
STATUTORY INSTRUMENTS

2011 No. 765

CLIMATE CHANGE

The Aviation Greenhouse Gas Emissions Trading
Scheme (Amendment) Regulations 2011 (revoked)^{F1}

<i>Made</i>	- - - -	<i>14th March 2011</i>
<i>Laid before Parliament</i>		<i>15th March 2011</i>
<i>Coming into force</i>	- -	<i>25th March 2011</i>

F1

Textual Amendments

F1 Regulations revoked (1.1.2013) by [The Greenhouse Gas Emissions Trading Scheme Regulations 2012 \(S.I. 2012/3038\)](#), [reg. 85\(e\)](#) (with [regs. 85, 87, Sch. 1](#))

EXPLANATORY NOTE

(This note is not part of the Regulations)

Directive [2003/87/EC](#) of the European Parliament and of the Council⁽¹⁾ (“the EU ETS Directive”) established a scheme for greenhouse gas emission trading within the European Union, and was transposed in the United Kingdom by the Greenhouse Gas Emissions Trading Scheme Regulations 2005⁽²⁾. The EU ETS Directive was amended, in particular, by Directive [2008/101/EC](#) of the European Parliament and of the Council⁽³⁾ (“the Aviation ETS Directive”) so as to include aviation activities in the scheme.

These Regulations amend the Aviation Greenhouse Gas Emissions Trading Scheme Regulations 2010⁽⁴⁾ (“the 2010 Regulations”), which transpose the Aviation ETS Directive in the United Kingdom. That Directive was previously transposed in part by the Aviation Greenhouse Gas Emissions Trading Scheme Regulations 2009⁽⁵⁾ (“the 2009 Regulations”), which were revoked by the 2010 Regulations with a number of savings and transitional provisions. In particular, by virtue of those provisions, Part 2 of the 2009 Regulations (which provides for applications for a free allocation of emission allowances) continues to have effect in relation to the first two trading periods of the scheme, namely 2012 and 2013 to 2020.

Article 3 of the EU ETS Directive, as amended, contains a definition of “aircraft operator”, and Article 18a(1) sets out criteria for determining which Member State should regulate the operator as its “administering Member State”. By Article 18a(3), the European Commission is required to publish and regularly update a list of aircraft operators, specifying the administering Member State for each one. The existing definition of “UK operator”, in regulation 2 of both the 2009 and the 2010 Regulations, has the effect that an operator who is not on the Commission’s list cannot be treated as a UK operator for the purposes of either set of Regulations.

Regulation 3(1) amends the definition of “UK operator” in regulation 2 of the 2010 Regulations to take account of the Secretary of State’s duty under the new regulation 2A (see below), and inserts a new definition of “unlisted operator”.

Regulation 3(2) inserts new regulations 2A and 2B. Regulation 2A gives the Secretary of State a duty in certain cases to designate a person as someone who is to be treated as a “UK operator” for the purposes both of the 2009 and the 2010 Regulations. The duty arises where the operator is not mentioned in the Commission’s list, but the Secretary of State is satisfied that the operator meets the criteria in Article 18a(1) for being administered by the United Kingdom. Before making a designation, the Secretary of State must consult the persons mentioned in regulation 2A(4). A designation must be revoked where the Secretary of State ceases to be so satisfied, and in any event ceases to have effect once the operator is included on the Commission’s list. Regulation 2B allows someone to apply to the Secretary of State to be designated under regulation 2A.

Regulation 4(1) makes consequential amendments to regulation 3 of the 2010 Regulations.

The amendments made by *regulation 4(2) and (3)* enable an appeal to be made against a designation (or revocation) made under the new regulation 2A, or against a refusal of an application under the new regulation 2B. Appeal is for reconsideration of the decision by the Secretary of State; but if

(1) OJ No L 275, 25.10.03, p. 32.

(2) [S.I. 2005/925](#), amended by [S.I. 2005/2903](#), [2006/737](#), [2007/465](#), [2007/1096](#), [2007/3433](#) and [2010/1513](#).

(3) OJ No. L 8, 13.1.2009, p. 3.

(4) [S.I. 2010/1996](#).

(5) [S.I. 2009/2301](#).

such an appeal is made the Secretary of State must either appoint a person to determine the appeal, or appoint a person to hold a hearing and make recommendations.

Regulation 4(4) to (6) makes further consequential amendments to the 2010 Regulations.

A full impact assessment of the costs and benefits of this instrument is available from the Department of Energy and Climate Change's National Climate Change Division (telephone 0300 060 4000), and is published alongside the instrument and its Explanatory Memorandum on the legislation website of The National Archives (<http://www.legislation.gov.uk>). A transposition note setting out how these Regulations implement the relevant provisions of the EU ETS Directive is annexed to that Explanatory Memorandum.

Changes to legislation:

There are currently no known outstanding effects for the The Aviation Greenhouse Gas Emissions Trading Scheme (Amendment) Regulations 2011 (revoked).