Article 3(o));
- “start of normal operation” (see Article 3(n)).

^{F20}(3)

Textual Amendments

F19 Sch. 6 para. 1(1)(ba) inserted (4.12.2015) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2015 \(S.I. 2015/1849\)](#), regs. 1(1), **13(2)**

F20 Sch. 6 para. 1(3) omitted (4.12.2015) by virtue of [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2015 \(S.I. 2015/1849\)](#), regs. 1(1), **13(3)**

[^{F21}Application

- 1A.**—(1) Subject to sub-paragraph (2), this Schedule does not apply—
- (a) to an installation that, by virtue of Article 10a(3) of the Directive, is not eligible for an allocation;
 - (b) where—
 - (i) a significant capacity extension;
 - (ii) a significant capacity reduction; or
 - (iii) a partial cessation,occurs while the installation is an excluded installation;
 - (c) where an installation permanently ceases the carrying out of regulated activities by virtue of meeting the conditions in paragraph 7(1)(a),(b) or (c) while the installation is an excluded installation; or
 - (d) where an installation permanently ceases the carrying out of regulated activities by virtue of meeting the condition in paragraph 7(1)(d), but only where the suspension of regulated activities occurs when the installation is an excluded installation.
- (2) Paragraph 8(8) applies where—
- (a) the allocation of allowances to an operator of an installation which used to be an excluded installation is reduced in accordance with paragraph 9 of Schedule 6A; and
 - (b) after the installation ceases to be an excluded installation, the activity of the sub-installation reaches more than the levels in paragraph 8(7)(a) or 8(7)(b) of this Schedule.]

Textual Amendments

F21 Sch. 6 para. 1A inserted (4.12.2015) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2015 \(S.I. 2015/1849\)](#), regs. 1(1), **13(4)**

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

- 2.**—(1) Subject to sub-paragraph (2), where—
- (a) the permit for an installation was granted on or after 30th June 2011, or
 - (b) the permit was granted before 30th June 2011, but the start of normal operation was on or after that date,

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

- (2) [^{F22}Subject to paragraph 8(6) of Schedule 6A, such] an application may not be made where—
- (a) the start of normal operation was before 30th June 2011; or
 - (b) the installation has already been included in the list referred to regulation 16(2).
- (3) Any application under sub-paragraph (1) must be made—
- (a) before the end of the period of twelve months beginning with the start of normal operation of the installation, or
 - (b) if that period expired before 1st February 2013, by that date.

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- (4) The application must contain—
- (a) all relevant information regarding each parameter listed in Annex 5 to the Free Allocation Decision for each separate sub-installation;
 - (b) the initial installed capacity for each sub-installation calculated by the operator in accordance with Article 17(4) of the Free Allocation Decision; and
 - (c) subject to paragraph (5), a statement that the data referred to in paragraphs (a) and (b) have been verified.
- (5) If the date for the submission of the application in accordance with sub-paragraph (3) falls before 30th May 2013, the statement may be submitted separately from the application and by the latter date.
- (6) If the regulator approves the calculations of initial installed capacity the regulator must calculate—
- (a) the activity levels of the installation in accordance with Article 18(1) and (2) of the Free Allocation Decision;
 - (b) the preliminary annual number of allowances to be allocated as from the start of normal operation of the installation for each sub-installation in accordance with Article 19(1) to (3) of the Free Allocation Decision; and
 - (c) the preliminary total annual amount of allowances to be allocated to the installation.
- (7) The result of any calculation under sub-paragraph (6) must be included in the notice of the determination of an application under sub-paragraph (1).

Textual Amendments

F22 Words in [Sch. 6 para. 2\(2\)](#) substituted (4.12.2015) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2015 \(S.I. 2015/1849\)](#), regs. 1(1), **13(5)**

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

- 3.—(1) Where an installation had a significant capacity extension—
- (a) after 30th June 2011, or
 - (b) on or before that date, but where the added capacity was capable of determination only after 30th September 2011,
- the operator of the installation may (subject to sub-paragraph (2)) apply to the regulator for an allocation of allowances from the new entrant reserve.
- (2) Any application under sub-paragraph (1) must be made—
- (a) before the end of the period of twelve months beginning with—
 - (i) the start of changed operation of the installation, or
 - (ii) in the case mentioned in paragraph (1)(b), the date of determination of added capacity; or
 - (b) if that period expired before 1st February 2013, by that date.
- (3) The application must contain—
- (a) all relevant information regarding each parameter listed in Annex 5 to the Free Allocation Decision for each separate sub-installation;
 - (b) the installed capacity, and a calculation of the added capacity, for each such sub-installation;

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- (c) any other evidence necessary to demonstrate that the criteria for a significant capacity extension have been met; and
- (d) subject to sub-paragraph (4), a statement that the data referred to in paragraphs (a) to (c) have been verified.

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

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

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

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

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

4.—(1) The regulator must, within 28 days after the date of the notice referred to in [F23 paragraph 2(7) or 3(6)] notify the preliminary total annual amount calculated under [F24 2(6)(c) or 3(5)(c)] to—

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

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

Textual Amendments

F23 Words in Sch. 6 para. 4(1) substituted (4.12.2015) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2015 \(S.I. 2015/1849\)](#), regs. 1(1), **13(6)(a)**

F24 Words in Sch. 6 para. 4(1) substituted (4.12.2015) by virtue of [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2015 \(S.I. 2015/1849\)](#), regs. 1(1), **13(6)(b)**

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

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

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

- (a) the operator;

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

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

Adjustment of allocation: significant capacity reductions

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

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

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

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

(3) For that purpose—

- (a) the relevant date is the later of—
 - (i) the last day of the period of 7 months following the date of the change of capacity;
 - (ii) 31st December in the year in which that change occurred; or
 - (iii) 1st February 2013; but

- (b) where the relevant date falls before 30th May 2013, the statement referred to in sub-paragraph (2)(b) need only be submitted by the latter date.

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

- (a) in accordance with Article 18 of the Free Allocation Decision, calculate the activity levels for the reduced capacity of the sub-installation to which the significant capacity reduction relates in accordance with Article 18(3) of the Free Allocation Decision;
- (b) in accordance with Article 21(2) of the Free Allocation Decision, reduce the preliminary annual number of allowances allocated to each sub-installation by the preliminary annual number of allowances allocated to the sub-installation concerned calculated in accordance with Article 19(1) of the Free Allocation Decision insofar as the significant capacity reduction is concerned; and
- (c) in accordance with Article 21(2) of the Free Allocation Decision, revise the preliminary total annual amount for the installation concerned in accordance with the methodology applied to determine the preliminary total annual amount prior to the significant capacity reduction.

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

- (a) the regulator is investigating whether or not there has been a significant capacity reduction in relation to the installation;
- (b) the information required under sub-paragraph (2)—
 - (i) has not been submitted in accordance with that sub-paragraph; or

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

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

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

- (a) the permit or a licence for the installation has been surrendered or revoked, or otherwise ceased to have effect;
- (b) the operation of regulated activities at the installation is technically impossible;
- (c) the installation was, but is no longer, carrying out regulated activities and it is technically impossible for it to resume doing so;
- (d) subject to sub-paragraphs (2) and (3), the operator—
 - (i) has suspended the carrying out of regulated activities at the installation, and
 - (ii) the carrying out of regulated activities has not recommenced within the period of 6 months following the date of the suspension.

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

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

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

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

[^{F25}(4A) For the purpose of sub-paragraph (4), where an installation permanently ceases the carrying out of regulated activities by virtue of meeting the condition in sub-paragraph (1)(d), the date of the permanent cessation is deemed to be the date on which the operator suspends the carrying out of regulated activities at the installation.]

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

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

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

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

- (a) allowances may be issued to the installation notwithstanding that the relevant period has not expired; but
- (b) such an issue of allowances is without prejudice to sub-paragraph (4) and [^{F26}paragraph 11(1)(c) and (2)].

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

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

- (a) the regulator is investigating whether or not the installation has permanently ceased the carrying out of regulated activities;
- (b) an application under sub-paragraph (7) has been made but the application—
 - (i) has not yet been determined, or
 - (ii) has been refused and the relevant period has not yet expired;
- (c) an application under regulation [^{F27}13(1)] has been made but has not yet been determined;
- (d) a notice of surrender or revocation notice has been given but has not yet taken effect;
- (e) an appeal against such a notice has been made but has not been determined or withdrawn;
- (f) a notification has been made to the registry administrator under regulation 80(11) but the necessary changes to the allocation table have not yet been made.

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

(11) Where the regulator makes a request under sub-paragraph (9) the regulator—

- (a) must notify the operator of the decision to do so as soon as is reasonably practicable; and
- (b) may, if the regulator considers it appropriate to do so, subsequently notify the operator that—
 - (i) the allocation of allowances will be permanently reduced; or
 - (ii) the allowances (or a proportion of them) will be issued.

(12) In this paragraph—

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- (a) a “licence” for an installation is a permit in force issued in relation to that installation in accordance with—
 - (i) Directive [2008/1/EC](#) of the European Parliament and of the Council concerning integrated pollution prevention and control ^{F28}, as amended for time to time; or
 - (ii) Directive [2010/75/EU](#) of the European Parliament and of the Council on industrial emissions (integrated pollution prevention and control) ^{F29}, as amended for time to time;
- (b) “relevant period” has the meaning given in sub-paragraph (5).

Textual Amendments

- F25** Sch. 6 para. 7(4A) inserted (4.12.2015) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2015 \(S.I. 2015/1849\)](#), regs. 1(1), **13(7)**
- F26** Words in Sch. 6 para. 7(7)(b) substituted (31.1.2014) by [The Greenhouse Gas Emissions Trading Scheme and National Emissions Inventory \(Amendment\) Regulations 2013 \(S.I. 2013/3135\)](#), regs. 1, **6(4)(a)**
- F27** Word in Sch. 6 para. 7(9)(c) substituted (31.1.2014) by [The Greenhouse Gas Emissions Trading Scheme and National Emissions Inventory \(Amendment\) Regulations 2013 \(S.I. 2013/3135\)](#), regs. 1, **6(4)(b)**
- F28** OJ No L 24, 29.1.2008, p 8.
- F29** OJ No L 334, 17.12.2010, p 17.

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

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

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

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

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

(3) However, following a partial transfer, sub-paragraph (2) applies as follows—

- (a) the amount of allowances transferred to the transferred units, in accordance with paragraph 3(2) of Schedule 4, is to be treated as the final annual amount of allowances allocated to the installation for the purposes of this paragraph; and
- (b) the activity level calculated in accordance with paragraph 3(2)(b)(i) of Schedule 4 is to be treated as the initial activity level for the purposes of this paragraph.

(4) Where an installation partially ceases regulated activities—

- (a) the operator must notify the regulator that such a reduction in activity level has occurred, stating the amount of that reduction and the sub-installation to which it applies—
 - (i) by 31st December in the year in which the reduction occurred, or
 - (ii) within one month after the date on which it occurred, if later; and
- (b) the regulator must—
 - (i) adjust the allocation of allowances in accordance with sub-paragraph (6),
 - (ii) revise the preliminary annual number of allowances allocated to each sub-installation; and

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

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

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

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

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

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

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

Recovery of allowances

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

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

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

- (3) The notice under [^{F30}sub-paragraph (2)] must specify—
 - (a) the number of allowances to which the operator is not entitled;
 - (b) the reasons why the operator is not entitled to those allowances;
 - (c) the process by which those allowances must be returned; and
 - (d) the date by which those allowances must be returned.
- (4) An operator must comply with a notice given under sub-paragraph (2).

Textual Amendments

F30 Words in Sch. 6 para. 11(3) substituted (31.1.2014) by [The Greenhouse Gas Emissions Trading Scheme and National Emissions Inventory \(Amendment\) Regulations 2013 \(S.I. 2013/3135\)](#), regs. 1, **6(4)(c)**

[^{F31}SCHEDULE 6A

Regulation 16(3A)

Allocation and adjustment of allowances: installations which cease to be excluded installations

Textual Amendments

F31 [Sch. 6A](#) inserted (4.12.2015) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2015 \(S.I. 2015/1849\)](#), regs. 1(1), **14**

Application of this Schedule

1. This Schedule applies to an operator of an excluded installation who has been given a change of status notice.

Interpretation

2.—(1) Subject to sub-paragraph (2), terms used in this Schedule which are defined in Schedule 6 have the same meaning in this Schedule as they have in Schedule 6.

(2) In this Schedule, “partial cessation” means a reduction in activity levels at a sub-installation of an installation, as described in paragraph 9(1).

Notification of end of excluded installation status: no significant capacity reduction or partial cessation

3.—(1) Sub-paragraph (2) applies where on or before the relevant date—

- (a) the regulator has not received from the operator a notice under paragraph 7(2), 8(10) or 9(2); and
- (b) the operator has not applied to surrender the permit authorising regulated activities at the installation under regulation 13(1).

(2) Where this sub-paragraph applies, the regulator must, as soon as reasonably practicable after the relevant date, notify the persons in sub-paragraph (3) that from the beginning of the entry year, the installation is not to be treated as an excluded installation and that so far as the regulator is aware—

- (a) the installation has not ceased operation;
- (b) the operator has not suspended the carrying out of regulated activities at the installation;
- (c) the installation has not had a significant capacity reduction—
 - (i) after 30th June 2011; or
 - (ii) on or before that date, but where the reduced capacity was capable of determination only after 30th September 2011; and
- (d) the installation has not had a partial cessation.

(3) The persons referred to in sub-paragraph (2) are—

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

(4) For the purpose of this paragraph, “the relevant date” is—

- (a) where the entry year is 2015, 4th December 2015;
- (b) where the entry year is any year after 2015, 31st January in the entry year.

Application for an allocation from the new entrant reserve: significant capacity extensions of excluded installations

4.—(1) Where an excluded installation has had a significant capacity extension in the period—

- (a) beginning—
 - (i) after 30th June 2011, or
 - (ii) on or before that date, but where the added capacity was capable of determination only after 30th September 2011; and

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(b) ending before 1st January in the entry year,
the operator of the excluded installation may apply to the regulator for an allocation of allowances from the new entrant reserve for each scheme year commencing with the entry year and the regulator must make a notice of determination in respect of the application.

- (2) An application under sub-paragraph (1) must be made—
- (a) where the entry year is 2015, by the later of—
 - (i) 31st December 2015;
 - (ii) the last day of the 12 month period beginning with the start of changed operation of the installation; or
 - (iii) where sub-paragraph (1)(a)(ii) applies, the last day of the 12 month period beginning with the date of determination of added capacity;
 - (b) where the entry year is any year after 2015, the later of—
 - (i) 31st January in the entry year;
 - (ii) the last day of the 12 month period beginning with the start of changed operation of the installation; or
 - (iii) where sub-paragraph (1)(a)(ii) applies, the last day of the 12 month period beginning with the date of determination of added capacity.
- (3) An application under sub-paragraph (1) must contain—
- (a) all relevant information regarding each parameter listed in Annex 5 to the Free Allocation Decision for each separate sub-installation;
 - (b) the installed capacity, and a calculation of the added capacity, for each such sub-installation;
 - (c) any other information necessary to demonstrate that the criteria for a significant capacity extension have been met; and
 - (d) a statement that the information referred to in sub-paragraphs (a) to (c) has been verified.
- (4) If the regulator approves the calculation of extended capacity the regulator must calculate—
- (a) the activity levels (for the extended capacity only) of the sub-installations to which the significant capacity extension applies in accordance with Article 18(1) and (2) of the Free Allocation Decision;
 - (b) the preliminary number of allowances to be allocated for each sub-installation insofar as the extension is concerned in accordance with Articles 19(1) to (3) and 20 of the Free Allocation Decision; and
 - (c) the preliminary total annual amount of allowances to be allocated for the installation insofar as the extension is concerned.
- (5) The result of any calculation under sub-paragraph (4) must be included in the notice of the determination of an application under sub-paragraph (1).

Notification of preliminary annual number of allowances: significant capacity extensions of excluded installations

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

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

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

Calculation of final total annual amount of allowances allocated free of charge: significant capacity extensions of excluded installations

6.—(1) Where the European Commission approves the preliminary total annual amount notified under paragraph 5(1), the regulator must calculate the final total annual amount of allowances allocated for the installation concerned insofar as the extension is concerned.

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

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

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

Adjustment of allocation: significant capacity reduction of excluded installation

7.—(1) Sub-paragraph (2) applies where an excluded installation has had a significant capacity reduction in the period—

- (a) beginning—
 - (i) after 30th June 2011, or
 - (ii) on or before that date, but where the added capacity was capable of determination only after 30th September 2011; and
- (b) ending before 1st January in the entry year.

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

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

(3) In sub-paragraph (2), the relevant date is—

- (a) where the entry year is 2015, the later of—
 - (i) 31st December 2015; or
 - (ii) the last day of the period of 7 months following the date of the change of capacity;
- (b) where the entry year is any year after 2015, the later of—
 - (i) 31st December in the year prior to the entry year; or
 - (ii) the last day of the period of 7 months following the date of the change of capacity.

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

- (a) calculate the activity levels for the reduced capacity of the sub-installation to which the significant capacity reduction relates in accordance with Article 18(1) of the Free Allocation Decision;

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- (b) calculate the preliminary annual number of allowances allocated to each sub-installation insofar as the significant capacity reduction is concerned, in accordance with Article 19(1) of the Free Allocation Decision;
 - (c) reduce the preliminary annual number of allowances allocated to each sub-installation by the preliminary annual number of allowances allocated to each sub-installation insofar as the significant capacity reduction is concerned, in accordance with article 21(2) of the Free Allocation Decision; and
 - (d) revise the preliminary total annual amount for the installation concerned in accordance with the methodology applied to determine the preliminary total annual amount prior to the significant capacity reduction.
- (5) The regulator must notify the registry administrator to withhold the allocation of allowances to the operator of an installation for as long as any of the following circumstances obtain—
- (a) the regulator is investigating whether or not there has been a significant capacity reduction in relation to the installation;
 - (b) the information required under sub-paragraph (2)—
 - (i) has not been submitted in accordance with that sub-paragraph; or
 - (ii) has been submitted but is insufficient;
 - (c) the operator has submitted a statement under sub-paragraph (2)(a), but has not submitted the statement under sub-paragraph (2)(b);
 - (d) the regulator is carrying out functions under sub-paragraph (4);
 - (e) a notification has been given to the European Commission pursuant to paragraph 9(3) (d) and the notified amount of allowances has not been approved by the European Commission; or
 - (f) a notification has been made to the registry administrator under regulation 80(11) but the necessary changes to the national allocation table have not been made.
- (6) The registry administrator must comply with a notification made under sub-paragraph (5).
- (7) Where sub-paragraph (5) applies, the regulator—
- (a) must notify the operator of the decision to withhold allowances; and
 - (b) may, if the regulator considers it appropriate to do so, notify the operator that—
 - (i) the allocation of allowances will be permanently reduced; or
 - (ii) the allowances (or a proportion of them) will be issued.
- (8) Where the European Commission approves the preliminary total annual amount of allowances notified under paragraph 9(1), the regulator must treat the installed capacity of the sub-installation after having had a significant capacity reduction as the sub-installation's initial installed capacity when assessing any subsequent significant capacity change under Schedule 6.

Adjustment of allocation: permanent cessation of regulated activities at an excluded installation

- 8.—(1)** For the purposes of this paragraph, an installation permanently ceases the carrying out of regulated activities where any of the following conditions are met—
- (a) the permit or licence for the installation has been surrendered or revoked, or otherwise ceased to have effect before 1st January in the entry year;
 - (b) the operation of regulated activities at the installation became technically impossible before 1st January in the entry year;

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- (c) the installation was carrying out regulated activities, but ceased to do so before 1st January in the entry year, and it is technically impossible for it to resume doing so;
 - (d) subject to sub-paragraph (2), the operator suspends the carrying out of regulated activities at the installation before 1st January in the entry year; and
 - (i) the suspension is continuing after 1st January in the entry year; and
 - (ii) subject to sub-paragraph (5), the carrying out of regulated activities has not recommenced within the period of 6 months following the date of suspension.
- (2) Sub-paragraph (1)(d) does not apply if the installation is kept in reserve or on standby, or is operated on a seasonal basis, provided that—
- (a) the operator holds a permit and a licence for the installation;
 - (b) it is technically possible to commence the carrying out of regulated activities without making physical changes to the installation; and
 - (c) regular maintenance of the installation is carried out.
- (3) Subject to sub-paragraph (6), no allocation of allowances may be made to the operator of an installation in any year following the year in which the installation has permanently ceased the carrying out of regulated activities.
- (4) For the purpose of sub-paragraph (3), where an installation permanently ceases the carrying out of regulated activities by virtue of meeting the condition in sub-paragraph (1)(d), the date of the permanent cessation is deemed to be the date on which the operator suspends the carrying out of regulated activities at the installation.
- (5) The operator may apply to the regulator, before the period of 6 months mentioned in sub-paragraph (1)(d)(ii) expires, for that period of 6 months to be extended to a period not exceeding 18 months where—
- (a) the carrying out of regulated activities at the installation cannot be recommenced within that period of 6 months due to exceptional and unforeseeable circumstances; and
 - (b) those circumstances—
 - (i) could not have been avoided even if all due care had been exercised; and
 - (ii) were beyond the control of the operator.
- (6) Where regulated activities at the installation recommence after the expiry of the relevant period, the operator may apply for an allocation of allowances under paragraph 2 of Schedule 6.
- (7) Where—
- (a) the operator suspends the carrying out of regulated activities at the installation before 1st January in the entry year; and
 - (b) the operator intends to recommence regulated activities before the expiry of the relevant period,
- the operator may, within a period of one month beginning with the date of suspension, apply for the suspension to be treated as temporary.
- (8) An application under sub-paragraph (7) must include evidence that the carrying out of regulated activities will recommence within the relevant period.
- (9) If the application under sub-paragraph (8) is granted, allowances may be issued to the operator notwithstanding that the relevant period has not expired.
- (10) Where—
- (a) the operator suspends the carrying out of regulated activities at the installation before 1st January in the entry year;
 - (b) the suspension is continuing after 1st January in the entry year;

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- (c) the operator does not make an application under sub-paragraph (7); and
 - (d) the operator has not made an application under regulation 13(1),
- the operator must notify the regulator of the suspension.
- (11) A notification under sub-paragraph (10) must be made by—
 - (a) where the entry year is 2015, 31st December 2015;
 - (b) where the entry year is any other scheme year, 31st January in the entry year.
 - (12) The regulator must notify the registry administrator to withhold the allocation of allowances to the operator of an installation for as long as any of the following circumstances obtains—
 - (a) the regulator is investigating whether or not the installation has permanently ceased the carrying out of regulated activities;
 - (b) sub-paragraphs (10)(a) and (b) apply, but the operator has not made an application under sub-paragraph (7);
 - (c) an operator has made an application under sub-paragraph (7) but the application—
 - (i) has not been determined; or
 - (ii) has been refused and the relevant period has not expired;
 - (d) an application under regulation 13(1) has been made but has not been determined;
 - (e) a notice of surrender or revocation has been given but has not taken effect;
 - (f) an appeal against such a notice has been made but has not been determined or withdrawn;
 - (g) a notification has been made to the registry administrator under regulation 80(11) but the necessary changes to the allocation table have not been made.
 - (13) The registry administrator must comply with a notification made under sub-paragraph (12).
 - (14) Where the regulator makes a notification under sub-paragraph (12) the regulator—
 - (a) must notify the operator of the decision to do so as soon as is reasonably practicable; and
 - (b) may, if the regulator considers it appropriate to do so, notify the operator that—
 - (i) the allocation of allowances will be permanently reduced; or
 - (ii) the allowances (or a proportion of them) will be issued.
 - (15) In this paragraph—
 - (a) a “licence” for an installation is a permit in force issued in relation to that installation in accordance with—
 - (i) [Directive 2008/1/EC](#) of the European Parliament and of the Council concerning integrated pollution prevention and control, as amended for time to time; or
 - (ii) Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions (integrated pollution prevention and control), as amended for time to time;
 - (b) “relevant period” means the period of 6 months following the date the operator suspends the carrying out of regulated activities at the installation, or any longer period allowed pursuant to sub-paragraph (5).

Adjustment of allocation to an installation: partial cessation of regulated activities of excluded installation

- 9.—(1)** Sub-paragraph (2) applies where, in the year prior to the entry year, one sub-installation of an excluded installation which contributes to—
- (a) at least 30% of the final annual amount of allowances allocated to the installation; or
 - (b) the allocation of more than 50,000 allowances,

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is operated at an activity level which is 50% or less than the activity level originally used for calculating the allocation in respect of the sub-installation (“the initial activity level”).

(2) Where this sub-paragraph applies the operator must notify the regulator of the reduction in activity levels, stating the amount of the reduction and the sub-installation to which it applies by—

- (a) where the entry year is 2015, 31st December 2015;
- (b) where the entry year is any year after 2015, the later of—
 - (i) 31st December in the year prior to the entry year; or
 - (ii) the last day of the one month period beginning with the date the reduction in activity levels occurred.

(3) Once the operator has notified the regulator of the reduction in activity levels, the regulator must—

- (a) adjust the allocation of allowances in accordance with sub-paragraph (4);
- (b) revise the preliminary annual number of allowances allocated in respect of each sub-installation; and
- (c) revise the preliminary total annual amount of allowances to be allocated, commencing with the entry year.

(4) Where the activity level of a sub-installation during the year prior to the entry year was at a level which constitutes a reduction of—

- (a) 50% or more but less than 75% compared with the initial activity level, the operator is entitled to receive a quantity of allowances representing 50% of the final total annual amount of allocated allowances in respect of that sub-installation, commencing with the entry year;
- (b) 75% or more but less than 90% compared with the initial activity level, the operator is entitled to receive a quantity of allowances representing 25% of the final total annual amount of allocated allowances in respect of that sub-installation, commencing with the entry year;
- (c) 90% or more compared with to the initial activity level, the operator is entitled to no allowances in respect of that sub-installation, commencing with the entry year.

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

- (a) the regulator is investigating whether or not, in the year prior to the entry year, a sub-installation was operating at an activity level which constitutes a reduction of 50% or more compared with the initial activity level;
- (b) the information required under sub-paragraph (2)—
 - (i) has not been submitted in accordance with that sub-paragraph; or
 - (ii) has been submitted but is insufficient;
- (c) the regulator is carrying out functions under sub-paragraph (3);
- (d) a notification has been given to the European Commission pursuant to paragraph 9(1) and the notified amount of allowances has not yet been approved by it;
- (e) a notification has been made to the registry administrator under regulation 80(11) but the necessary changes to the allocation table have not yet been made.

(6) The registry administrator must comply with a notification made under sub-paragraph (5).

(7) Where sub-paragraph (5) applies, the regulator—

- (a) must notify the operator of the decision to withhold the allocation of allowances; and

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- (b) may, if the regulator considers it appropriate to do so, notify the operator that—
 - (i) the allocation of allowances will be permanently reduced; or
 - (ii) the allowances (or a proportion of them) will be issued.
- (8) In this paragraph—
 - (a) “activity level” means the activity level used for calculating the sub-installation’s allocation in accordance with Article 9 of the Free Allocation Decision; and
 - (b) “final total annual amount” means the amount of allowances calculated in respect of the activity level originally used for calculating the allocation in respect of the sub-installation, in accordance with Article 10(9) of the Free Allocation Decision.

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

- 10.**—(1) The regulator must, within 28 days after the date of making a calculation under—
- (a) paragraph 7(4) (significant capacity reductions); or
 - (b) paragraph 8(3) (partial cessation of regulated activities),
- notify the revised preliminary total annual amount of allowances to the persons mentioned in sub-paragraph (3).
- (2) A notification given to the operator under sub-paragraph (1) may specify a period within which a fee for making the calculation must be paid.
- (3) The persons referred to in sub-paragraph (1) are—
- (a) the operator;
 - (b) the authority;
 - (c) the Secretary of State (where the Secretary of State is not the authority); and
 - (d) the European Commission, pursuant to Article 24(2) of the Free Allocation Decision.
- (4) Where the European Commission notifies the regulator that the revised preliminary total annual amount of allowances is rejected the regulator must, as soon as is reasonably practicable, notify the operator giving the reasons for rejection provided by the European Commission.

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

- 11.**—(1) Where the European Commission approves the revised preliminary total annual amount of allowances notified under paragraph 10(1), the regulator must calculate the revised final total annual amount of allowances allocated for the installation concerned.
- (2) For the purposes of sub-paragraph (1) the revised final total annual amount is—
- (a) the revised preliminary total annual amount notified under paragraph 10(1); but
 - (b) in the case of a significant capacity reduction, that amount as multiplied by the cross-sectoral correction factor under Article 10(9) of the Free Allocation Decision.
- (3) The regulator must, as soon as is reasonably practicable after the European Commission approves the revised preliminary total annual amount of allowances, notify that amount to —
- (a) the operator;
 - (b) the registry administrator (where the registry administrator is not the regulator);
 - (c) the authority; and
 - (d) the Secretary of State (where the Secretary of State is not the authority).

Recovery of allowances

12.—(1) This sub-paragraph applies where an operator (“P”) of an installation which used to be an excluded installation has been issued allowances to which P is not entitled—

- (a) as a result of a failure to notify the regulator of any change to an installation’s capacity, activity level or operation before 1st January in the entry year;
- (b) where the installation’s allocation is not adjusted in sufficient time to take account of a change in the installation’s capacity, activity level or operation before 1st January in the entry year;
- (c) where the operator is issued with allowances under paragraph 8(9) but the installation does not recommence the carrying out of regulated activities at the installation within the relevant period (within the meaning of paragraph 8(15)(b));
- (d) as a result of an error of the regulator or registry administrator in relation to the period before 1st January in the entry year.

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

(3) The notice under sub-paragraph (2) must specify—

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

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

SCHEDULE 7

Regulation 30(a)

Allocation of aviation allowances

Purpose of this Schedule

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

(2) Paragraph 10 provides for the recovery of aviation allowances to which a UK administered operator is not entitled, and applies to aviation allowances issued following an application made under Schedule 8 as well as one made under this Schedule [^{F32}or under the 2009 Regulations].

Textual Amendments

F32 Words in Sch. 7 para. 1(2) inserted (31.1.2014) by [The Greenhouse Gas Emissions Trading Scheme and National Emissions Inventory \(Amendment\) Regulations 2013 \(S.I. 2013/3135\)](#), regs. 1, **6(5)**

[^{F33}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

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(b) disapplying the exclusion in point (k) of that section.]

Textual Amendments

F33 Sch. 7 para. 1A inserted (22.12.2014) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2014 \(S.I. 2014/3125\)](#), regs. 1(1), 20

Application for a benchmarking plan

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

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

Issue of a benchmarking plan

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

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

(2) This sub-paragraph applies where—

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

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

Amendment of a benchmarking plan

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

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

Monitoring tonne-kilometre data

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

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

Reporting tonne-kilometre data

6. P must—

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- (a) prepare a verified report of tonne-kilometre data monitored in accordance with paragraph 5;
- (b) ensure that the report complies with the Monitoring and Reporting Regulation and the Verification Regulation; and
- (c) make an application for an allocation by submitting the report to the regulator by 31st March in the year after the benchmarking year.

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

7.—(1) Where P has made an application under paragraph 6(c) the regulator must—

- (a) grant the application and submit the report to the Secretary of State; or
- (b) subject to sub-paragraph (2), refuse the application where the regulator is not satisfied that P has complied with the requirements of this Schedule.

(2) The regulator may grant the application under sub-paragraph (1)(a) where P has otherwise complied with the requirements of this Schedule but failed to comply with the deadline in Article 51(2) of the Monitoring and Reporting Regulation or in paragraph 6(c).

(3) Where the regulator refuses the application under sub-paragraph (1)(b), the notice of determination must state the regulator's reasons for doing so.

(4) The Secretary of State must, by 30th June in the year after the benchmarking year, submit to the European Commission any report submitted under sub-paragraph (1)(a).

Publication of aviation allowances

8.—(1) Within the period of 3 months beginning with the date on which the Commission adopts a decision under Article 3e(3) of the Directive in respect of a trading period, the Secretary of State must (in accordance with Article 3e(4)) calculate and publish—

- (a) the total allocation of aviation allowances for the period to each UK administered operator whose report was submitted under paragraph 7(4); and
- (b) the allocation of aviation allowances to each such UK administered operator for each year of the period.

(2) Sub-paragraph (1) is subject to regulation 47 (national security).

Force majeure

9.—(1) Paragraphs 4 to 8 are subject to the provisions of Article 68 of the Monitoring and Reporting Regulation (which apply where a person cannot monitor and report tonne-kilometre data because of serious and unforeseeable circumstances outside that person's control).

(2) The Secretary of State must notify to the registry administrator any revised allocation of aviation allowances published by the Secretary of State under Article 68(3) of that Regulation.

Recovery of allowances

10.—(1) This sub-paragraph applies where a UK administered operator (“Q”)—

- (a) has a duty to return excess aviation allowances under Article 68(3) of the Monitoring and Reporting Regulation; or
- (b) has otherwise been issued aviation allowances to which Q is no longer entitled as a result, in particular, of—
 - (i) Q having ceased to perform an aviation activity; or

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(ii) an error of the regulator or registry administrator.

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

(3) The notice under sub-paragraph (2) must specify—

- (a) the number of aviation allowances to which Q is not entitled;
- (b) the reason why Q is not entitled to them;
- (c) the process by which they must be returned; and
- (d) the date by which they must be returned.

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

SCHEDULE 8

Regulation 30(b)

Allocation of aviation allowances from the special reserve

Purpose of this Schedule

1.—(1) This Schedule sets out the requirements that must be satisfied by an eligible person (“R”) who wishes to apply for an allocation of allowances issued from the special reserve under Article 3f of the Directive in any trading period.

(2) For that purpose, and subject to sub-paragraphs (3) and (4), an eligible person in a trading period is—

- (a) a person who becomes a UK aircraft operator after the benchmarking year for that trading period; or
- (b) a UK aircraft operator whose tonne-kilometre data in the second calendar year in the trading period exceeds by more than 93.9% its tonne-kilometre data in the benchmarking year for that trading period.

(3) A person is not an eligible person by virtue of sub-paragraph (2)(a) if that person has previously received an allocation of aviation allowances for that trading period.

(4) A person within sub-paragraph (2)(a), or a UK aircraft operator within sub-paragraph (2)(b), who would otherwise qualify as an eligible person by virtue of performing an aviation activity does not so qualify where that aviation activity is in whole or part a continuation of an activity previously performed by another person who is or has been a person falling within the definition of “aircraft operator” in Article 3(o) of the Directive.

Application for a benchmarking plan

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

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

Issue of a benchmarking plan

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

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- (a) issue a benchmarking plan to R; or
 - (b) where sub-paragraph (2) applies, refuse to issue such a plan.
- (2) This sub-paragraph applies where—
- (a) the regulator is not satisfied that the plan proposed in the application complies with the Monitoring and Reporting Regulation; and
 - (b) P has not agreed to amendments of the plan that satisfy the regulator.
- (3) Where the regulator by notice refuses to issue a benchmarking plan under sub-paragraph (1) (b), the notice must state what changes must be made to the proposed plan for the purposes of any fresh application under paragraph 2.

Amendment of a benchmarking plan

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

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

Monitoring tonne-kilometre data

5. R must monitor tonne-kilometre data from R's aviation activity carried out in the [^{F34}second calendar year in the trading period] in accordance with—

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

Textual Amendments

F34 Words in Sch. 8 para. 5 substituted (22.12.2014) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2014 \(S.I. 2014/3125\)](#), regs. 1(1), **21(2)**

Application for an allocation of allowances

6.—(1) R must apply to the regulator by 30th June in the third year of a trading period.

(2) That application must—

- (a) contain evidence that R is an eligible person under paragraph 1(2);
- (b) include a verified report of R's tonne-kilometre data monitored in accordance with paragraph 5;
- (c) ensure that the report complies with the Monitoring and Reporting Regulation and the Verification Regulation; and
- (d) where R is eligible by virtue of paragraph 1(2)(b), include evidence of—
 - (i) the percentage increase in R's tonne-kilometres from the benchmarking year to the second calendar year in the trading period;
 - (ii) the increase in R's tonne-kilometres from the benchmarking year to the second calendar year in the trading period; and

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- (iii) the amount in tonne-kilometres by which R exceeds the percentage in paragraph 1(2)(b) in the second calendar year in the trading period.

Submission of an application to the Secretary of State and to the European Commission

7.—(1) Where R has made an application under paragraph 6 the regulator must—

- (a) grant the application and forward it to the Secretary of State; or
- (b) subject to sub-paragraph (2), refuse the application where the regulator is not satisfied that R has complied with the requirements of this Schedule.

(2) The regulator may grant the application under sub-paragraph (1)(a) where R has otherwise complied with the requirements of this Schedule but failed to comply with the deadline in Article 51(2) of the Monitoring and Reporting Regulation or in paragraph 6(1).

(3) Where the regulator refuses the application under sub-paragraph (1)(b), the notice of determination must state the regulator's reasons for doing so.

(4) The Secretary of State must submit an application received under sub-paragraph (1)(a) to the European Commission within 6 months of the deadline in paragraph 6(1).

Publication of aviation allowances from the special reserve

8.—(1) Within the period of 3 months beginning with the date on which the Commission adopts a decision under Article 3f(5) of the Directive in respect of a trading period, the Secretary of State must (in accordance with Article 3f(7) [^{F35} and Article 28a(2)]) calculate and publish—

- (a) the total allocation of aviation allowances for the period from the special reserve to each UK administered operator whose application was submitted under paragraph 7(4); and
- (b) the allocation of aviation allowances to each such UK administered operator for each remaining year of the period.

(2) Sub-paragraph (1) is subject to regulation 47 (national security).

Textual Amendments

F35 Words in Sch. 8 para. 8 inserted (22.12.2014) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2014 \(S.I. 2014/3125\)](#), regs. 1(1), **21(3)**

[^{F36}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.]

Textual Amendments

F36 Sch. 8 para. 9 inserted (22.12.2014) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2014 \(S.I. 2014/3125\)](#), regs. 1(1), **21(4)**

SCHEDULE 9

Regulation 39(3)

Detention and sale of aircraft

Interpretation

1. In this Schedule—

“aerodrome” has the meaning given to it in section 105(1) of the Civil Aviation Act 1982 ^{F37};

“aerodrome operator” means the person for the time being having the management or control of an aerodrome;

“aircraft documents” has the meaning given by section 88(10) of the Civil Aviation Act 1982 ^{F38};

“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 ^{F39});

“civil penalty” means any civil penalty which is due under regulation 50, under regulation 21 of the 2009 Regulations or regulation 30 of the 2010 Regulations (even where the failure giving rise to that civil penalty arose before 1st January 2012);

“the court” means—

- (a) in relation to England, Wales and Northern Ireland, the High Court; and
- (b) in relation to Scotland, the Court of Session;

“defaulting operator” means a person who falls under regulation 39(1)(a) or (b);

“operating ban” means an operating ban imposed under Article 16(10) of the Directive;

“regulator expenses” means any expenses incurred by the regulator in detaining, keeping or selling an aircraft, including—

- (a) any sums recovered from the regulator under paragraph 7(2) or regulation 21(2), or any sums under paragraph 2(4)(b) of Schedule 10 that have not been recovered under paragraph 2(5) of that Schedule;
- (b) any expenses in connection with the application to the court under paragraph 4; and
- (c) any regulator expenses that are deemed to be added by virtue of paragraph 3(2).

Textual Amendments

F37 1982 c. 16; there are amendments to section 105(1) that are not relevant.

F38 There are amendments to section 88(10) that are not relevant.

F39 2000 c. 38.

Sale following detention of aircraft

2. Where an aircraft has been detained—

- (a) under regulation 39(1)(a) and the defaulting operator has not paid the civil penalty and regulator expenses within the period of—
 - (i) 56 days beginning with the date on which the detention began; or
 - (ii) 21 days beginning with the date of service of a notice under paragraph 8(2), if later; or
- (b) under regulation 39(1)(b) and—

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- (i) the operating ban has not been lifted within the period of 56 days beginning with the date on which the detention began; and
- (ii) the defaulting operator has not paid the regulator expenses,

the regulator may, subject to the following provisions of this Schedule, sell that aircraft.

Release of aircraft

- 3.—(1) The regulator must not detain, or continue to detain, or sell an aircraft if—
- (a) following detention, the regulator no longer has reason to believe the defaulting operator is the operator of the aircraft;
 - (b) in relation to a detention under regulation 39(1)(a), the defaulting operator—
 - (i) has exercised a right of appeal in respect of the civil penalty for which the aircraft has been detained;
 - (ii) gives to the regulator, pending the determination or withdrawal of the appeal, sufficient security for the payment of that civil penalty and any other civil penalty that the defaulting operator has not paid; and
 - (iii) pays to the regulator the regulator expenses;
 - (c) the defaulting operator or any other person claiming an interest in the aircraft demonstrates to the satisfaction of the regulator that the defaulting operator is no longer entitled to possession of the detained aircraft, or no longer entitled to possession of a part of it, in particular by virtue of the termination of any lease of the aircraft or of any part;
 - (d) in relation to a detention under regulation 39(1)(a), the defaulting operator pays to the regulator—
 - (i) the civil penalty for which the aircraft has been detained;
 - (ii) any other civil penalty that the defaulting operator has not paid; and
 - (iii) the regulator expenses;
 - (e) in relation to a detention under regulation 39(1)(b)—
 - (i) the operating ban imposed on the defaulting operator is lifted; and
 - (ii) the defaulting operator pays to the regulator any regulator expenses; or
 - (f) in relation to a detention under regulation 39(1)(b)—
 - (i) the regulator is satisfied that the aircraft will not be flown from the aerodrome in contravention of the operating ban; and
 - (ii) the defaulting operator pays to the regulator any regulator expenses.

(2) Where an aircraft has been detained, but subsequently released under sub-paragraph (1)(c), any unpaid regulator expenses incurred in relation to that detention are deemed to be added to any regulator expenses that may subsequently be incurred in relation to an aircraft of which the defaulting operator is the operator.

Court procedures

- 4.—(1) The regulator must not sell an aircraft under paragraph 2 without the leave of the court.
- (2) The court must not give leave under sub-paragraph (1) in relation to a detention under regulation 39(1)(a) except where it is satisfied that—
- (a) a civil penalty is due to the regulator;
 - (b) the UK administered operator has not paid the civil penalty to the regulator; and

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- (c) the regulator is entitled to apply to the court for leave to sell the aircraft.
- (3) The court must not give leave under sub-paragraph (1) in relation to a detention under regulation 39(1)(b) except where it is satisfied that—
 - (a) an operating ban has been imposed on the person who is the operator of the aircraft;
 - (b) the operating ban has not been lifted before the expiry of the period mentioned in paragraph 2(b); and
 - (c) the regulator is entitled to apply to the court for leave to sell the aircraft.
- (4) Before applying to the court for leave under sub-paragraph (1) the regulator must, in accordance with the procedure set out in paragraph 8—
 - (a) take steps for bringing the proposed application to the notice of any person who may have an interest in the aircraft; and
 - (b) afford those persons an opportunity of becoming a party to the proceedings.
- (5) Where leave is given under sub-paragraph (1) the regulator must sell the aircraft for the best price that can be reasonably obtained.
- (6) Failure to comply with sub-paragraph (4) or (5) does not make a sale void or voidable.

Proceeds of sale

5.—(1) The proceeds of any sale under this Schedule must be applied by the regulator in the following order—

- (a) in payment of any customs duty which is due in consequence of the aircraft having been brought into the United Kingdom;
- (b) in payment of any regulator expenses that remain unpaid;
- (c) in payment of any charges in respect of any aircraft operated by the defaulting operator which the court has found to be due by virtue of section 73(1) of the Transport Act 2000;
- (d) in payment of any airport charges incurred in respect of the aircraft which are due from the defaulting operator to the person entitled to levy charges in respect of the aerodrome at which the aircraft was detained under regulation 39(1);
- (e) in relation to a detention under regulation 39(1)(a), in payment of the civil penalty in respect of which the aircraft was detained and sold;
- (f) in payment of any other civil penalty that the defaulting operator has not paid.

(2) The regulator must, after making the payments under sub-paragraph (1), pay any residue from the proceeds of sale to the person or persons whose interests have been divested by reason of the sale.

Equipment and documents

6.—(1) The power to detain and sell an aircraft under regulation 39 and this Schedule includes the power to detain and sell equipment and stores carried in the aircraft provided it is the property of the defaulting operator; and for that purpose references to the aircraft include references to any such equipment and stores.

(2) The power of detention under regulation 39 extends to any aircraft documents carried in the aircraft, and any such documents may, if the aircraft is sold under these Regulations, be transferred by the regulator to the purchaser.

Assistance of aerodrome operator

7.—(1) An aerodrome operator must provide such reasonable assistance and advice as the regulator may require in connection with any of the regulator's functions under this Schedule.

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(2) An aerodrome operator is entitled to recover from the regulator a sum equal to any expense reasonably incurred in providing the regulator with assistance or advice under sub-paragraph (1).

Procedure for applying for leave to sell an aircraft

8.—(1) The following procedure applies where the regulator proposes to apply to the court for leave to sell an aircraft under paragraph 4.

(2) At least 21 days before applying to the court the regulator must, unless it is impracticable to do so, serve a notice in accordance with sub-paragraph (5) on—

- (a) the person in whose name the aircraft is registered;
- (b) any person who appears to the regulator to be the owner of the aircraft;
- (c) any person who appears to the regulator to be a charterer of the aircraft whether or not by demise;
- (d) any person who appears to the regulator to have the management of the aircraft for the time being;
- (e) any person who appears to the regulator to be the operator of the aircraft;
- (f) any person who is registered as a mortgagee of the aircraft under an Order in Council made under section 86 of the Civil Aviation Act 1982 ^{F40} or who appears to the regulator to be a mortgagee of the aircraft under the law of any country other than the United Kingdom;
- (g) any other person who appears to the regulator to have a proprietary interest in the aircraft or any part of it [^{F41}(including an international interest within the meaning of the International Interests in Aircraft Equipment (Cape Town Convention) Regulations 2015)].

(3) Where a person who has been served with a notice in accordance with sub-paragraph (2) informs the regulator within the period of 14 days beginning with the day following service of the notice of the person's desire to become a party to the proceedings, the regulator must make that person a party to the application.

(4) At the same time as serving any notice under sub-paragraph (2), the regulator must publish a copy of that notice—

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

(5) A notice under sub-paragraph (2) must—

- (a) state the nationality and registration marks of the aircraft;
- (b) state the type of aircraft;
- (c) state, as the case may be, the matters mentioned in sub-paragraph (6) or (7);
- (d) invite the person to whom the notice is given to inform the regulator within 14 days after the date of service of the notice if the person wishes to become a party to the proceedings on the application.

(6) The matters mentioned in this sub-paragraph are that—

- (a) by reason of default in the payment of a civil penalty, the regulator, on a date specified in the notice, detained the aircraft under these Regulations; and
- (b) unless payment of the sum so due is made within a period of—
 - (i) 56 days beginning with the date when the detention began, or
 - (ii) 21 days after the date of service of the notice, if later,

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the regulator may (subject to the provisions of this Schedule) apply to the court for leave to sell the aircraft.

- (7) The matters mentioned in this sub-paragraph are that—
- (a) by reason of an operating ban having been imposed on the operator of the aircraft under Article 16(10) of the Directive the regulator, on a date specified in the notice, detained the aircraft under these Regulations; and
 - (b) unless the operating ban has been lifted within the period of 56 days beginning with the date on which the detention began and the operator of the aircraft has paid the regulator expenses by a date specified in the notice, the regulator may (subject to the provisions of this Schedule) apply to the court for leave to sell the aircraft.
- (8) A notice under sub-paragraph (2) must be served by the regulator—
- (a) delivering it to the person to whom it is to be sent;
 - (b) leaving it at that person's usual or last known place of business or abode;
 - (c) sending it, addressed to that person at that person's usual or last known place of business or abode, by a registered post service or by a postal service which provided for the delivery of the notice by post to be recorded; or
 - (d) if the person to whom it is to be sent is an incorporated company or body, delivering it to the secretary, clerk or other appropriate officer of the company or body at its registered or principal office or sending it, addressed to the secretary, clerk or other officer of the company or body at that office, by a registered post service or by a postal service which provides for the delivery of the notice by post to be recorded.

(9) In sub-paragraph (8), “registered post service” and “postal service” have the meaning given in section 125(1) of the Postal Services Act 2000^{F42}; and any notice which is sent by a postal service in accordance with that sub-paragraph to a place outside the United Kingdom must be sent by air mail or by some other equally expeditious means.

Textual Amendments

F40 1982 c. 16.

F41 Words in Sch. 9 para. 8(2)(g) added (coming into force in accordance with reg. 2 of the amending S.I.) by [The International Interests in Aircraft Equipment \(Cape Town Convention\) Regulations 2015 \(S.I. 2015/912\)](#), reg. 2, [Sch. 5 para. 5](#) (with reg. 51)

F42 2000 c. 26.

SCHEDULE 10

Regulation 40

Aircraft operating bans

Application for an operating ban

1.—(1) Where the Secretary of State intends to make a request to the European Commission under Article 16(5) of the Directive to impose an operating ban on a UK administered operator (“A”), the Secretary of State must first—

- (a) receive consent from—
 - (i) the Scottish Ministers, where SEPA is the regulator;
 - (ii) the Welsh Ministers, [^{F43}where the NRBW is the regulator];

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- (iii) the Department of the Environment in Northern Ireland, where the chief inspector is the regulator; and
 - (b) give notice to the regulator.
- (2) A notice under sub-paragraph (1)(b) may require relevant information to be provided to the Secretary of State by a deadline specified in the notice, and may require in particular—
- (a) evidence that A has not complied with obligations under these Regulations; and
 - (b) details of any enforcement action against A that has been taken by the regulator.
- (3) Following the giving of notice under sub-paragraph (1)(b) and, where applicable, the provision of information under sub-paragraph (2), the Secretary of State must give notice to A.
- (4) A notice under sub-paragraph (3) must—
- (a) include a copy of any information provided under sub-paragraph (2);
 - (b) include a copy of the request that the Secretary of State intends to send to the European Commission;
 - (c) give A an opportunity to make representations before the Secretary of State makes the request; and
 - (d) set out the deadline by which those representations must be made.
- [^{F44}(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.]

Textual Amendments

F43 Words in Sch. 10 para. 1(1)(a)(ii) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 4 para. 427** (with Sch. 7)

F44 Sch. 10 para. 1(5) inserted (22.12.2014) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2014 \(S.I. 2014/3125\)](#), regs. 1(1), **22**

Enforcement of an operating ban

2.—(1) Where the European Commission has adopted a decision to impose an operating ban on a person (“P”) under Article 16(10) of the Directive, the regulator must take all reasonable steps to ensure that P does not operate a flight that departs from or arrives in the United Kingdom.

(2) The steps a regulator may take under sub-paragraph (1) include—

- (a) subject to sub-paragraph (3), issuing to aerodrome operators (or to any other person) any direction that the regulator deems necessary to enforce the ban;
- (b) detaining and selling any aircraft of which P is the operator, in accordance with regulation 39(1)(b) and Schedule 9.

(3) Before issuing a direction under sub-paragraph (2)(a) the regulator must receive approval from the authority and (where different) the relevant authority.

(4) A person to whom a direction is issued under sub-paragraph (2)(a)—

- (a) must comply with that direction, but
 - (b) is entitled to recover from the regulator a sum equal to any expense reasonably incurred by that person in complying with the direction.
- (5) The regulator is entitled to recover as a civil debt from the operator concerned all sums incurred under sub-paragraph (4).
- (6) In sub-paragraph (3) “relevant authority” means, where the principal place of business of the person to be directed is—
- (a) in Wales, the Welsh Ministers;
 - (b) in Scotland, the Scottish Ministers;
 - (c) in Northern Ireland, the Department of the Environment in Northern Ireland;
 - (d) not in Wales, Scotland or Northern Ireland, the Secretary of State.

SCHEDULE 11

Regulation 78(1) and (3)

Appeals to the Scottish Ministers

PART 1

1.—(1) Any person who wishes to appeal to the Scottish Ministers (“the appeal body”) under regulation 73(1) against a decision of SEPA must—

- (a) give to the appeal body written notice of the appeal together with the documents specified in sub-paragraph (2); and
 - (b) at the same time, send to the regulator a copy of that notice together with copies of the documents specified in sub-paragraph (2)(a) and (e).
- (2) The documents mentioned in sub-paragraph (1) are—
- (a) a statement of the grounds of appeal;
 - (b) a copy of any relevant application;
 - (c) a copy of any relevant monitoring plan, aviation emissions plan, or benchmarking plan (as defined by regulation 20);
 - (d) a copy of any relevant correspondence between the appellant and the regulator;
 - (e) a copy of any notice (or particulars of any deemed refusal) which is the subject matter of the appeal; and
 - (f) a statement indicating whether the appellant wishes the appeal to be in the form of a hearing or to be disposed of on the basis of written representations.

(3) An appellant may withdraw an appeal by notifying the appeal body in writing and must send a copy of that notification to the regulator.

2.—(1) Subject to sub-paragraph (2), notice of appeal in accordance with paragraph 1 is to be given before the expiry of the period of 24 days beginning with the date that the decision takes effect.

(2) The appeal body may in a particular case allow notice of appeal to be given after the expiry of the period in sub-paragraph (1) where they are satisfied that there was good reason for the applicant's failure to bring the appeal in time.

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3.—(1) The regulator must, within 16 days of receipt of the copy of the notice of appeal sent in accordance with paragraph 1, give notice of it to any person who appears to the regulator to have a particular interest in the subject matter of the appeal.

(2) A notice under sub-paragraph (1) must—

- (a) state that notice of appeal has been given;
- (b) state the name of the appellant;
- (c) describe the decision or notice to which the appeal relates;
- (d) state that if a hearing is to be held wholly or partly in public, an interested party will be notified of the date of the hearing; and
- (e) state that an affected party may request to be heard at a hearing.

(3) An interested party may request the regulator to provide a copy of the documents set out in paragraph 1(2) for the purposes of the appeal only and where such a request is made the regulator must provide the documents as soon as is reasonably practicable.

(4) An interested party—

- (a) may make representations with respect to the appeal to the appeal body in writing within 16 days beginning with the date of the notice under sub-paragraph (1);
- (b) must, when making those representations, state whether or not their civil rights will be determined in the appeal, and, if so, which civil rights will be determined.

(5) The appeal body must provide a copy of any representations made under sub-paragraph (4) to the appellant and the regulator.

(6) The regulator must, within 8 days of sending a notice under sub-paragraph (1), notify the appeal body of the persons to whom and the date on which the notice was sent.

(7) The appeal body must, as soon as possible after receiving representations under sub-paragraph (4), determine whether an interested party is an affected party.

(8) In the event of an appeal being withdrawn, the regulator must give notice of the withdrawal to all interested parties.

4.—(1) Before determining an appeal, the appeal body may afford the appellant, the regulator and any affected party an opportunity of appearing before and being heard by a person appointed by the appeal body (the “person holding the hearing”) and it must do so in any case where a request is made by the appellant, the regulator or any affected party.

(2) A hearing held under sub-paragraph (1) may, if the person holding the hearing so decides, be held wholly or partly in private.

(3) Where the appeal body causes a hearing to be held under sub-paragraph (1) it must give the appellant, the regulator and any affected party at least 24 days notice (or such shorter period of notice as they may agree) of the date, time and place fixed for the holding of the hearing.

(4) In the case of a hearing which is to be held wholly or partly in public, the appeal body must, at least 24 days before the date fixed for the holding of the hearing—

- (a) publish a copy of the notice referred to in sub-paragraph (3) in a newspaper circulating in the locality in which the installation is operated, or (as the case may be) in an appropriate international aviation publication; and
- (b) serve a copy of that notice on every interested party who has made representations in writing to the appeal body.

(5) The appeal body may vary the date fixed for the holding of any hearing and sub-paragraphs (3) and (4) apply to the variation of a date as they applied to the date originally fixed.

(6) The appeal body may vary the time or place for the holding of a hearing and must give such notice of any such variation as appears to the appeal body to be reasonable.

(7) The persons entitled to be heard at a hearing are the appellant, the regulator and any affected party.

(8) Nothing in sub-paragraph (7) prevents the person holding the hearing from permitting any other persons to be heard at the hearing and such permission must not be unreasonably withheld.

(9) After the conclusion of a hearing, the person holding the hearing must make a report in writing to the appeal body which must include that person's conclusions and recommendations, or decision not to make any recommendation and in all cases the reasons supporting the report.

(10) Paragraph 13(5) applies to hearings held under this paragraph as if references to the appointed person in that paragraph were references to the person holding the hearing under this paragraph.

5.—(1) Where an appeal under regulation 73(1) is to be disposed of on the basis of written representations, the regulator must submit any written representations to the appeal body not later than 24 days after receiving a copy of the documents mentioned in paragraph 1(2)(a) and (e).

(2) The appellant must make any further representations by way of reply to any representations from the regulator not later than 16 days after the date of submission of those representations by the regulator.

(3) Any representations made by the appellant or the regulator must bear the date on which they are submitted to the appeal body.

(4) When the regulator or the appellant submits any representations to the appeal body they must at the same time send a copy of them to the other party.

(5) The appeal body must send to the appellant and the regulator a copy of any representations made to the appeal body by any interested party and must allow the appellant and the regulator a period of not fewer than 16 days in which to make representations on them.

(6) The appeal body may in a particular case—

- (a) set earlier or later time limits than those mentioned in this Part;
- (b) require or permit exchanges of representations between the parties in addition to those mentioned in sub-paragraphs (1) and (2).

6.—(1) The appeal body must give notice to the appellant of the determination of the appeal and must provide the appellant with a copy of any report mentioned in paragraph 4(9).

(2) The appeal body must at the same time send—

- (a) a copy of the documents mentioned in sub-paragraph (1) to the regulator; and
- (b) a copy of the determination of the appeal to any interested party who made representations to the appeal body and, if a hearing was held, to any other person who made representations at the hearing.

7. Where an appeal is made against the refusal of an application for an allocation under Schedule 7 or Schedule 8, the appeal body must, where practicable, determine the appeal before the deadline in paragraph 7(4) of Schedule 7 or Schedule 8, as appropriate.

8. Where the appeal body's determination of an appeal is quashed in proceedings before any court, the appeal body—

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

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- (b) must afford to those persons the opportunity of making, within 31 days of the date of the statement, written representations in respect of those matters; and
- (c) may, as the appeal body thinks fit, cause a hearing to be held or reopened and, if it does so, paragraphs 4(2) to (10) apply to the hearing or the reopened hearing as they apply to a hearing held under paragraph 4(1),

and paragraph 6 applies to the re-determination of the appeal as it applies to the determination of an appeal.

9. In this Part—

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

PART 2

10. In this Part—

- “appointed person” means a person appointed under regulation 78(2)(a);
- “appointment”, in the case of any appointed person, means appointment under regulation 78(2)(a).

11. An appointment must be in writing and—

- (a) may relate to any particular appeal, matters or questions specified in the appointment or to appeals, matters or questions of a description so specified;
- (b) may provide for any function to which it relates to be exercisable by the appointed person either unconditionally or subject to the fulfilment of such conditions as may be specified in the appointment; and
- (c) may, by notice in writing to the appointed person, be revoked at any time by the appeal body in respect of any appeal, matter or question which has not been determined by the appointed person before that time.

12. Subject to the provisions of this Part, an appointed person, in relation to any appeal, matter or question to which the appointed person's appointment relates, has the same powers and duties as the appeal body, other than any function of appointing a person for the purpose—

- (a) of enabling persons to appear before and be heard by the person so appointed; or
- (b) of referring any question or matter to that person.

13.—(1) If the appellant, the regulator or any person whose civil rights are to be determined in the appeal expresses a wish to appear before and be heard by the appointed person, the appointed person must give them an opportunity of appearing and being heard.

(2) Whether or not a person under sub-paragraph (1) has asked for an opportunity to appear and be heard, the appointed person—

- (a) may hold a local inquiry or other hearing in connection with the appeal, matter or question; and
- (b) must if the appeal body so directs, hold a local inquiry in connection with an appeal, matter or question.

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(3) Where an appointed person holds a local inquiry or other hearing by virtue of this Part, an assessor may be appointed by the appeal body to sit with the appointed person at the inquiry or hearing and advise the appeal body on any matters arising, notwithstanding that the appointed person is to determine the appeal, matter or question.

(4) Subject to sub-paragraphs (5) and (6), the costs of a local inquiry held under this Part must be defrayed by the appeal body.

(5) Subsections (3) to (8) of section 210 of the Local Government (Scotland) Act 1973 ^{F45} (which relates to the costs of and holding of local inquiries) apply to hearings held under this Part by an appointed person as they apply to inquiries held under that section, but with the following modifications, that is to say—

- (a) with the substitution in subsection (3) (notice of inquiry) for the reference to the person appointed to hold the inquiry of a reference to the appointed person;
- (b) with the substitution in subsection (4) (evidence) for the reference to the person appointed to hold the inquiry and, in paragraph (b), the reference to the person holding the inquiry of references to the appointed person;
- (c) with the substitution in subsection (6) (expenses of witnesses etc) for the references to the Minister causing the inquiry to be held of a reference to the appointed person or the Scottish Ministers;
- (d) with the substitution in subsection (7) (expenses)—
 - (i) for the first reference to the Minister of a reference to the Scottish Ministers; and
 - (ii) for the second reference to the Minister of a reference to the appointed person or the Scottish Ministers;
- (e) with the substitution in subsection (7A) (recovery of entire administrative expense)—
 - (i) for the first reference to the Minister of a reference to the appointed person or the Scottish Ministers;
 - (ii) in paragraph (a), for the reference to the Minister of a reference to the Scottish Ministers; and
 - (iii) in paragraph (b), for the reference to the Minister holding the inquiry of a reference to the Scottish Ministers;
- (f) with the substitution in subsection (7B) (power to prescribe daily amount)—
 - (i) for the first reference to the Minister of a reference to the Scottish Ministers;
 - (ii) in paragraphs (a) and (c), for the references to the person appointed to hold the inquiry of references to the appointed person; and
 - (iii) in paragraph (d), for the reference to the Minister of a reference to the appointed person or the Scottish Ministers; and
- (g) with the substitution in subsection (8) (certification of expenses)—
 - (i) for the words “the Minister has”, of the words “the Scottish Ministers have”;
 - (ii) for the reference to him and the reference to the Crown of references to the appointed person or the Scottish Ministers.

Textual Amendments

F45 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.

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14.—(1) Where—

- (a) under paragraph 11(c) the appointment of the appointed person is revoked in respect of any appeal, matter or question, and
- (b) the appeal body does not itself propose to determine that appeal, matter or question,

the appeal body must appoint another person under regulation 78(2)(a) to determine the appeal, matter or question.

(2) Where such a new appointment is made, the consideration of the appeal, matter or question, or any hearing in connection with it, must be begun afresh.

15.—(1) Anything done or omitted to be done by an appointed person in, or in connection with, the exercise of any function to which the appointment relates is for all purposes to be treated as done or omitted to be done by the appeal body in its capacity as such.

(2) Sub-paragraph (1) does not apply—

- (a) for the purposes of so much of any contract made between the appeal body and the appointed person as relates to the exercise of the function; or
- (b) for the purposes of any criminal proceedings brought in respect of anything done or omitted to be done by an appointed person in, or in connection with, the exercise or purported exercise of any function to which the appointment relates.

SCHEDULE 12

Regulation 78(4)

Appeals (Northern Ireland)

1.—(1) A person who wishes to appeal to the Planning Appeals Commission (“the appeals commission”) under regulation 73(1) against a decision of the chief inspector must give to the appeals commission written notice of the appeal together with a statement of the grounds of appeal.

(2) The appeals commission must as soon as is reasonably practicable send to the regulator a copy of that notice and that statement.

(3) An appellant may withdraw an appeal by notifying the appeals commission; and the appeals commission must as soon as is reasonably practicable notify the regulator of that withdrawal.

2. Notice of appeal in accordance with paragraph 1 is to be given before the expiry of the period of 47 days beginning with the date on which the decision takes effect.

3.—(1) The appeals commission must determine the appeal and paragraphs (1), (3), (4) and (5) of Article 111 of the Planning (Northern Ireland) Order 1991^{F46} 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.

Textual Amendments

F46 S.I. 1991/1220 (N.I. 11); relevant amending instruments are S.I. 1999/660 (N.I. 4), 2003/430 (N.I. 8) and 2006/1252 (N.I. 7).

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4. An appeal under this Schedule must be accompanied by a fee; and Article 127(2)(b) of the Planning (Northern Ireland) Order 1991 has effect as if the reference to an appeal under that Order included a reference to an appeal under these Regulations.

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