
STATUTORY INSTRUMENTS

2009 No. 2301

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

[^{F1}PART 1

General

Textual Amendments

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

Citation and commencement

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

Interpretation

- 2.** In these Regulations—

“additional daily penalty” has the meaning given by regulation 21(1)(b);

“address” means, in relation to electronic communications, any number or address used for the purpose of such communication;

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

“aircraft operator” has the meaning given by regulation 3;

“allowance” means an allowance issued to aircraft operators under Article 3e of the EU ETS Directive;

“appeal body” has the meaning given by regulation 36(6);

“area”, in relation to a regulator, means—

(a) in respect of the Environment Agency, England and Wales;

(b) in respect of the Scottish Environment Protection Agency, Scotland;

(c) in respect of the chief inspector, Northern Ireland;

“authority” has the meaning given by regulation 7;

“aviation activity” means the category of aviation activity listed in Annex I to the EU ETS Directive but with the reference to 1st January 2012 omitted;

“aviation emissions” means emissions from an aviation activity;

“benchmarking plan” means a plan issued under regulation 10(1)(a);

“chief inspector” means the chief inspector constituted under regulation 8(3) of the Northern Ireland Regulations;

“Commission list” means the list of operators specified in Commission Regulation (EC) No 748/2009 on the list of aircraft operators which performed an aviation activity listed in Annex I to Directive 2003/87/EC on or after 1 January 2006 specifying the administering Member State for each aircraft operator ^{M1}, as amended from time to time;

“electronic communication” has the same meaning as in the Electronic Communications Act 2000 ^{M2};

“emissions” means the release of greenhouse gases into the atmosphere;

“emissions plan” means a plan issued under regulation 15;

“EU ETS Directive” means Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emissions allowance trading within the Community and amending Council Directive 96/61/EC ^{M3}, as amended from time to time;

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

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

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

“Monitoring and Reporting Decision” means Commission Decision 2007/589/EC establishing guidelines for the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87/EC of the European Parliament and of the Council ^{M4}, as amended from time to time;

“Northern Ireland Regulations” means the Pollution Prevention and Control Regulations (Northern Ireland) 2003 ^{M5};

“Planning Appeals Commission” means the Planning Appeals Commission established under Article 110 of the Planning (Northern Ireland) Order 1991 ^{M6};

“registered office” means the address that is required under section 86 of the Companies Act 2006 ^{M7};

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

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

“trading period” means one of the following periods—

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

“UK operator” means a person who is—

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

“UKAS” means the United Kingdom Accreditation Service ^{M8}.

Marginal Citations

M1 OJ No L 219, 22.08.09, p.1.

M2 2000 c.7; the definition of electronic communication in section 15(1) was amended by the Communications Act 2003 (c. 21), section 406(1) and Schedule 17, paragraph 158.

M3 OJ No. L 275, 25.10.03, p.32. The Directive is amended by Directive 2004/101/EC, OJ No. L 338, 13.11.2004, p.18.

- M4** OJ No. L 59, 26.02.04, p.1.
- M5** S.R. (NI) 2003 No 46, amended by [S.I. 2003/496](#), [S.I. 2003/3311](#); there is another amending instrument which is not relevant.
- M6** [S.I. 1991/1220 \(N.I.11\)](#); relevant amending instruments are [S.I. 1999/660 \(N.I.4\)](#), 2003/430 (N.I.8).
- M7** 2006 c..46.
- M8** The United Kingdom Accreditation Service Limited (company number 03076190) is a company limited by guarantee and which operates under a memorandum of understanding made on 1st August 1995 between it and the then Secretary of State for Trade and Industry.

Aircraft operator

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

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

Regulator: general

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

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

Regulator: assessment of emissions

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

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

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

(3) Where—

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

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

Regulator: registered office changes

6.—(1) Where—

- (a) a UK operator changes its registered office to the area of a different regulator (“A”); and

- (b) the UK operator gives notice of the change to A and its existing regulator,

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

(2) Where—

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

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

Authority

7. In regulations 21, 38 and 39 the authority is—

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

PART 2

Application for a free allocation

Application of this Part

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

Application for a benchmarking plan

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

(2) That application must contain—

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

Issue of a benchmarking plan

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

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

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

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

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

Monitoring tonne-kilometre data

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

Reporting tonne-kilometre data

12. Where this regulation applies a UK operator must—

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

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

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

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

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

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

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

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

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

PART 3

Monitoring and reporting aviation emissions

Application for an emissions plan

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

Issue of an emissions plan

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

Monitoring emissions

16. From the date it is issued with an emissions plan, an aircraft operator must, in each calendar year from 1st January 2010, monitor its aviation emissions in accordance with—

- (a) that plan; and
- (b) the Monitoring and Reporting Decision.

Reporting emissions

17.—(1) An aircraft operator must for each calendar year from 1st January 2010—

- (a) prepare a report of its aviation emissions; and
- (b) ensure that report—
 - (i) complies with the Monitoring and Reporting Decision and Annex IV of the EU ETS Directive; and
 - (ii) is verified by an independent verifier in accordance with and the Monitoring and Reporting Decision and Annex V to the EU ETS Directive.

(2) An aircraft operator must submit a report prepared and verified in accordance with paragraph (1) to the regulator by 31st March in the following year.

Monitoring and Reporting Decision requirements

18. An aircraft operator must—

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

Duty of the regulator to determine emissions

19.—(1) Where an aircraft operator fails to comply with regulation 17, the regulator must determine the aviation emissions of the aircraft operator that have not been reported in accordance with that regulation.

(2) Where the regulator is required to make a determination under paragraph (1) it—

- (a) must, if an aircraft operator submits a report that complies with regulation 17 late but before the regulator makes a determination under paragraph (1), use the emissions reported for its determination;
- (b) must, so far as possible, ensure that determination complies with the Monitoring and Reporting Decision and Annexes IV and V to the EU ETS Directive;
- (c) must give notice of any determination under paragraph (1) to the aircraft operator; and
- (d) may recover the cost of making that determination from the aircraft operator.

PART 4

Information

Information

20.—(1) The regulator may serve a notice on an aircraft operator requiring the aircraft operator to provide information.

- (2) A notice under paragraph (1)—
- (a) must set out the information required;
 - (b) may state the form in which that information is to be provided;
 - (c) must state the deadline for the provision of that information;
 - (d) may only be served for the purpose of discharging the regulator's functions under these Regulations.

PART 5

Civil penalties

Procedure

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

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

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

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

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

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

(6) Any civil penalty imposed is recoverable—

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

(7) The regulator must—

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

Variable amounts

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

- (2) Before substituting a lower amount under paragraph (1) the regulator must—
 - (a) take into account the seriousness of the failure to comply; and
 - (b) ensure that the new amount provides for an effective and dissuasive penalty.

Waiver and modification

- 23.**—(1) Paragraph (2) applies where—
- (a) the person liable to a civil penalty or upon whom a civil penalty has been imposed demonstrates to the satisfaction of the regulator, within 8 weeks of the service of a notice under regulation 21(1), that the person exercised all due diligence and took all steps possible—
 - (i) to comply with the provision of the Regulations giving rise to the penalty; or
 - (ii) to rectify any failure in compliance as soon as it came to that person's notice, provided that the person was acting reasonably in being unaware of the failure in compliance; and
 - (b) in all the circumstances it is reasonable to exercise the powers set out in paragraph (2).
- (2) The regulator may—
- (a) waive a civil penalty;
 - (b) impose or substitute a lower civil penalty;
 - (c) allow the person a period of no more than 31 days to rectify any failure in compliance before it imposes a civil penalty, subject to such conditions (if any) as it considers appropriate;
 - (d) extend the time for payment.

Failure to submit or resubmit an application for an emissions plan

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

Failure to monitor aviation emissions

- 25.**—(1) The civil penalties in paragraph (2) apply where an aircraft operator fails to monitor aviation emissions, contrary to regulation 16.

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

Failure to report aviation emissions

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

- (2) The civil penalties are—
- (a) for a failure before 1st January 2012—
 - (i) £1,250; and
 - (ii) £125 for each day that the aircraft operator fails to report or reports late aviation emissions following the service of a notice under regulation 21(1), up to a maximum of £11,250;
 - (b) for a failure on or after 1st January 2012—
 - (i) £3,750; and
 - (ii) £375 for each day that the aircraft operator fails to report or reports late aviation emissions following the service of a notice under regulation 21(1), up to a maximum of £33,750.

Making false or misleading statements

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

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

Failure to comply with requirements of the Monitoring and Reporting Decision

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

- (2) The civil penalties are—
- (a) for a failure before 1st January 2012—
 - (i) £500; and
 - (ii) £50 for each day that the aircraft operator fails to comply with regulation 18 following the service of a notice under regulation 21(1), up to a maximum of £4,500;
 - (b) for a failure on or after 1st January 2012—
 - (i) £1,500; and

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

Failure to comply with information notices

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

(2) The civil penalties are—

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

(i) £500; and

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

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

(i) £1,500; and

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

PART 6

Detention and sale of aircraft for unpaid civil penalties

General

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

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

(a) 56 days of the date when the detention begins; or

(b) if later, 21 days of the date of service of a notice under paragraph 2(1) of Schedule 1,

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

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

Release of aircraft

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

(a) the aircraft operator has made an appeal under regulation 36 in respect of the civil penalty for which the aircraft has been detained and gives to the regulator, pending the determination of the appeal, sufficient security for the payment of that civil penalty; or

(b) where appropriate, the aircraft operator or any other person claiming an interest demonstrates to the satisfaction of the regulator that the aircraft operator is no longer the lessee of the detained aircraft or any part of it.

Court procedures

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

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

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

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

- (a) take such steps for bringing the proposed application to the notice of any person who may have an interest in the aircraft; and
- (b) afford those persons an opportunity of becoming a party to the proceedings.

(4) Where leave is given under paragraph (1) the regulator must sell the aircraft for the best price that can be reasonably obtained.

(5) Failure to comply with paragraph (3) or (4) does not make a sale under regulation 30(2) void or voidable.

Proceeds of sale

33.—(1) The proceeds of any sale under these Regulations must be applied by the regulator in the following order—

- (a) in payment of any customs duty which is due in consequence of the aircraft having been brought into the United Kingdom;
- (b) in payment of the expenses incurred by the regulator in detaining, keeping and selling the aircraft, including its expenses in connection with the application to the court;
- (c) in payment of any charges in respect of any aircraft operated by the aircraft operator which the court has found to be due by virtue of section 73(1) of the Transport Act 2000 ^{M9};
- (d) in payment of any airport charges incurred in respect of the aircraft which are due from the aircraft operator to the person entitled to levy charges in respect of the aerodrome at which the aircraft was detained under regulation 30(1);
- (e) in payment of the civil penalty in respect of which the aircraft was detained and sold;
- (f) in payment of any other civil penalty that the aircraft operator has not paid which is due under regulation 21(3) or (4), even where the failure giving rise to that civil penalty arose before 1st January 2012.

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

Marginal Citations

M9 2000 c. 38.

Equipment and documents

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

and references to the aircraft in regulations 30 to 33 include references to any such equipment and stores.

(2) The power of detention under regulation 30(1) extends to any aircraft documents carried in the aircraft, and any such documents may, if the aircraft is sold under these Regulations, be transferred by the regulator to the purchaser.

Interpretation

35. In this Part—

- (a) “aircraft documents” has the meaning given by section 88(10) of the Civil Aviation Act 1982 ^{M10};
- (b) “airport charges” means charges payable to the owner or manager of an aerodrome for the use of, or for services provided at, an aerodrome but does not include charges payable by virtue of section 73 of the Transport Act 2000;
- (c) “the court” means—
 - (i) in relation to England, Wales and Northern Ireland, the High Court; and
 - (ii) in relation to Scotland, the Court of Session.

Marginal Citations

M10 1982 c. 16.

PART 7

Appeals

General

- 36.—(1) A UK operator may appeal to the appeal body where the regulator has—
- (a) refused the UK operator's application for a benchmarking plan by—
 - (i) notice under regulation 10(1); or
 - (ii) deemed refusal under regulation 10(4);
 - (b) refused to submit the UK operator's report to the Secretary of State by—
 - (i) notice under regulation 13(1)(b); or
 - (ii) deemed refusal under regulation 13(4);
 - (c) served the UK operator a notice under regulation 21(1) in relation to a civil penalty under regulation 27(1).
- (2) An aircraft operator may appeal to the appeal body where the regulator has—
- (a) refused the aircraft operator's application for an emissions plan by—
 - (i) notice under regulation 15(1) or (5); or
 - (ii) deemed refusal under regulation 15(6);
 - (b) served the aircraft operator a notice under regulation 19(2)(c), 20 or 21.
- (3) In determining an appeal under this regulation the appeal body may—
- (a) affirm the notice or deemed refusal;

- (b) quash all or part of the notice or deemed refusal;
 - (c) vary the notice;
 - (d) give directions to the regulator in relation to the subject matter of the appeal;
 - (e) substitute a deemed refusal by the regulator with a decision of the appeal body.
- (4) An appeal brought under paragraph (1)(a), (b) or (2)(a) does not suspend the operation of the notice or deemed refusal.
- (5) An appeal brought under paragraph (1)(c) or (2)(b) suspends the operation of the notice pending the final determination or the withdrawal of the appeal.
- (6) The “appeal body” means—
- (a) in respect of an appeal against a notice or deemed refusal of the Environment Agency—
 - (i) the Welsh Ministers, where the UK operator making the appeal has its registered office in Wales;
 - (ii) otherwise, the Secretary of State;
 - (b) in respect of an appeal against a notice or deemed refusal of the Scottish Environment Protection Agency, the Scottish Ministers;
 - (c) in respect of an appeal against a notice or deemed refusal of the chief inspector, the Planning Appeals Commission.

Procedure and appointment

- 37.—(1) Except where paragraph (4) applies, Schedule 2 has effect in relation to the making and determination of appeals under regulation 36.
- (2) Except where paragraph (4) applies, the appeal body may—
- (a) appoint any person to exercise on its behalf, with or without payment, the function of determining an appeal under regulation 36 or any matter or question involved in such an appeal; or
 - (b) refer any matter or question involved in an appeal under regulation 36 to such person as it may appoint for the purpose, with or without payment.
- (3) Schedule 3 has effect with respect to appointments under paragraph (2)(a).
- (4) Where an appeal under regulation 36 is made to the Planning Appeals Commission, Schedule 4 has effect in relation to the making and determination of the appeal.

PART 8

Directions and guidance to regulators

Directions to regulators

- 38.—(1) The authority may give a direction to the regulator of a general or specific character with respect to the carrying out of any of the regulator's functions under these Regulations.
- (2) A direction under paragraph (1) may direct a regulator—
- (a) to exercise any of its powers under these Regulations or to do so in such circumstances as may be specified in the directions or in such manner as may be so specified; or
 - (b) not to exercise those powers, or not to do so in such circumstances or such manner as may be specified in the directions.

- (3) Any direction given under these Regulations must be in writing and may be varied or revoked.
- (4) The regulator must comply with any direction addressed to it.

Guidance to regulators

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

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

PART 9

Miscellaneous

Notices

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

Submission of reports and applications for plans

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

- (2) Any submission of a report or application for a plan made under these Regulations—
 - (a) must, unless the regulator agrees otherwise, be sent to the regulator electronically;
 - (b) may, if agreed by the regulator, be withdrawn at any time.

Functions of the regulator: Northern Ireland

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

Assistance and advice to be provided by the Civil Aviation Authority

43.—(1) The Civil Aviation Authority must provide such assistance and advice as the regulator may require in connection with any of the regulator's functions under these Regulations.

- (2) The Civil Aviation Authority is entitled to recover from the regulator a sum equal to any expense reasonably incurred by it in providing the regulator with assistance or advice under paragraph (1).

Department of Energy and Climate Change]

David Kidney
Parliamentary Under Secretary of State

Changes to legislation:

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