
DRAFT STATUTORY INSTRUMENTS

2020 No.

The Greenhouse Gas Emissions Trading Scheme Order 2020

PART 7

Enforcement

CHAPTER 2

Civil penalties

Failure to surrender allowances

52.—(1) Subject to paragraphs (4) to (9), the operator of an installation or an aircraft operator is liable to the civil penalty (the “excess emissions penalty”) referred to in paragraph (2) where—

- (a) in the case of the operator, the operator fails to surrender sufficient allowances, contrary to—
 - (i) article 27;
 - (ii) the requirement of a surrender notice set out in paragraph 11(4)(b)(iii) of Schedule 6;
 - (iii) the requirement of a revocation notice set out in paragraph 12(5)(b)(iii) of that Schedule;
- (b) in the case of the aircraft operator, the aircraft operator fails to surrender sufficient allowances, contrary to article 34.

(2) The excess emissions penalty is £100 multiplied by the inflation factor for each allowance that the operator or the aircraft operator fails to surrender.

(3) For the purpose of calculating the excess emissions penalty—

- (a) under paragraph (1)(a)(i), a deemed increase in the installation’s reportable emissions under paragraph 4(4) of Schedule 6 must be disregarded;
- (b) under paragraph (1)(b), a deemed increase in an aircraft operator’s aviation emissions under article 34(2) must be disregarded.

(4) This paragraph applies where—

- (a) the regulator becomes aware that an installation’s reportable emissions (as determined by the regulator under article 45) in a scheme year exceed the installation’s verified reportable emissions for that year; and
- (b) the operator of the installation failed to surrender allowances equal to the difference—
 - (i) on or before 30th April in the year following the scheme year referred to in sub-paragraph (a); or
 - (ii) where the end date set out in a surrender notice under paragraph 11 of Schedule 6 or a revocation notice under paragraph 12 of that Schedule falls in the scheme year referred to in sub-paragraph (a), on or before the date set out in the notice for the surrender of allowances.

- (5) In paragraph (4), “verified reportable emissions” means reportable emissions—
- (a) verified in accordance with a condition of a permit included under paragraph 4(2)(b) of Schedule 6 (including for the purpose of complying with the requirements of a surrender notice under paragraph 11, or a revocation notice under paragraph 12, of that Schedule); or
 - (b) previously determined by the regulator under article 45.
- (6) Where paragraph (4) applies, the operator is liable to the civil penalty referred to in paragraph (10) (and not the excess emissions penalty) in respect of the failure to surrender allowances referred to in paragraph (4)(b).
- (7) This paragraph applies where the regulator becomes aware that—
- (a) an aircraft operator’s aviation emissions (as determined by the regulator under article 45) in a scheme year exceed the aircraft operator’s verified aviation emissions for that year; and
 - (b) the aircraft operator failed to surrender allowances equal to the difference on or before 30th April in the year following the scheme year referred to in sub-paragraph (a).
- (8) In paragraph (7), “verified aviation emissions” means aviation emissions—
- (a) verified under article 33(1);
 - (b) considered verified under article 33(2); or
 - (c) previously determined by the regulator under article 45.
- (9) Where paragraph (7) applies, the aircraft operator is liable to the civil penalty referred to in paragraph (10) (and not the excess emissions penalty) in respect of the failure to surrender allowances referred to in paragraph (7)(b).
- (10) The civil penalty is £20 multiplied by the inflation factor for each allowance that the operator or the aircraft operator failed to surrender.
- (11) For the purposes of this article, the inflation factor is $(CPI_2 - CPI_1) / CPI_1$ or 1, whichever is greater, where—
- CPI₂ is the consumer prices index for the most recent March for which the consumer prices index is published when the penalty notice is given;
 - CPI₁ is the consumer prices index for March 2021.
- (12) In paragraph (11), “consumer prices index” means—
- (a) the all items consumer prices index published by the Statistics Board⁽¹⁾; or
 - (b) if that index is not published for a month, any substituted index or index figures published for that month by the Statistics Board.

(1) The Statistics Board was established by section 1 of the Statistics and Registration Service Act 2007 (c. 18).