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## STATUTORY INSTRUMENTS

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# 2012 No. 3038

## The Greenhouse Gas Emissions Trading Scheme Regulations 2012

### PART 1

#### General

##### Citation and commencement

1. These Regulations may be cited as the Greenhouse Gas Emissions Trading Scheme Regulations 2012 and come into force on 1st January 2013.

##### Duty to review these Regulations

2.—(1) The Secretary of State must from time to time—

- (a) carry out a review of these Regulations;
- (b) set out the conclusions of the review in a report; and
- (c) publish the report.

(2) In carrying out the review the Secretary of State must, so far as is reasonable, have regard to how the Directive, and measures adopted under it by the European Commission, are implemented in other member States.

(3) The report must in particular—

- (a) set out the objectives intended to be achieved by the regulatory system established by these Regulations;
- (b) assess the extent to which those objectives are achieved; and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(4) The first report under this regulation must be published before the end of the period of five years beginning with the day on which these Regulations come into force.

(5) Reports under this regulation are afterwards to be published at intervals not exceeding five years.

##### Interpretation

3.—(1) In these Regulations—

“the 2005 Regulations” means the Greenhouse Gas Emissions Trading Scheme Regulations 2005<sup>F1</sup>;

“the 2010 Regulations” means the Aviation Greenhouse Gas Emissions Trading Scheme Regulations 2010<sup>F2</sup>;

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“allocation”, in relation to an allowance, means allocation free of charge in accordance with Chapter [F3<sup>2</sup> or 3] of the Directive [F4<sup>4</sup>(and, except in regulation 87A(3), “allocated” has the corresponding meaning)];

“allowance”—

- (a) in this regulation, has the meaning given in Article 3(a) of the Directive, but
- (b) otherwise (and [F5<sup>5</sup>subject to regulations 54(7), 82(1) and 87B(5)] ) means an allowance other than an aviation allowance;

“annual reportable emissions” means the reportable emissions arising in any scheme year;

“authority” means—

- (a) in relation to an installation which is (or will be) situated in England or an offshore installation, the Secretary of State;
- (b) in relation to an installation, other than an offshore installation, which is (or will be) situated in—
  - (i) Scotland, the Scottish Ministers;
  - (ii) Wales, the Welsh Ministers;
  - (iii) Northern Ireland, the Department of the Environment;
- (c) in relation to a UK administered operator, the authority defined in regulation 20;
- (d) in relation to a banned non-UK operator, the Secretary of State;

[F6<sup>6</sup>“aviation activity”—

- (a) in respect of paragraphs (2) to (9) of Schedule 7, has the meaning given in paragraph 1A of that Schedule; or
- (b) otherwise, means an activity listed in the table in Annex I to the Directive under the section titled ‘Aviation’, excluding the activities listed under—
  - (i) points (a) to (j) of that section; and
  - (ii) point (k) of that section, but as if the reference to “1 January 2013” is to “1 January 2015”;

“aviation allowance” means any allowance allocated in accordance with Article 3e or 3f of the Directive or auctioned in accordance with Article 3d of the Directive;

[F7<sup>7</sup>“aviation emissions” means emissions of carbon dioxide arising from an aviation activity;]

“aviation emissions plan” means an emissions plan as defined by regulation 20;

“banned non-UK operator” means a person on whom an operating ban has been imposed under Article 16(10) of the Directive and who is not a UK administered operator;

“bioliquids” has the meaning given in Article 2(h) of the Renewable Energy Directive;

“cease operation”, in relation to an installation, has the meaning given in paragraph (3);

[F8<sup>8</sup>“change of status notice” means a notice under paragraph 8(1), 8(4) or 9(1) of Schedule 5 that an installation will cease to be treated as an excluded installation;]

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

[F9<sup>9</sup>“commercial air transport operator” has the meaning given in Article 3(p) of the Directive;]

“current operator” has the meaning given by regulation 12(1);

“the 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](#)<sup>F10</sup>, as amended from time to time and as adapted by Annex 20 to the EEA agreement<sup>F11</sup>;

“duly made”, in relation to an application, means made in accordance with the requirements of these Regulations;

“emissions” has the meaning given in Article 3(b) of the Directive;

[<sup>F12</sup>“entry year” means the scheme year following the scheme year in which the operator of an excluded installation is given a change of status notice;]

“excluded installation” means an installation the exclusion of which is deemed to be approved by the European Commission under the first sub-paragraph of Article 27(2) of the Directive, unless a notice has been given to the operator under paragraph 8(1) or (4) or paragraph 9(1) of Schedule 5 (in which case the installation ceases to be an excluded installation as from the date specified in the notice);

“excluded installation emissions permit” means a permit—

- (a) granted following an application under regulation 10(2), or
- (b) which results from a variation under paragraph 2 of Schedule 5;

[<sup>F13</sup>“exempt non-commercial air transport operator” means a UK administered operator who—

- (a) is a non-commercial air transport operator; and
- (b) has annual reportable emissions of less than 1,000 tonnes;]

“fee”, in relation to any matter, means the fee or charge prescribed in respect of that matter by a scheme, or regulations, made under—

- (a) regulation 18;
- (b) section 41A of the Environment Act 1995<sup>F14</sup>;
- (c) regulation 4 of the Greenhouse Gas Emissions Trading Scheme Charging Scheme Regulations (Northern Ireland) 2010<sup>F15</sup>; or
- (d) Article 127 of the Planning (Northern Ireland) Order 1991<sup>F16</sup>;

“the Free Allocation Decision” means Commission Decision 2011/278/EU of 27 April 2011 determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of Directive [2003/87/EC](#)<sup>F17</sup>;

“greenhouse gas emissions permit” means a permit granted following an application under—

- (a) regulation 10(1); or
- (b) regulation 8 of the 2005 Regulations;

“installation” has the meaning given in Article 3(e) of the Directive (and references to an “installation” include a reference to a part of an installation);

“KP registry administrator” has the meaning given by regulation 81(1);

“monitoring and reporting conditions” has the meaning given by paragraph 3(8) of Schedule 5;

“monitoring and reporting requirements” has the meaning given by paragraph 2(3) of Schedule 4;

“the Monitoring and Reporting Regulation” means Commission Regulation (EU) No 601/2012 of 21 June 2012 on the monitoring and reporting of greenhouse gas emissions pursuant to Directive [2003/87/EC](#) of the European Parliament and of the Council<sup>F18</sup>, as amended from time to time;

“new operator” has the meaning given by regulation 12(1);

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[<sup>F19</sup>“non-commercial air transport operator” means any UK administered operator who is not a commercial air transport operator;]

“Northern Ireland Regulations” means the Pollution Prevention and Control Regulations (Northern Ireland) 2003 <sup>F20</sup>;

“notice of surrender” has the meaning given in regulation 13(7);

[<sup>F21</sup>“the NRBW” means the Natural Resources Body for Wales;]

[<sup>F21</sup>“the NRBW Order” means the Natural Resources Body for Wales (Establishment) Order 2012;]

“offshore installation” means—

- (a) an offshore petroleum installation; or
- (b) an offshore storage or unloading installation;

“offshore petroleum installation” means an installation which—

- (a) is used for purposes connected with the exploration for, or exploitation of, petroleum (within the meaning of section 1 of the Petroleum Act 1998 <sup>F22</sup>); and
- (b) is, or will be, situated in the area (together with places above and below it) comprising—
  - (i) those parts of the sea adjacent to England and Wales from the low water mark to the landward baseline of the United Kingdom territorial sea;
  - (ii) the United Kingdom territorial sea apart from those areas comprised in any controlled waters within the meaning of section 30A(1) of the Control of Pollution Act 1974 <sup>F23</sup>; and
  - (iii) those areas of sea in any area for the time being designated under section 1(7) of the Continental Shelf Act 1964 <sup>F24</sup>;

[<sup>F25</sup>“the Offshore Regulations” means the Offshore Combustion Installations (Pollution Prevention and Control) Regulations 2013;]

“offshore storage or unloading installation” means an installation which—

- (a) is used for purposes connected with an activity within section 2(3) or section 17(2) of the Energy Act 2008 <sup>F26</sup>; and
- (b) is, or will be, situated in the area (together with places above and below it) comprising—
  - (i) those parts of the sea adjacent to England from the low water mark to the landward baseline of the United Kingdom territorial sea;
  - (ii) the United Kingdom territorial sea, other than the territorial sea adjacent to Scotland or Wales; and
  - (iii) those areas of sea in a Gas Importation and Storage Zone (within the meaning of section 1(5) of that Act <sup>F27</sup>);

“operator”, in relation to an installation, has the meaning given in paragraph (2) (and “operate” has the corresponding meaning);

“partial transfer” has the meaning given by regulation 12(2);

“permit” (except in paragraph 1(2)(b) of Schedule 4 and paragraph 7(12) of Schedule 6) means—

- (a) a greenhouse gas emissions permit; or
- (b) an excluded installation emissions permit;

“the Planning Appeals Commission” means the Planning Appeals Commission established under article 110 of the Planning (Northern Ireland) Order 1991 <sup>F28</sup>;

“prescribed” (in relation to a fee) means specified in, or determined under, the scheme or regulations in question;

“the Registries Regulation 2010” means Commission Regulation (EU) No 920/2010 of 7 October 2010 for a standardised and secured system of registries pursuant to Directive [2003/87/EC](#) of the European Parliament and of the Council and Decision No [280/2004/EC](#) of the European Parliament and of the Council <sup>F29</sup>;

<sup>F30</sup> ...

[<sup>F31</sup>“the Registries Regulation 2013” means Commission Regulation (EU) No 389/2013 of 2 May 2013 establishing a Union Registry pursuant to Directive [2003/87/EC](#) of the European Parliament and of the Council, Decisions No [280/2004/EC](#) and No [406/2009/EC](#) of the European Parliament and of the Council and repealing Commission Regulations (EU) No 920/2010 and No 1193/2011, as amended from time to time;]

“registry administrator” has the meaning given by regulation 8(1);

“registry account” means an operator holding account or an aircraft operator holding account in the Union Registry (and “open”, “blocked” [<sup>F32</sup>, “excluded” or “closed”] status, in relation to such an account, have the meanings given by [<sup>F33</sup>Article 10 of the Registries Regulation 2013] );

“regulated activity” means an activity (other than an aviation activity) that—

- (a) is listed in Annex 1 to the Directive, and
- (b) results in specified emissions;

“regulator” means, in relation to—

- (a) an installation (other than an offshore installation) which is, or will be, situated in—
  - (i) England <sup>F34</sup>..., the Environment Agency;
  - (ia) [<sup>F35</sup>Wales, the NRBW;]
  - (ii) Scotland, SEPA;
  - (iii) Northern Ireland, the chief inspector;
- (b) an offshore installation, the Secretary of State;
- (c) a UK administered operator, the regulator specified in regulations 27 to 29;
- (d) a banned non-UK operator, the Environment Agency;

“the Renewable Energy Directive” means Directive [2009/28/EC](#) of the European Parliament and of the Council on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives [2001/77/EC](#) and [2003/30/EC](#) <sup>F36</sup>, as amended from time to time;

“reportable emissions” means—

- (a) in relation to an installation, the total specified emissions (expressed in tonnes of carbon dioxide equivalent) which arise from the regulated activities carried out at that installation; or
- (b) in relation to a UK aircraft operator, the total aviation emissions of that aircraft operator (expressed in tonnes of carbon dioxide equivalent);

“revocation notice” has the meaning given by regulation 14(1);

“scheme year” means the year beginning with 1st January 2013 or any subsequent calendar year;

“SEPA” means the Scottish Environment Protection Agency;

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- “specified emissions”, in relation to an activity listed in Annex 1 to the Directive, means emissions of gases specified in Annex 1 in respect of that activity;
- “sub-installation” has the meaning given by Article 3(b), (c), (d) and (h) and Article 6 of the Free Allocation Decision;
- “surrender requirements” has the meaning given by paragraph 2(4) of Schedule 4;
- “tonne of carbon dioxide equivalent” has the meaning given in Article 3(j) of the Directive;
- “trading period” means one of the following eight-year periods—
- (a) 2013 to 2020; and
  - (b) subsequent consecutive periods of eight calendar years;
- “UK administered operator” has the meaning given in regulation 20;
- “UK aircraft operator” has the meaning given by regulation 26;
- “the Union Registry” means the registry established by Article 4 of the Registries Regulation [F372013];
- “the UK Registry” means the registry operated by the Environment Agency for the purposes specified in Article 3(1) of the Registries Regulation 2010 immediately before the coming into force of these Regulations;
- “variation”, in relation to a permit or a plan, means the amendment of its provisions (and “vary” has the corresponding meaning);
- “the Verification Regulation” means Commission Regulation (EU) No 600/2012 of 21 June 2012 on the verification of greenhouse gas emission reports and tonne-kilometre reports and the accreditation of verifiers pursuant to Directive 2003/87/EC of the European Parliament and of the Council F38, as amended from time to time;
- “working day” means any day other than—
- (a) a Saturday, Sunday, Good Friday, or Christmas Day; or
  - (b) a day which is a bank holiday under the Banking and Financial Dealings Act 1971 F39;
- “written procedures” means the written procedures required by Article 11(1) of the Monitoring and Reporting Regulation.
- (2) The “operator” of an installation is the person who has control over its operation; but where—
    - (a) an installation has not been put into operation, the operator is the person who will have control over the operation of the installation when it is put into operation;
    - (b) an installation has ceased operation, the operator is the person who holds the permit relating to the installation; and
    - (c) the holder of a permit has ceased to have control of the installation to which it relates, the operator is that permit holder.
  - (3) An installation ceases operation where—
    - (a) the conditions in paragraph 7(1)(b) or (c) of Schedule 6 apply in relation to that installation; or
    - [F40(b) the installation is a relevant installation, and has permanently ceased the carrying out of regulated activities by virtue of meeting the condition in paragraph 7(1)(d) of Schedule 6 or paragraph 8(1)(d) of Schedule 6A.]
  - (4) For the purposes of paragraph (3), a relevant installation is any installation other than—
    - (a) an excluded installation; or
    - (b) an installation that, by virtue of Article 10a(3) of the Directive, is not eligible for an allocation.

(5) References in these Regulations to anything taking effect (or ceasing to have effect) on a particular date are to be read as references to it taking effect (or ceasing to have effect) as from the beginning of that date.

### Textual Amendments

- F1** [S.I. 2005/925](#); amended by [S.I. 2005/2903](#), 2006/737, 2007/465, 2007/1096, 2007/3433, 2010/1513, 2011/1506, 2011/2911 and S.R. (N.I.) 2010/92.
- F2** [S.I. 2010/1996](#), amended by [S.I. 2011/76](#) and 2011/2911.
- F3** Words in reg. 3 substituted (23.5.2013) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2013 \(S.I. 2013/1037\)](#), regs. 1(1), **2(1)(a)**
- F4** Words in reg. 3 inserted (23.5.2013) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2013 \(S.I. 2013/1037\)](#), regs. 1(1), **2(1)(b)**
- F5** Words in reg. 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, **4(1)**
- F6** Words in reg. 3(1) substituted (22.12.2014) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2014 \(S.I. 2014/3125\)](#), regs. 1(1), **2(a)**
- F7** Words in reg. 3(1) substituted (22.12.2014) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2014 \(S.I. 2014/3125\)](#), regs. 1(1), **2(b)**
- F8** Words in reg. 3(1) inserted (4.12.2015) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2015 \(S.I. 2015/1849\)](#), regs. 1(1), **2(2)(a)**
- F9** Words in reg. 3(1) inserted (22.12.2014) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2014 \(S.I. 2014/3125\)](#), regs. 1(1), **2(c)**
- F10** OJ No L 275, 25.10.2003, p 32. The Directive was amended by European Parliament and Council Directives 2004/101/EC (OJ No L 338, 13.11.2004, p 18), 2008/101/EC (OJ No L 8, 13.1.2009, p 3) and 2009/29/EC (OJ No L 140, 5.6.2009, p 63), and by Regulation (EC) No 219/2009 of the European Parliament and of the Council (OJ No L 87, 31.3.2009, p 109).
- F11** See Point 21a of that Annex, amended by Decision of the EEA Joint Committee No 6/2011 (OJ No L 93, 7.4.2011, p 35); and see the Introduction and Sectoral Adaptation included at the beginning of the Annex.
- F12** Words in reg. 3(1) inserted (4.12.2015) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2015 \(S.I. 2015/1849\)](#), regs. 1(1), **2(2)(b)**
- F13** Words in reg. 3(1) inserted (22.12.2014) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2014 \(S.I. 2014/3125\)](#), regs. 1(1), **2(d)**
- F14** 1995 c. 25; section 41A was amended by [S.I. 2011/2911](#) and 2012/2788, and see further the footnote to regulation 18(3).
- F15** S.R. (N.I.) 2010 No. 151; amended by [S.I. 2011/2911](#) and 2012/2788.
- F16** Article 127 was substituted by [S.I. 2006/1252 \(N.I. 7\)](#).
- F17** OJ No L 130, 17.5.2011, p 1.
- F18** OJ No L 181, 12.7.2012, p 30.
- F19** Words in reg. 3(1) inserted (22.12.2014) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2014 \(S.I. 2014/3125\)](#), regs. 1(1), **2(e)**
- F20** S.R. (NI) 2003 No 46, amended by S.R. (NI) 2003 No 496 and [S.I. 2003/3311](#); there are other amending instruments which are not relevant.
- F21** Words in reg. 3(1) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 4 para. 419(2)** (with Sch. 7)
- F22** 1998 c. 17.
- F23** 1974 c. 40; section 30A was substituted (in relation to Scotland) by section 169 of, and paragraph 4 of Schedule 23 to, the [Water Act 1989 \(c. 15\)](#), and was amended by section 120 of, and paragraph 29 of Schedule 22 to, the Environment Act 1995.
- F24** 1964 c. 29; section 1(7) was amended by section 37 of, and paragraph 1 of Schedule 3 to, the [Oil and Gas \(Enterprise\) Act 1982 \(c. 23\)](#).

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- F25** Words in reg. 3(1) substituted (22.12.2014) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2014 \(S.I. 2014/3125\)](#), regs. 1(1), **2(f)**
- F26** 2008 c. 32; section 17 was amended by S.S.I. 2011/224 and S.I. 2011/2453.
- F27** Section 1 is amended (from a date yet to be appointed) by section 41 of, and paragraph 5 of Schedule 4 to, the [Marine and Coastal Access Act 2009 \(c. 23\)](#).
- F28** S.I. 1991/1220 (N.I. 11); relevant amending instruments are S.I. 1999/660 (N.I. 4) and 2003/430 (N.I. 8).
- F29** OJ No L 270, 14.10.2010, p 1; amended by the Registries Regulation 2011.
- F30** Words in reg. 3 omitted (31.1.2014) by virtue of [The Greenhouse Gas Emissions Trading Scheme and National Emissions Inventory \(Amendment\) Regulations 2013 \(S.I. 2013/3135\)](#), regs. 1, **5(1)(a)**
- F31** Words in reg. 3 inserted (31.1.2014) by [The Greenhouse Gas Emissions Trading Scheme and National Emissions Inventory \(Amendment\) Regulations 2013 \(S.I. 2013/3135\)](#), regs. 1, **5(1)(a)**
- F32** Words in reg. 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, **5(1)(b)(i)**
- F33** Words in reg. 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, **5(1)(b)(ii)**
- F34** Words in reg. 3(1) omitted (1.4.2013) by virtue of [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 4 para. 419(3)(a)** (with Sch. 7)
- F35** Words in reg. 3(1) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 4 para. 419(3)(b)** (with Sch. 7)
- F36** OJ No L 140, 5.6.2009, p 16.
- F37** Word in reg. 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, **5(1)(c)**
- F38** OJ No L 181, 12.7.2012, p 1.
- F39** 1971 c. 80; see [section 1](#) and Schedule 1 (which was amended by section 1 of the [St Andrew's Day Bank Holiday \(Scotland\) Act 2007 \(2007 asp 2\)](#)).
- F40** Reg. 3(3)(b) substituted (4.12.2015) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2015 \(S.I. 2015/1849\)](#), regs. 1(1), **2(3)**

#### Application to the Crown etc.

4. Schedule 1 (application to the Crown etc.) has effect.

#### Notices etc.

5. Schedule 2 (notices etc.) has effect.

#### Applications etc.

6. Schedule 3 (applications etc.) has effect.

#### Functions of the regulator: Northern Ireland

7.—(1) Regulation 8(4) of the Northern Ireland Regulations (delegation of functions) has effect as if the reference to the chief inspector's functions included a reference to the chief inspector's functions under these Regulations.

(2) Regulation 37(1) of the Northern Ireland Regulations (power of the Department to give directions) has effect as if the reference to functions under those Regulations included a reference to functions under these Regulations.

(3) Any direction of the Department of the Environment that is given by virtue of paragraph (2) must be published in such manner as the Department of the Environment considers appropriate.



### Commission Regulations: designations

8.—(1) The Environment Agency is the national administrator designated by the United Kingdom for the purposes of the Registries Regulation [<sup>F41</sup>2013], and in these Regulations is referred to in that capacity as the “registry administrator”.

[<sup>F42</sup>(2) Subject to paragraph (3), the regulator is the competent authority designated by the United Kingdom for the purposes of the Registries Regulation 2013 (other than Articles 25(3) and 34(6)).

(3) The Secretary of State is the competent authority so designated for the purposes of—

- (a) Article 19;
- (b) Article 32(2);
- (c) Article 33(1);
- (d) Article 34(7); and
- (e) Article 97(1).]

<sup>F43</sup>(4) .....

<sup>F43</sup>(5) .....

(6) Subject to paragraph (7), the regulator is the competent authority designated by the United Kingdom for the purposes of the Monitoring and Reporting Regulation.

(7) The Secretary of State is the competent authority so designated for the purposes of Article 68(3).

(8) Subject to paragraph (9), the regulator is the competent authority designated by the United Kingdom for the purposes of the Verification Regulation.

(9) The Secretary of State is the competent authority so designated for the purposes of Article 64(3), and is designated as the focal point authorised by the United Kingdom for the purposes of Article 69(2).

#### Textual Amendments

- F41** Word in reg. 8(1) 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(2)(a)**
- F42** Reg. 8(2)(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, **5(2)(b)**
- F43** Reg. 8(4)(5) omitted (31.1.2014) by virtue of [The Greenhouse Gas Emissions Trading Scheme and National Emissions Inventory \(Amendment\) Regulations 2013 \(S.I. 2013/3135\)](#), regs. 1, **5(2)(c)**

## PART 2

### Stationary installations

#### CHAPTER 1

##### Permits

#### Requirement for permit to carry out regulated activities

9. No person may carry out a regulated activity at an installation except to the extent authorised by a permit held by the operator of the installation.

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## Applications for and grant of permits

**10.**—(1) The operator of an installation (other than an excluded installation) may apply to the regulator for a greenhouse gas emissions permit to carry out a regulated activity at the installation.

(2) The operator of an excluded installation may apply to the regulator for an excluded installation emissions permit to carry out a regulated activity at the installation.

(3) However, an application may not be made—

- (a) under paragraph (1) or (2) where a permit has already been granted in respect of the installation and continues to have effect; or
- (b) under paragraph (2) where an excluded installation emissions permit has been granted in respect of the installation and has been surrendered or revoked.

(4) Following an application under paragraph (1) or (2), the permit must be granted if the regulator is satisfied that—

- (a) the application is duly made, and
- (b) at the time that the permit is granted (or, if later, has effect) the applicant will be capable of monitoring and reporting emissions from the installation in accordance with—
  - (i) the monitoring and reporting requirements of the greenhouse gas emissions permit, or
  - (ii) the monitoring and reporting conditions of the excluded installations permit,

but must otherwise be refused.

(5) A permit may be granted under this regulation in respect of more than one installation on the same site, provided that they are operated by the same operator.

(6) Paragraph 1 of Schedule 4 makes further provision about applications for permits.

(7) Paragraph 2 of Schedule 4 makes provision about the contents of greenhouse gas emissions permits, and paragraph 3 of Schedule 5 makes provision about the contents of excluded installation emissions permits.

## Review, variation and consolidation of permits

**11.**—(1) The regulator must review a permit before the end of the period of five years beginning with the date on which the permit was granted, and afterwards at intervals not exceeding five years.

(2) The regulator may, by giving notice to the operator, vary a permit at any time and may in particular make any variation of the permit that the regulator considers necessary in consequence of—

- (a) a review under paragraph (1);
- (b) any report made by the operator under Article 69 of the Monitoring and Reporting Regulation; or
- (c) any notification as mentioned in paragraph 2(7)(b) of Schedule 4 (notification of planned changes in operation etc).

(3) The regulator may by giving notice to the operator vary a permit where the operator—

- (a) applies to the regulator for such a variation pursuant to a provision of the permit; or
- (b) has failed to comply with a requirement of the permit to apply for such a variation.

(4) The regulator may by giving notice to the operator vary a permit in order to comply with regulator's duty under—

- (a) regulation 88(6); or
- (b) any of the following provisions of Schedule 5—

- (i) paragraph 2(1);
- (ii) paragraph 3(3);
- (iii) paragraph 6(5) or (6);
- (iv) paragraph 7(4)(b), (6)(b) or (7)(b);
- (v) paragraph 8(6).

(5) A notice given under paragraph (2), (3)(b) or (4) may specify a period within which a fee for the variation of the permit must be paid.

(6) The regulator may by giving notice to the operator replace a permit with a consolidated permit applying to the same regulated activities, and containing the same or equivalent provisions, in the following circumstances—

- (a) where the permit has been varied;
- (b) where there is more than one permit applying to installations on the same site operated by the same operator.

### **Transfer of permits**

**12.**—(1) Subject to paragraph (6), the holder of a permit (“the current operator”) and another person may jointly apply to the regulator for the permit to be transferred to that other person (“the new operator”).

(2) An application may also be made under paragraph (1) for the partial transfer of a permit; and for that purpose a “partial transfer” is a transfer in respect of—

- (a) some only of the installations to which the permit relates; or
- (b) some only of the parts of an installation to which the permit relates.

(3) Paragraph 3 of Schedule 4 makes further provision about the transfer, or partial transfer, of a permit.

(4) Subject to paragraph 3(2)(b) of Schedule 4, an application under paragraph (1) must be granted if the regulator is satisfied that—

- (a) the application is duly made, and
- (b) the new operator will (from the relevant date) be the operator of the installation and will be capable of monitoring and reporting emissions from the installation in accordance with—
  - (i) the monitoring and reporting requirements of the greenhouse gas emissions permit, or
  - (ii) the monitoring and reporting conditions of the excluded installations emissions permit,

but must otherwise be refused.

(5) For the purposes of paragraph (4), the relevant date is the date mentioned in paragraph 3(6), (8) or (10) of Schedule 4 as the case may be.

(6) An application for the transfer (or partial transfer) of a permit may not be made in respect of any installation (or part of an installation) that has ceased operation.

### **Surrender of permits**

**13.**—(1) Subject to paragraph (4), if an installation has ceased operation the operator must apply to the regulator to surrender the permit authorising regulated activities at the installation.

[<sup>F44</sup>(2) An application under paragraph (1) must be made by the date specified in paragraph (3), or such later date as may be agreed with the regulator.

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- (3) The date specified is, in the case of an installation that has ceased operation by virtue of meeting the condition in—
- (a) paragraph 7(1)(b) or (c) of Schedule 6, the last day of the one month period beginning with the day on which the installation ceased operation;
  - (b) paragraph 7(1)(d) of Schedule 6, the last day of the one month period following the end of the relevant period (as defined by paragraph 7(5) of that Schedule);
  - (c) paragraph 8(1)(d) of Schedule 6A—
    - (i) where the entry year is 2015, the later of 31st December 2015 or the last day of the one month period following the end of the relevant period (as defined by paragraph 8(15)(b) of Schedule 6A);
    - (ii) where the entry year is any other scheme year, the later of 31st January in the entry year or the last day of the one month period following the end of the relevant period (as defined by paragraph 8(15)(b) of Schedule 6A).]
- (4) The application need not be made where—
- (a) the permit authorises regulated activities at more than one installation, some of which have not ceased operation; and
  - (b) by the end of the period mentioned in paragraph (2), the operator has applied to vary that permit so that it no longer applies to any of those installations that have ceased operation.
- (5) Where the carrying out of regulated activities at an installation mentioned in paragraph (6) has been suspended, but the installation has not ceased operation, the operator may at any time make an application under paragraph (1) but is not obliged to do so.
- (6) Those installations are—
- (a) an excluded installation; or
  - (b) an installation that, by virtue of Article 10a(3) of the Directive, is not eligible for an allocation.
- (7) If the application under paragraph (1) is granted, the notice of determination given to the operator (“notice of surrender”) takes effect on the date specified in the notice.
- (8) Paragraph 4 of Schedule 4 makes further provision about the surrender of permits.

#### Textual Amendments

**F44** [Reg. 13\(2\)\(3\)](#) substituted (4.12.2015) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2015 \(S.I. 2015/1849\)](#), regs. 1(1), 3

#### Revocation of permits

- 14.—**(1) The regulator—
- (a) may at any time revoke a permit by serving on the operator a notice to that effect (a “revocation notice”), and in particular may do so if the operator has failed to pay a fee for the subsistence of the permit; and
  - (b) must do so where the regulator becomes aware that the operator has failed to comply with regulation 13(1) to (3).
- (2) A revocation notice takes effect—
- (a) 28 days after the date on which it is served; or
  - (b) if a later date is specified in the notice, on that date.

- (3) Paragraph 5 of Schedule 4 makes further provision about the revocation of permits.

## CHAPTER 2

### Excluded installations: further provision

#### Excluded installations

**15.**—(1) Schedule 5 makes further provision about excluded installations.

(2) Subject to paragraphs (3) and (4), and unless a contrary intention appears, these Regulations apply to an excluded installation as they apply to an installation that is not an excluded installation.

[<sup>F45</sup>(3) The following provisions do not so apply—

- (a) regulation 12(2); and
- (b) Chapter 3 of this Part (except that regulation 16(3A) and Schedule 6A do apply where the operator of an excluded installation has been given a change of status notice).]

(4) The following provisions so apply—

- (a) paragraph 4 of Schedule 4, but as if—
  - (i) any reference in that paragraph to the monitoring and reporting requirements of the greenhouse gas emissions permit were a reference to the monitoring and reporting conditions of the excluded installation emissions permit; and
  - (ii) sub-paragraph (1)(c) and sub-paragraphs (2)(b)(ii), (3), (4) and (6) to (8) were omitted;
- (b) paragraph 5 of Schedule 4, but as if—
  - (i) any reference in that paragraph to the monitoring and reporting requirements of the greenhouse gas emissions permit were a reference to the monitoring and reporting conditions of the excluded installation emissions permit; and
  - (ii) sub-paragraph (1)(c) and sub-paragraphs (3)(b)(ii), (4), (5) and (7) to (9) were omitted.

#### Textual Amendments

**F45** Reg. 15(3) substituted (4.12.2015) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2015 \(S.I. 2015/1849\)](#), regs. 1(1), 4

## CHAPTER 3

### Allocation of allowances

#### Allocation of allowances for 2013 to 2020

**16.**—(1) In this regulation the “allocated amount”, in relation to an installation, means the annual amount of allowances to be allocated to that installation for each scheme year in the trading period 2013 to 2020.

(2) Subject to paragraph (5), the allocated amount is the amount specified in the list that was submitted to the European Commission on 12th December 2011 in accordance with Article 15(5) of the Free Allocation Decision, as substituted by the modified list submitted in April 2012 following the first stage of the Commission's scrutiny process <sup>F46</sup>.

(3) Schedule 6 sets out procedures for the allocation of allowances to new entrants to the scheme, and for the adjustment of existing allocations.

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[<sup>F47</sup>(3A) Schedule 6A sets out procedures for the allocation of allowances to operators of installations which cease to be excluded installations, and for the adjustment of such allocations.]

(4) The Secretary of State must make any revisions to that list that become necessary in consequence of—

- (a) the procedures set out in Schedule 6 [<sup>F48</sup>or Schedule 6A];
- (b) the application of the linear reduction factor referred to in Article 9 of the Directive; or
- (c) any other adjustment required by the European Commission in accordance with the Directive or the Free Allocation Decision.

(5) Following such a revision the allocated amount is the amount specified in the list as so revised.

(6) The Secretary of State must by 30th April in each scheme year publish the latest version of the list as so revised.

(7) Paragraph (6) is subject to regulation 47 (national security).

#### Textual Amendments

- F46** See *Modified UK National Implementation Measures for Phase III of the EU Emissions Trading System*  
<http://www.decc.gov.uk/assets/decc/11/cutting-emissions/eu-ets/5233-modified-uk-national-implementation-measures-for-p.pdf>.
- F47** Reg. 16(3A) inserted (4.12.2015) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2015 \(S.I. 2015/1849\)](#), regs. 1(1), **5(2)**
- F48** Words in reg. 16(4)(a) inserted (4.12.2015) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2015 \(S.I. 2015/1849\)](#), regs. 1(1), **5(3)**

## CHAPTER 4

### Offshore installations

#### Powers of entry

17.—(1) The Secretary of State may authorise in writing any person who appears suitable to the Secretary of State to exercise, in accordance with the terms of that authorisation, any of the powers specified in paragraph (2) in respect of offshore installations for the purposes of—

- (a) determining whether the requirements, restrictions or prohibitions imposed under or by virtue of these Regulations are being, or have been, complied with;
- (b) discharging one or more of the functions conferred or imposed upon the Secretary of State under or by virtue of these Regulations; or
- (c) determining whether and, if so, how such a function should be discharged.

[<sup>F49</sup>(2) The powers exercisable under paragraph (1) are the powers in regulation 25 of the Offshore Regulations (but subject to regulation 26 of those Regulations).

(3) Regulations 34(2)(d) and (e) of the Offshore Regulations apply to a failure to comply with an obligation imposed pursuant to a power exercisable under paragraph (1) as they apply to a failure to comply with an obligation imposed pursuant to regulation 25 of the Offshore Regulations.]

#### Textual Amendments

- F49** Reg. 17(2)(3) substituted (22.12.2014) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2014 \(S.I. 2014/3125\)](#), regs. 1(1), **3**

## Charging schemes

**18.**—(1) The Secretary of State may make, and from time to time revise, a scheme prescribing charges in relation to offshore installations in respect of the matters to which paragraph (2) applies.

(2) This paragraph applies to—

- (a) the performance by the Secretary of State of functions conferred under or by virtue of these Regulations, as regulator in relation to offshore installations; and
- (b) the subsistence of an account required to be held in a trading scheme registry by the operator of an offshore installation.

(3) In this regulation, “trading scheme registry” has the meaning given by section 41A(7) of the Environment Act 1995 <sup>F50</sup>.

(4) The charges prescribed by a scheme under paragraph (1) must be paid to the Secretary of State.

### Textual Amendments

**F50** 1995 c. 25; section 41A of that Act (“the 1995 Act”) was inserted by S.I. 2005/925; sections 41 and 41A were amended by S.I. 2011/2911, and sections 41, 41A, 42 and 56 and 111 were amended by S.I. 2012/2788. By paragraph 9A(2) of Schedule 1 to the Pollution Prevention and Control Act 1999, subsections (2) to (5) of section 41A of the 1995 Act apply in relation to the Secretary of State and a charging scheme made under this regulation as they apply in relation to SEPA and a charging scheme made by SEPA under the 1995 Act. Paragraph 9A of that Schedule was also amended by S.I. 2012/2788.

## Charging schemes: supplementary

**19.**—(1) On making, or revising, a scheme the Secretary of State must lay before each House of Parliament a copy of (as the case may be)—

- (a) the scheme; or
- (b) the revisions made to the scheme (or the scheme as so revised).

(2) A scheme may, in particular—

- (a) make different provision for different cases, including different provision in relation to different persons in different circumstances or localities;
- (b) allow for reduced charges payable in respect of permits granted to the same operator;
- (c) provide for the times at which and the manner in which the payments required by the scheme are to be made (subject to any requirements in these Regulations as to times at which payment is required); and
- (d) make such incidental, supplementary and transitional provisions as appear to the Secretary of State to be appropriate.

(3) The Secretary of State must take such steps as the Secretary of State considers appropriate for bringing the provisions of a scheme which is for the time being in force to the attention of persons likely to be affected by it.

(4) In this regulation, “scheme” means a scheme made under regulation 18(1).

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## PART 3

### Aviation

#### CHAPTER 1

##### General

#### Interpretation

20. In this Part (and in Schedules 7 to 10)—

“the 2009 Regulations” means the Aviation Greenhouse Gas Emissions Trading Scheme Regulations 2009 <sup>F51</sup>;

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

- (a) in respect of the Environment Agency, England <sup>F52</sup> ...;
- (aa) [<sup>F53</sup>in respect of the NRBW, Wales;]
- (b) in respect of SEPA, Scotland;
- (c) in respect of the chief inspector, Northern Ireland;

“authority”, in relation to a UK administered operator (“P”) means—

- (a) [<sup>F54</sup>the Welsh Ministers, where P’s regulator is the NRBW;]
- (b) the Scottish Ministers, where P’s regulator is SEPA;
- (c) the Department of the Environment in Northern Ireland, where P’s regulator is the chief inspector;
- (d) otherwise, the Secretary of State;

“benchmarking plan” has the meaning given by paragraph 2 of Schedule 7;

“benchmarking year”, in relation to a trading period, means the calendar year ending 24 months before the beginning of the period;

“Commission list” means the list of operators set out 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 <sup>F55</sup>, as amended from time to time;

“emissions plan” means a plan issued under—

- (a) regulation 34(1)(a);
- (b) regulation 19(1)(a) of the 2010 Regulations; or
- (c) regulation 15(1)(a) of the 2009 Regulations;

[<sup>F56</sup>“Eurocontrol” means the European organisation for air safety navigation;

“excluded aviation activity” means—

- (a) in respect of the scheme year 2013, an activity consisting in—
  - (i) a flight departing from, or arriving in, an aerodrome situated in any country other than an EEA state or Croatia; or
  - (ii) an outermost region flight;
- (b) in respect of any other scheme year, an activity consisting in—
  - (i) a flight departing from, or arriving in, an aerodrome situated in any country other than an EEA state; or



(ii) an outermost region flight;

“excluded aviation emissions” means aviation emissions arising from an excluded aviation activity;]

“member State” includes an EEA state;

[<sup>F57</sup>“non-UK operator” has the meaning given in regulation 24(2);

“outermost region” means—

- (a) in respect of the scheme year 2013, the Canary Islands, French Guiana, Guadeloupe, Martinique, Réunion, Saint-Martin, the Azores, or Madeira;
- (b) in respect of any other scheme year, the Canary Islands, French Guiana, Guadeloupe, Martinique, Mayotte, Réunion, Saint-Martin, the Azores, or Madeira;

“outermost region flight” means—

- (a) in respect of the scheme year 2013, a flight between an aerodrome located in an outermost region and an aerodrome located in—
  - (i) a different outermost region;
  - (ii) an area of an EEA state which is not an outermost region; or
  - (iii) Croatia;
- (b) in respect of any other scheme year, a flight between an aerodrome located in an outermost region and an aerodrome located in—
  - (i) a different outermost region; or
  - (ii) an area of an EEA state which is not an outermost region;]

“registered office” (except in Schedule 9) means the registered office in the United Kingdom that a company is required to have under section 86 of the Companies Act 2006 <sup>F58</sup>;

[<sup>F59</sup>“Small Emitters Tool Regulation” means Commission Regulation (EU) No 606/2010 on the approval of a simplified tool developed by the European organisation for air safety navigation (Eurocontrol) to estimate the fuel consumption of certain small emitting aircraft operators, as amended from time to time;]

“tonne-kilometre” and “tonne-kilometre data” have the same meaning as in the Monitoring and Reporting Regulation;

“UK administered operator” means (subject to regulations 22 to 25) a person who is—

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

“unlisted operator” means a person who is—

- (a) not identified in the Commission list, and
- (b) the user or owner of an aircraft used to perform an aviation activity.

#### Textual Amendments

**F51** S.I. 2009/2301; revoked with savings etc. by S.I. 2010/1996.

**F52** Words in reg. 20 omitted (1.4.2013) by virtue of [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 4 para. 420(2)(a)** (with Sch. 7)

**F53** Words in reg. 20 inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 4 para. 420(2)(b)** (with Sch. 7)

**F54** Words in reg. 20 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 4 para. 420(3)** (with Sch. 7)

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- F55** OJ No L 219, 22.8.2009, p 1; amended by Commission Regulations (EU) No 82/2010 (OJ No L 25, 29.1.2010, p 12), No 115/2011 (OJ No L 39, 12.2.2011, p 1), No 394/2011 (OJ No L 107, 27.4.2011, p 1) and No 100/2012 (OJ No L 39, 11.2.2012, p 1).
- F56** Words in reg. 20 inserted (22.12.2014) by The Greenhouse Gas Emissions Trading Scheme (Amendment) Regulations 2014 (S.I. 2014/3125), regs. 1(1), **4(a)**
- F57** Words in reg. 20 inserted (22.12.2014) by The Greenhouse Gas Emissions Trading Scheme (Amendment) Regulations 2014 (S.I. 2014/3125), regs. 1(1), **4(b)**
- F58** 2006 c. 46.
- F59** Words in reg. 20 inserted (22.12.2014) by The Greenhouse Gas Emissions Trading Scheme (Amendment) Regulations 2014 (S.I. 2014/3125), regs. 1(1), **4(c)**

### Civil Aviation Authority

**21.—(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 this Part (including Schedules 7 to 10) or under regulation 44.

(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).

## CHAPTER 2

### UK administered operators, UK aircraft operators and regulators

#### UK administered operators: power to designate

**22.—(1)** This paragraph applies where the Secretary of State is satisfied that, under Article 18a(1) of the Directive, the United Kingdom is to be regarded as the administering member State in respect of an unlisted operator (“P”).

(2) Where paragraph (1) applies the Secretary of State must—

- (a) designate P as an operator to whom these Regulations apply; and
- (b) give notice to P of that designation.

(3) From the date of service of the notice under paragraph (2), P is to be treated as a UK administered operator for the purposes of these Regulations.

(4) Before making a designation under paragraph (2), the Secretary of State must consult—

- (a) P;
- (b) the relevant regulator;
- (c) the relevant authority; and
- (d) such other persons as the Secretary of State considers appropriate.

(5) For the purposes of paragraph (4)—

- (a) the relevant regulator is the person who will be the regulator of P if the designation is made; and
- (b) the relevant authority is a person (other than the Secretary of State) who will then be the authority in relation to P.

(6) A designation under paragraph (2)—

- (a) must (subject to paragraph (7)) be revoked by the Secretary of State if paragraph (1) no longer applies in relation to P, and
- (b) ceases to have effect once P is identified in the Commission list,

but this is without prejudice to any specification of P in that list as an aircraft operator to be administered by the United Kingdom.

(7) A designation may not be revoked solely because P has ceased to perform an aviation activity.

(8) Paragraphs (2)(b), (3) and (4) apply to the revocation of a designation as they apply to the designation itself, except that the reference in paragraph (3) to being treated as a UK administered operator is to be read (subject to the proviso in paragraph (6)) as a reference to no longer being so treated.

### **Application to be designated as a UK administered operator**

**23.**—(1) An unlisted operator (“Q”) may apply to the Secretary of State to be designated as a UK administered operator.

(2) Where such an application is made the Secretary of State must, after consulting the relevant persons—

- (a) designate Q in accordance with regulation 22(1) and (2); or
- (b) refuse the application.

(3) For the purposes of paragraph (2) the relevant persons are—

- (a) the person who will be the regulator of Q if the designation is made;
- (b) a person (other than the Secretary of State) who will then be the authority in relation to Q; and
- (c) such other persons as the Secretary of State considers appropriate.

(4) An application under this regulation must be accompanied by evidence that the United Kingdom is to be regarded as the administering member State in respect of Q.

### **Transfers of operators between member States**

**24.**—(1) This regulation applies where a person (a “transferred operator”)—

- (a) was a non-UK operator at the beginning of a scheme year but, in the course of that year, ceased to be a non-UK operator and became a UK administered operator, or
- (b) was a UK administered operator at the beginning of a scheme year but, in the course of that year, ceased to be a UK administered operator and became a non-UK operator.

(2) For those purposes, “non-UK operator” means a person who is—

- (a) identified in the Commission list, and
- (b) specified in that list as an aircraft operator to be administered by a member State other than the United Kingdom (“the other State”).

(3) Subject to paragraphs (4) and (5), a regulator (“R”) in performing any of R’s functions under these Regulations may (if it appears to R appropriate to do so) treat the transferred operator—

- (a) as a person who, for the whole of that scheme year, is not a UK administered operator, or
- (b) as a person who is a UK administered operator for the whole of that scheme year.

(4) R may not so treat a transferred operator unless R has—

- (a) consulted the other State and the transferred operator, and
- (b) given both of them notice of that decision.

(5) R may not treat the transferred operator as a UK administered operator under paragraph (3)(b) for the purposes of imposing a civil penalty in respect of any failure to comply with these Regulations that occurred—

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- (a) while the transferred operator was still a non-UK operator, or
- (b) after the transferred operator became a non-UK operator.

### **Gibraltar operators**

**25.**—(1) This paragraph applies where—

- (a) a person (“P”) is specified in the Commission list as an aircraft operator to be administered by the United Kingdom;
- (b) the Commission list identifies P’s State as “Gibraltar (UK)”; and
- (c) the Secretary of State is satisfied that P is regulated for the purposes of the Directive under legislation implementing the Directive that is applicable in Gibraltar.

(2) Where paragraph (1) applies, the Secretary of State—

- (a) may designate P as a Gibraltar operator, and
- (b) must in that case give notice to P of the designation.

(3) From the date of service of the notice under paragraph (2), P is to be treated for the purposes of these Regulations as a person who is not a UK administered operator.

(4) Where regulation (1)(b) or (c) no longer applies in relation to P, the Secretary of State may revoke P’s designation; and in that case—

- (a) the Secretary of State must give notice to P of the revocation, and
- (b) from the date following the date of service of that notice (and for as long as paragraph (1) (a) continues to apply in relation to P) P is to be treated as a UK administered operator for the purposes of these Regulations.

(5) Before making a designation under paragraph (2), the Secretary of State must consult—

- (a) P;
- (b) the regulator of P;
- (c) a person (other than the Secretary of State) who is the authority in relation to P; and
- (d) the Government of Gibraltar.

(6) Before revoking a designation under paragraph (4), the Secretary of State must consult—

- (a) P;
- (b) the person who will be the regulator of P if the revocation is made;
- (c) a person (other than the Secretary of State) who will then be the authority in relation to P; and
- (d) the Government of Gibraltar.

### **UK aircraft operators**

**26.**—(1) A person (“P”) is a UK aircraft operator in relation to a scheme year where, in respect of that year, P—

- (a) is a UK administered operator; and
- (b) performs an aviation activity (or is deemed to perform an aviation activity in accordance with paragraph (5)).

(2) Where the regulator cannot identify the person that performed an aviation activity the regulator may, where the owner of the aircraft at the time it was used to perform the activity (“the owner”) is a UK administered operator or an unlisted operator, serve a notice on the owner.

(3) A notice under paragraph (2) must—

- (a) where this information is available to the regulator, specify the dates, times and locations of the activity;
  - (b) be accompanied by such evidence relevant to the activity as the regulator considers appropriate; and
  - (c) require the owner to inform the regulator of the identity of the person who performed the activity, by the deadline specified in the notice.
- (4) The regulator may extend the deadline specified in a notice under paragraph (2).
- (5) Where the owner does not comply with a notice under paragraph (2) by the deadline as so specified or extended, the owner is on the expiry of that deadline deemed to be the person that performed the aviation activity.

### Regulators: general

27. Subject to regulations 28 and 29, the regulator of a UK administered operator (“P”) is—
- (a) the Environment Agency, where—
    - (i) P has its registered office in England <sup>F60</sup> ...; or
    - (ii) P does not have a registered office;
  - [<sup>F61</sup>(aa) the NRBW, where P has its registered office in Wales;]
  - (b) SEPA, where P has its registered office in Scotland;
  - (c) the chief inspector, where P has its registered office in Northern Ireland.

#### Textual Amendments

- F60** Words in reg. 27(a)(i) omitted (1.4.2013) by virtue of [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 4 para. 421(2)** (with Sch. 7)
- F61** Reg. 27(aa) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 4 para. 421(3)** (with Sch. 7)

### Regulators: assessment of emissions

- 28.—(1) Where—
- (a) a UK aircraft operator (“A”) does not have a registered office, and
  - (b) the regulator (“B”) is in possession of the necessary data,
- B must by 1st September in the final year of each trading period make an assessment in accordance with paragraph (2).
- (2) The assessment must—
- (a) determine whether the highest percentage of A's aviation emissions is attributable to the area of a different regulator (“C”); and
  - (b) in doing so take into account data from the two scheme years preceding the year in which the assessment is made (if received by B before the date that it is made).
- (3) Where that assessment shows that the highest percentage of emissions is attributable to the area of C, B must give notice to A and C by 21st December in the final year of the trading period.
- (4) Where—
- (a) B has given notice under paragraph (3), and

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(b) the regulator for the trading period following that notice is not determined under regulation 29,

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

### **Regulators: change in registered office**

**29.**—(1) This paragraph applies where a UK administered operator (“A”) with a registered office in the area of one regulator changes, in the course of a trading period, the address of its registered office to the area of a different regulator (“R”).

(2) Where paragraph (1) applies, R is the regulator of A from the beginning of the next trading period.

(3) Where—

- (a) a UK administered operator (“B”) which did not have a registered office at the beginning of a trading period acquires a registered office in the course of that period, and
- (b) that registered office is in the area of a regulator (“S”) who is not the regulator of B in that trading period,

S is the regulator of B from the beginning of the next trading period.

## **CHAPTER 3**

### **Allocation of aviation allowances**

#### **Allocation of aviation allowances**

**30.** The following Schedules have effect—

- (a) Schedule 7 (allocation of aviation allowances);
- (b) Schedule 8 (allocation of aviation allowances from the special reserve).

## **CHAPTER 4**

### **Monitoring and reporting aviation emissions**

#### **Interpretation**

**31.** In this Chapter, any reference to a numbered Article is to that Article of the Monitoring and Reporting Regulation.

#### **Application for an emissions plan by a UK administered operator**

**32.**—<sup>[F62]</sup>(1) Subject to paragraphs (3), (4), (6) and (7), a UK administered operator (“A”) must apply to the regulator for a monitoring plan where required by Article 51(1) and within the period of time required by that Article.]

(2) That application must contain a <sup>[F63]</sup>draft] plan to monitor A's aviation emissions (together with supporting documents) submitted under Article 12(1).

(3) If A has previously been issued with an emissions plan—

- (a) an application under paragraph (1) may not be made without the agreement of the regulator; and
- (b) any plan issued under regulation 34(1)(a) replaces the plan that has previously been issued.

(4) Where an application is made by virtue of the second or third sub-paragraphs of Article 51(1), the application must include a satisfactory explanation of why it could not have been made earlier.

(5) Without prejudice to paragraph (1), a UK administered operator who has not previously been issued with an emissions plan may make an application in accordance with paragraph (2) at any time.

(6) If A is a transferred operator within regulation 24(1)(a), and has previously applied to another member State for a monitoring plan in accordance with Article 51(1)—

- (a) this regulation applies to A as it applies to a UK administered operator who is not a transferred operator; but
- (b) the application to the regulator may be made within the period of 8 weeks beginning with the date on which A became a UK administered operator.

[<sup>F64</sup>(7) This regulation does not apply to a UK administered operator who commences aviation activities during the scheme years [<sup>F65</sup>2015 to 2023].]

#### Textual Amendments

- F62** Reg. 32(1) substituted (22.12.2014) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2014 \(S.I. 2014/3125\)](#), regs. 1(1), **5(2)**
- F63** Word in reg. 32(2) inserted (22.12.2014) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2014 \(S.I. 2014/3125\)](#), regs. 1(1), **5(3)**
- F64** Reg. 32(7) inserted (22.12.2014) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2014 \(S.I. 2014/3125\)](#), regs. 1(1), **5(4)**
- F65** Words in reg. 32(7) substituted (31.3.2018) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2018 \(S.I. 2018/306\)](#), regs. 1, **2(2)**

#### [<sup>F66</sup>Application for an emissions plan by a UK administered operator: [<sup>F67</sup>activities during 2015 to 2023]

**32A.**—(1) This regulation applies to a UK administered operator (“B”) who commences aviation activities other than excluded aviation activities during [<sup>F68</sup>the scheme years 2015 to 2023 (“the relevant activities”)].

(2) Subject to paragraphs (3) to (7), B must apply to the regulator for a monitoring plan by the application date.

[<sup>F69</sup>(3) Where B is unable to foresee the date on which B is due to commence the relevant activities, B must—

- (a) where the relevant activities are due to commence during the scheme years 2017 or 2018, apply to the regulator for a monitoring plan without delay after B is aware that B will commence these activities and in any event by the later of 6 weeks after 31st March 2018 or 6 weeks after the date on which the relevant activities commence;
- (b) where the relevant activities are due to commence during a scheme year other than 2017 or 2018, apply to the regulator for a monitoring plan without delay after B is aware that B will commence the relevant activities and in any event by a date no later than 6 weeks after the date on which the relevant activities commence; and
- (c) include with the application a written explanation of why B was unable to comply with paragraph (2).]

(4) Paragraph (5) applies where B is unable to comply with paragraph (2) by reason only that B’s administering member State, referred to in Article 18a of the Directive, is not known by the application date.

(5) Where this paragraph applies B must—

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- (a) apply to the regulator for a monitoring plan [<sup>F70</sup>in respect of the relevant activities], without delay once information on B’s administering member State becomes available; and
  - (b) include with the application a written explanation of why B was unable to comply with paragraph (2).
- (6) Paragraph (7) applies where B was a non-UK operator and becomes a UK administered operator after the transferred operator cut-off date.
- (7) Where this paragraph applies, B must apply to the regulator for a monitoring plan by the transferred operator application date.
- [<sup>F71</sup>(8) In this regulation—
- (a) “application date” means—
    - (i) where the relevant activities are due to commence during the scheme year 2015, the later of 31st January 2015 or the date which is 4 months before the date on which the 2015 activities are due to commence;
    - (ii) where the relevant activities are due to commence during the scheme year 2016, the date which is 4 months before the date on which the 2016 activities are due to commence;
    - (iii) where the relevant activities are due to commence during the scheme years 2017 or 2018, the later of 30th April 2018 or the date which is 4 months before the date on which these activities are due to commence; and
    - (iv) where the relevant activities are due to commence during the scheme years 2019 to 2023, the date which is 4 months before the date on which these activities are due to commence;
  - (b) “transferred operator application date” means—
    - (i) where the relevant activities are due to commence during the scheme year 2015, the later of 31st January 2015 or the last day of the 8 week period beginning with the date on which B becomes a UK administered operator;
    - (ii) where the relevant activities are due to commence during the scheme year 2016, the last day of the 8 week period beginning with the date on which B becomes a UK administered operator;
    - (iii) where the relevant activities are due to commence during the scheme years 2017 or 2018, the later of 30th April 2018 or the last day of the 8 week period beginning with the date on which B becomes a UK administered operator; and
    - (iv) where the relevant activities are due to commence during the scheme years 2019 to 2023, the last day of the 8 week period beginning with the date on which B becomes a UK administered operator; and
  - (c) “transferred operator cut-off date” means the date which is 6 months before the date on which the relevant activities are due to commence.]

#### Textual Amendments

- F66** Regs. 32A-32C inserted (22.12.2014) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2014 \(S.I. 2014/3125\)](#), regs. 1(1), **6**
- F67** Words in [reg. 32A](#) heading substituted (31.3.2018) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2018 \(S.I. 2018/306\)](#), regs. 1, **2(3)(a)**
- F68** Words in [reg. 32A\(1\)](#) substituted (31.3.2018) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2018 \(S.I. 2018/306\)](#), regs. 1, **2(3)(b)**



- F69** Reg. 32A(3) substituted (31.3.2018) by The Greenhouse Gas Emissions Trading Scheme (Amendment) Regulations 2018 (S.I. 2018/306), regs. 1, 2(3)(c)
- F70** Words in reg. 32A(5)(a) substituted (31.3.2018) by The Greenhouse Gas Emissions Trading Scheme (Amendment) Regulations 2018 (S.I. 2018/306), regs. 1, 2(3)(d)
- F71** Reg. 32A(8) substituted (31.3.2018) by The Greenhouse Gas Emissions Trading Scheme (Amendment) Regulations 2018 (S.I. 2018/306), regs. 1, 2(3)(e)

**Application for an emissions plan by a UK administered operator: [F72]post-2023] activities**

**32B.**—(1) This regulation applies—

- (a) to a UK administered operator (“C”) who commences only excluded aviation activities during the scheme years [F73]2015 to 2023]; and
- (b) where C carries out aviation activities after 31st December [F74]2023] (“ [F72]post-2023] activities”).

(2) Subject to paragraphs (3) to (7), C must apply to the regulator for a monitoring plan in respect of C’s [F72]post-2023] activities by a date which is no later than 4 months before the date on which C’s [F72]post-2023] activities are due to commence (“the application date”).

(3) Where C is unable to foresee the date on which C is due to commence [F72]post-2023] activities, C must—

- (a) apply to the regulator for a monitoring plan in respect of C’s [F72]post-2023] activities without delay after C is aware that C will commence the [F72]post-2023] activities and in any event by a date no later than 6 weeks after the date on which the [F72]post-2023] activities commence; and
- (b) include with the application a written explanation of why C was unable to comply with paragraph (2).

(4) Paragraph (5) applies where C is unable to comply with paragraph (2) by reason only that C’s administering member State, referred to in Article 18a of the Directive, is not known by the application date.

(5) Where this paragraph applies, C must—

- (a) apply to the regulator for a monitoring plan in respect of C’s [F72]post-2023] activities without delay once information on C’s administering member State becomes available; and
- (b) include with the application a written explanation of why C was unable to comply with paragraph (2).

(6) Paragraph (7) applies where C was a non-UK operator and becomes a UK administered operator after the transferred operator cut-off date.

(7) Where this paragraph applies, C must apply to the regulator for a monitoring plan by the transferred operator application date.

(8) In this regulation—

- (a) “transferred operator application date” means the last day of the 8 week period beginning with the date on which C becomes a UK administered operator; and
- (b) “transferred operator cut-off date” means the date which is 6 months before the [F72]post-2023] activities are due to commence.

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#### Textual Amendments

- F66** Regs. 32A-32C inserted (22.12.2014) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2014 \(S.I. 2014/3125\)](#), regs. 1(1), **6**
- F72** Word in reg. 32B substituted (31.3.2018) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2018 \(S.I. 2018/306\)](#), regs. 1, **2(4)(a)**
- F73** Words in reg. 32B(1)(a) substituted (31.3.2018) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2018 \(S.I. 2018/306\)](#), regs. 1, **2(4)(b)**
- F74** Word in reg. 32B(1)(b) substituted (31.3.2018) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2018 \(S.I. 2018/306\)](#), regs. 1, **2(4)(c)**

#### Application for an emissions plan by a UK administered operator: general

**32C.**—(1) An application for a monitoring plan under regulation 32A or 32B must include a draft plan to monitor the UK administered operator’s aviation emissions, together with the supporting documents which are required to be submitted under Article 12(1).

(2) If a UK administered operator has previously been issued with an emissions plan (“the existing plan”)—

- (a) an application under regulation 32A or 32B may not be made without the agreement of the regulator; and
- (b) any plan issued under regulation 34(1)(a) replaces the existing plan.]

#### Textual Amendments

- F66** Regs. 32A-32C inserted (22.12.2014) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2014 \(S.I. 2014/3125\)](#), regs. 1(1), **6**

#### Requirement to notify the regulator if an emissions plan is not applied for [<sup>F75</sup>before 1st January 2015]

**33.**—(1) [<sup>F76</sup>Subject to paragraph (4), without] prejudice to regulation 32(1), a person (“B”) who becomes a UK administered operator after 31st December 2012 must by the relevant date—

- (a) apply to the regulator in accordance with regulation 32, or
- (b) notify the regulator in accordance with paragraph (2).

(2) The notification must state that B does not expect to commence an aviation activity within the four-month period beginning with the relevant date.

(3) For the purposes of this regulation, “the relevant date” is the last day of the period of 12 weeks beginning with the date on which B became a UK administered operator.

[<sup>F77</sup>(4) This regulation does not apply after 31st December 2014.]

#### Textual Amendments

- F75** Words in reg. 33 heading inserted (22.12.2014) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2014 \(S.I. 2014/3125\)](#), regs. 1(1), **7(2)**
- F76** Words in reg. 33(1) substituted (22.12.2014) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2014 \(S.I. 2014/3125\)](#), regs. 1(1), **7(3)**

**F77** Reg. 33(4) inserted (22.12.2014) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2014 \(S.I. 2014/3125\)](#), regs. 1(1), **7(4)**

### **[<sup>F78</sup>Requirement to notify the regulator if an emissions plan is not applied for on or after 1st January 2015**

**33A.**—(1) Where a person (“B”)—

- (a) becomes a UK administered operator on or after 1st January 2015; but
- (b) is not required to apply for a monitoring plan under regulation 32 or 32A,

B must, by the relevant date, notify the regulator in accordance with paragraph (2).

(2) Where—

- (a) the relevant date is before 1st September [<sup>F79</sup>2023], the notification must state that—
  - (i) B does not expect to commence an aviation activity within the four-month period beginning with the relevant date; or
  - (ii) B does expect to commence an aviation activity within the four-month period beginning with the relevant date, but B expects to carry out only excluded aviation activities within that four-month period;
- (b) the relevant date is on or after 1st September [<sup>F79</sup>2023], the notification must state that B does not expect to commence an aviation activity within the four-month period beginning with the relevant date.

(3) For the purposes of this regulation, the “relevant date” is the last day of the period of 12 weeks beginning with the date on which B became a UK administered operator.]

#### **Textual Amendments**

**F78** Reg. 33A inserted (22.12.2014) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2014 \(S.I. 2014/3125\)](#), regs. 1(1), **8**

**F79** Word in reg. 33A(2) substituted (31.3.2018) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2018 \(S.I. 2018/306\)](#), regs. 1, **2(5)**

### **Issue of an emissions plan**

**34.**—(1) Where a UK administered operator (“A”) has made an application under [<sup>F80</sup>regulation 32, 32A or 32B,] the regulator must, by the notice of determination of the application—

- (a) issue to A a plan setting out how A's aviation emissions must be monitored; or
- (b) where paragraph (2) applies, refuse the application.

(2) This 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) A has not agreed to amendments of the plan that so satisfy the regulator.

(3) A plan issued under paragraph (1)(a) must contain—

- (a) the provisions of the plan as proposed in the application, or with amendments as mentioned in paragraph (2)(b); and
- (b) any conditions included pursuant to regulation 36(1).

(4) Where the application is refused—

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- (a) the regulator must state in the notice under paragraph (1)(b) what changes must be made to the application if a plan is to be issued; and
  - (b) A must (or, in the case of an application under regulation 32(5), may) resubmit the amended application within the period of 31 days beginning with the date of service of that notice.
- (5) This regulation applies to the resubmission of an application as it applies to the original application, but for that purpose the references to the period of two months in paragraph 2(1)(a) and (2)(b) of Schedule 3 are to be read as a reference to a period of 24 days.

#### Textual Amendments

**F80** Words in reg. 34(1) substituted (22.12.2014) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2014 \(S.I. 2014/3125\)](#), regs. 1(1), **9**

#### Monitoring and reporting emissions

**35.**—(1) [<sup>F81</sup>Subject to paragraph (5), once] a UK administered operator (“A”) has been issued with an emissions plan, A must monitor aviation emissions for each scheme year in which A is a UK aircraft operator.

(2) [<sup>F82</sup>Subject to paragraph (5), monitoring] under paragraph (1) must be carried out in accordance with—

- (a) the Monitoring and Reporting Regulation; and
- (b) A's emissions plan (including the written procedures supplementing that plan).

(3) [<sup>F83</sup>Subject to paragraphs (6) and (7),] A must prepare a verified report of aviation emissions, for the whole of each such scheme year, in accordance with the Monitoring and Reporting Regulation and the Verification Regulation.

[<sup>F84</sup>(4) Subject to paragraphs (6) to (8), the report prepared under paragraph (3) must be submitted to the regulator—

- (a) for the scheme year 2018, by 11th March 2019; or
- (b) for any other scheme year, by 31st March in the year following that scheme year.]

[<sup>F85</sup>(5) The obligation to monitor aviation emissions does not apply in respect of excluded aviation emissions for the scheme years [<sup>F86</sup>2015 to 2023].

(6) The obligation to prepare and to submit to the regulator a verified report of aviation emissions does not apply—

- (a) in respect of excluded aviation emissions, for the scheme years beginning with 2013 and ending with [<sup>F87</sup>2023]; or
- (b) where, for the scheme years 2013 or 2014, A was an exempt non-commercial air transport operator.

[<sup>F88</sup>(7) The report shall be considered verified in accordance with the Verification Regulation where—

- (a) either—
  - (i) A has annual reportable emissions of less than 25,000 tonnes, or
  - (ii) A has annual reportable emissions of less than 3,000 tonnes other than from an outermost region flight, or flights departing from, or arriving in, an aerodrome situated in any country other than an EEA state, and

- (b) A has determined its emissions using the small emitters tool approved under the Small Emitters Tool Regulation and populated with data by Eurocontrol.]
- (8) The verified report for the scheme year 2013 must be submitted to the regulator by 31st March 2015.]

#### Textual Amendments

- F81** Words in reg. 35(1) substituted (22.12.2014) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2014 \(S.I. 2014/3125\)](#), regs. 1(1), **10(2)**
- F82** Words in reg. 35(2) substituted (22.12.2014) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2014 \(S.I. 2014/3125\)](#), regs. 1(1), **10(3)**
- F83** Words in reg. 35(3) inserted (22.12.2014) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2014 \(S.I. 2014/3125\)](#), regs. 1(1), **10(4)**
- F84** Reg. 35(4) substituted (27.12.2017) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2017 \(S.I. 2017/1207\)](#), regs. 1, **2(2)**
- F85** Reg. 35(5)-(8) inserted (22.12.2014) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2014 \(S.I. 2014/3125\)](#), regs. 1(1), **10(6)**
- F86** Words in reg. 35(5) substituted (31.3.2018) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2018 \(S.I. 2018/306\)](#), regs. 1, **2(6)(a)**
- F87** Word in reg. 35(6)(a) substituted (31.3.2018) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2018 \(S.I. 2018/306\)](#), regs. 1, **2(6)(b)**
- F88** Reg. 35(7) substituted (31.3.2018) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2018 \(S.I. 2018/306\)](#), regs. 1, **2(6)(c)**

#### Emissions plan conditions

**36.**—(1) Each regulator (“R”) must ensure that the emissions plan of a UK administered operator (“A”) for which R is the regulator includes any conditions that R from time to time considers necessary to give proper effect to—

- (a) the Monitoring and Reporting Regulation; and
  - (b) the Verification Regulation.
- (2) A must comply with any condition included in A's emissions plan.

#### Variation of an emissions plan

**37.**—(1) The regulator may, by giving notice to a UK administered operator (“A”), make any variation of A's emissions plan that the regulator considers necessary in consequence of a report made by A under Article 69.

- (2) The regulator may, by giving notice to A, vary A's emissions plan where—
- (a) A applies to the regulator for an amendment to the emissions plan, pursuant to a condition of the plan; or
  - (b) A has failed to comply with a requirement in the emissions plan to apply for such an amendment.

(3) The regulator may, by giving notice to a UK administered operator, vary an emissions plan in order to comply with the regulator's duty under regulation 36(1) or 89(4).

[<sup>F89</sup>(3A) The regulator may, by giving notice to a UK administered operator, vary an emissions plan in order to take account of any amendments to the Directive which may be made from time to time.]

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(4) A notice given under paragraph (1), (2)(b) or (3) may specify a period within which a fee for the variation of the emissions plan must be paid.

#### Textual Amendments

**F89** Reg. 37(3A) inserted (22.12.2014) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2014 \(S.I. 2014/3125\)](#), regs. 1(1), **11**

#### Variation of a benchmarking plan

**38.** The regulator may, by giving notice to a UK administered operator (“B”), vary B’s benchmarking plan where B applies to the regulator under paragraph 4(1) of Schedule 7 or paragraph 4(1) of Schedule 8.

### CHAPTER 5

#### Sanctions (other than civil penalties)

#### Detention and sale of aircraft

**39.**—(1) Where a person (“P”) is—

- (a) a UK administered operator who has not paid a civil penalty within the period of 6 months beginning with the date by which it is due, or
- (b) the subject of an operating ban imposed under Article 16(10) of the Directive,

the regulator may detain a relevant aircraft.

(2) For the purposes of paragraph (1)—

- (a) a “civil penalty” is any penalty imposed—
  - (i) under Part 7; or
  - (ii) under the 2010 Regulations in respect of a failure to comply with those Regulations on or after 1st January 2012; and
- (b) a “relevant aircraft” is any aircraft of which the regulator has reason to believe that P is the operator.

(3) Schedule 9 makes further provision about the detention of aircraft under this regulation, and about the sale of aircraft following such detention.

(4) For the purposes of paragraph (2), and of Schedules 9 and 10, the operator of an aircraft is the person using the aircraft to perform an aviation activity (and “operate” has the corresponding meaning).

#### Aircraft operating bans

**40.** Schedule 10 has effect in relation to—

- (a) requests to the European Commission made by the Secretary of State under Article 16(5) of the Directive for the imposition of an operating ban on a UK administered operator; and
- (b) the enforcement of any operating ban imposed under Article 16(10) of the Directive.

## PART 4

### Surrender of allowances

#### Surrender of allowances: operators of installations

**41.** For each scheme year, the operator of an installation must surrender allowances in accordance with the surrender requirements of the permit for the installation.

#### Surrender of allowances: UK aircraft operators

<sup>F90</sup>**42.** . . . . .

##### Textual Amendments

**F90** Reg. 42 revoked (22.12.2014) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2014 \(S.I. 2014/3125\)](#), regs. 1(1), **12(1)**

#### <sup>F91</sup>Surrender of allowances: UK aircraft operators: 2013, 2014 and subsequent scheme years

**42A.**—(1) Subject to paragraphs (3) and (4), by 30th April 2015, a UK administered operator (“A”) must surrender a number of allowances or aviation allowances equal to the sum of A’s annual reportable emissions in the scheme years 2013 and 2014.

<sup>F92</sup>(2) Subject to paragraph (3) and regulation 42B, for each scheme year beginning with 2015, A must surrender a number of allowances or aviation allowances equal to A’s annual reportable emissions in that scheme year by—

- (a) for the scheme year 2018, 15th March 2019; or
- (b) for any other scheme year, the following 30th April.]

(3) For each scheme year beginning with 2013 and ending with <sup>F93</sup>2023], the duty in paragraphs (1) and (2) does not apply in respect of A’s excluded aviation emissions.

(4) The duty in paragraph (1) does not apply for a scheme year in which A was an exempt non-commercial air transport operator.

##### Textual Amendments

**F91** Regs. 42A, 42B inserted (22.12.2014) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2014 \(S.I. 2014/3125\)](#), regs. 1(1), **13**

**F92** Reg. 42A(2) substituted (27.12.2017) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2017 \(S.I. 2017/1207\)](#), regs. 1, **2(3)**

**F93** Word in reg. 42A(3) substituted (31.3.2018) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2018 \(S.I. 2018/306\)](#), regs. 1, **2(7)**

#### Surrender of a deficit of allowances: UK administered operators

**42B.**—(1) Paragraphs (2) and (3) apply where a deficit arises in respect of compliance by a UK administered operator with regulation 42A(1) or 42A(2) for a scheme year (the “non-compliance year”).

(2) Where the deficit does not result from an error in the verified emissions report submitted by the UK administered operator, the amount of allowances or aviation allowances that the UK

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administered operator is required to surrender under regulation 42A(2) for the recovery year is increased by an amount of allowances or aviation allowances equal to the deficit.

(3) Where the deficit results from an error in the verified emissions report submitted by the UK administered operator, the amount of annual reportable emissions of the UK administered operator in the year in which the error is discovered, for the purpose of regulation 42A(2), is increased by an amount of annual reportable emissions equal to the deficit.

(4) In this regulation—

(a) “deficit” means a shortfall in the number of allowances or aviation allowances surrendered, calculated as—

(i) where the non-compliance year is any scheme year beginning with 2013 and ending with [<sup>F94</sup>2023],

$$x-y-z$$

, where—

‘x’ is the amount of annual reportable emissions arising in the non-compliance year;

‘y’ is the amount of excluded aviation emissions arising in the non-compliance year (expressed in tonnes of carbon dioxide equivalent); and

‘z’ is the amount of allowances or aviation allowances which the UK administered operator surrendered for the non-compliance year; and

(ii) where the non-compliance year is any scheme year beginning with [<sup>F95</sup>2024],

$$x-y$$

, where—

‘x’ is the amount of annual reportable emissions arising in the non-compliance year; and

‘y’ is the amount of allowances or aviation allowances which the UK administered operator surrendered for the non-compliance year; and

(b) the “recovery year” means, in respect of a failure to comply with—

(i) regulation 42A(1), the scheme year 2015; or

(ii) regulation 42A(2), the scheme year following the non-compliance year.]

#### Textual Amendments

**F91** Regs. 42A, 42B inserted (22.12.2014) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2014 \(S.I. 2014/3125\)](#), regs. 1(1), **13**

**F94** Word in reg. 42B(4)(a)(i) substituted (31.3.2018) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2018 \(S.I. 2018/306\)](#), regs. 1, **2(8)(a)**

**F95** Word in reg. 42B(4)(a)(ii) substituted (31.3.2018) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2018 \(S.I. 2018/306\)](#), regs. 1, **2(8)(b)**



## PART 5

### Enforcement etc.

#### Enforcement notices

**43.**—(1) Where the regulator considers that a person (“P”) has contravened, is contravening, or is likely to contravene a relevant provision, the regulator may serve a notice (“enforcement notice”) on P.

- (2) For the purpose of paragraph (1), a “relevant provision” is any provision of—
- (a) these Regulations;
  - (b) the Monitoring and Reporting Regulation;
  - (c) a permit; or
  - (d) an aviation emissions plan.
- (3) An enforcement notice must—
- (a) state the regulator's view under paragraph (1);
  - (b) specify the matters constituting the contravention or making a contravention likely;
  - (c) specify the steps that must be taken to remedy the contravention or to ensure that the likely contravention does not occur; and
  - (d) specify the period within which those steps must be taken.
- (4) P must comply with the requirements of the notice within the period so specified.
- (5) The regulator may withdraw an enforcement notice at any time by further notice served on P.

#### Power to determine reportable emissions

**44.**—(1) A power of the regulator to make a conservative estimate of emissions in accordance with Article 70 of the Monitoring and Reporting Regulation (a “determination of emissions”) may also be exercised where—

- (a) an operator fails to comply with the requirement to submit—
    - (i) a surrender report in accordance with paragraph 4(1)(a) and (b) of Schedule 4; or
    - (ii) a revocation report in accordance with paragraph 5(1)(a) and (b) of Schedule 4;
  - (b) an operator has failed to satisfy the regulator as required pursuant to paragraph 2(3)(c) of Schedule 4 or paragraph 3(8)(c) of Schedule 5;
  - (c) a request has been made under regulation 54(5)(b); or
  - (d) the regulator considers that such a determination is necessary for the purpose of imposing, or considering whether to impose, a penalty under Part 7.
- (2) In the case referred to in paragraph (1)(b), in making the determination the regulator may substitute an emissions factor of greater than zero for the factor reported in respect of the bioliquids concerned.
- (3) The regulator may make a determination of emissions where—
- (a) the operator has failed to submit a report as required pursuant to paragraph 3(8)(b) of Schedule 5; or
  - (b) the regulator has reason to believe that the report submitted is incorrect.
- (4) A determination of emissions—
- (a) must be notified to the operator or UK aircraft operator concerned; and

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- (b) is to be treated as determining all of the reportable emissions from the installation (or of the UK aircraft operator) for the period to which the determination relates.
- (5) A notice under paragraph (4)—
- (a) except where it relates to an excluded installation, must be served on the registry administrator (and is in that case to be regarded as an instruction to the registry administrator for the purposes of [<sup>F96</sup>Article 35(6) of the Registries Regulation 2013]); and
  - (b) must, where required by Article 70(2) of the Monitoring and Reporting Regulation, specify the corrections that are required to the verified report mentioned in regulation 35(3) or in paragraph 2(3)(b) of Schedule 4.
- (6) A regulator who makes a determination of emissions under the Monitoring and Reporting Regulation, or by virtue of this regulation, may recover the cost of doing so from the operator or UK aircraft operator concerned.

#### Textual Amendments

**F96** Words in [reg. 44\(5\)](#) 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(3)**

## PART 6

### Information

#### Provision of information

**45.**—(1) An authority or the Secretary of State may, by notice served on a regulator (“R”), require R to furnish such information about the discharge of R’s functions as the authority or the Secretary of State may require.

(2) For the purposes mentioned in paragraph (4), an authority, the Secretary of State, the registry administrator, the KP registry administrator or a regulator (a “relevant body”) may, by notice served on any person, require that person (“P”) to furnish such information as is specified in the notice, in such form and within such period following service of the notice or at such time as is so specified.

(3) The information which P may be required to furnish by a notice under paragraph (2) includes information, which, although it is not in P’s possession or would not otherwise come into P’s possession, is information which it is reasonable to require P to compile for the purpose of complying with the notice.

(4) The purposes referred to in paragraph (2) are—

- (a) the discharge of the relevant body’s functions; and
- (b) applying, seeking to apply, or assessing whether to seek to apply emission allowance trading to activities or greenhouse gases which are not listed in Annex 1 to the Directive, in accordance with Article 24 of the Directive.

(5) Where the Secretary of State is entitled to serve a notice on a person under paragraph (2)—

- (a) in relation to England<sup>F97</sup> ..., the regulator, and
- (b) in relation to [<sup>F98</sup>Wales,] Scotland and Northern Ireland, the regulator or the Environment Agency,

may serve that notice for the purpose of assisting the Secretary of State.

(6) In this regulation, “functions” means functions under or by virtue of—

- (a) these Regulations;
- (b) the Monitoring and Reporting Regulation;
- (c) the Verification Regulation;
- (d) the Registries Regulation 2010; or
- (e) the Registries Regulation [<sup>F99</sup>2013].

#### Textual Amendments

- F97** Words in reg. 45(5)(a) omitted (1.4.2013) by virtue of [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 4 para. 422(2)** (with Sch. 7)
- F98** Word in reg. 45(5)(b) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 4 para. 422(3)** (with Sch. 7)
- F99** Word in reg. 45(6)(e) 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(4)**

#### Disclosure of information

**46.**—(1) Subject to paragraph (2) a relevant body (within the meaning of regulation 45(2)) must not disclose or publish any information provided to the relevant body under these Regulations except where—

- (a) disclosure or publication is—
  - (i) required in these Regulations or otherwise by law;
  - (ii) necessary for the performance of the relevant body's functions (as defined by regulation 45(6)); [<sup>F100</sup>or]
  - (iii) made with the consent of the person by or on behalf of whom the information was provided; or
  - [<sup>F101</sup>(iv) necessary for the performance of the Environment Agency's functions in England under the Emissions Performance Standard Regulations 2015; or]
  - [<sup>F102</sup>(iv) necessary for the performance of the NRBW's functions in Wales under the Emissions Performance Standard (Enforcement) (Wales) Regulations 2015.]
  - [<sup>F103</sup>(v) necessary for the performance of the chief inspector's functions in Northern Ireland under the Emissions Performance Standard Monitoring and Enforcement Regulations (Northern Ireland) 2016; or]
- (b) disclosure is between one relevant body and another.

(2) The Secretary of State may use any information held or obtained for the purposes of these Regulations, and may share such information with other government bodies, for the purpose of preparing and publishing national energy and emissions statistics, including the preparation and publication of a national inventory.

(3) For the purpose of paragraph (2), “national inventory” means the estimation, under Article 4(1)(a) of the United Nations Framework Convention on Climate Change <sup>F104</sup>, of anthropogenic emissions of greenhouse gases by sources and removals of all greenhouse gases by sinks not controlled by the Montreal Protocol.

#### Textual Amendments

- F100** Word in reg. 46(1)(a)(ii) omitted (E.) (25.3.2015) by virtue of [The Emissions Performance Standard Regulations 2015 \(S.I. 2015/933\)](#), regs. 1(1), **20(1)** and word in reg. 46(1)(a)(ii) omitted (W.)

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(8.7.2015) by virtue of The Emissions Performance Standard (Enforcement) (Wales) Regulations 2015 (S.I. 2015/1388), regs. 1(2), **14(1)**

**F101** Reg. 46(1)(a)(iv) inserted (E.) (25.3.2015) by The Emissions Performance Standard Regulations 2015 (S.I. 2015/933), regs. 1(1), **20(2)**

**F102** Reg. 46(1)(a)(iv) inserted (W.) (8.7.2015) by The Emissions Performance Standard (Enforcement) (Wales) Regulations 2015 (S.I. 2015/1388), regs. 1(2), **14(2)**

**F103** Reg. 46(1)(a)(v) inserted (N.I.) (15.3.2016) by The Emissions Performance Standard Monitoring and Enforcement Regulations (Northern Ireland) 2016 (S.R. 2016/28), regs. 1, **15**

**F104** Cm 2833.

## National security

**47.**—(1) No information may be published—

(a) by the Secretary of State under regulation 16(6), paragraph 8 of Schedule 7 or paragraph 8 of Schedule 8, or

(b) by the regulator under regulation 71,

if, in the opinion of the Secretary of State, the publication of that information would be contrary to the interests of national security.

(2) For the purposes of paragraph (1)(b), the Secretary of State may give to the regulator directions specifying information which may not be published under regulation 71.

(3) The regulator must notify the Secretary of State of any information which is excluded from publication in accordance with directions under paragraph (2).

## PART 7

### Civil Penalties

#### Interpretation

**48.** In this Part—

“carbon price”, in relation to a tonne of carbon dioxide equivalent, is the price referred to in regulation 49;

“penalty notice” means a notice served under regulation 50(1);

“additional penalty notice” means a notice served under regulation 50(3).

#### Carbon Price

**49.**—(1) In respect of the scheme year beginning with 1st January 2013, the carbon price is £6.70.

(2) For each subsequent scheme year, the Secretary of State must determine a price as the carbon price for that year, based on the sterling equivalent of the average end of day settlement price (in Euro per tonne of carbon dioxide equivalent) of the December futures contracts for that scheme year.

(3) For that purpose—

“average end of day settlement price” means the average over the 12 months ending with the relevant date;

“futures contract” means the futures contract as traded on the single largest carbon market exchange (as determined by volume of sales in the 12 months ending with the relevant date);

“sterling equivalent” means the sterling equivalent converted by reference to the Bank of England annual average spot exchange rate for the 12 months ending with the relevant date;

“the relevant date”, in relation to the year for which the carbon price is set, is 11th November in the preceding year.

(4) The Secretary of State must publish a determination made under paragraph (2) one month before the beginning the scheme year in question.

### **Penalty notices**

**50.**—(1) Where the regulator is satisfied that a person (“P”) is liable to a civil penalty under this Part the regulator must (subject to regulation 51) serve a notice on P.

(2) The penalty notice must specify—

- (a) the regulation under which that liability arises;
- (b) the amount of the civil penalty due;
- (c) where appropriate, how that amount is calculated;
- (d) whether or not P may be liable to a civil penalty in accordance with regulation 53(2)(b), 56(2)(b), 60(2)(b), 62(2)(b), 63(2)(b), 64(2)(b), 67(2)(b), 68(2)(b), or 69(2)(b) (an “additional daily penalty”); and
- (e) if P will not be liable to an additional daily penalty, the date by which the penalty for which P is liable must be paid.

(3) Subject to regulation 51 and to paragraph (4), where the regulator is satisfied that P is liable to an additional daily penalty the regulator must, when the amount of that additional daily penalty can be determined, serve a notice on P specifying—

- (a) the total amount of the civil penalties due; and
- (b) the date by which that amount must be paid.

(4) In the case of an additional daily penalty under regulation 67(2)(b), a notice under paragraph (3) stating the amount of additional daily penalty that has accrued by the date of the notice may be served at such intervals as the regulator thinks fit.

(5) A civil penalty imposed by a penalty notice or an additional penalty notice must be paid to the regulator by the date specified in the notice.

(6) Any such civil penalty is recoverable by the regulator—

- (a) as a civil debt; and
- (b) where applicable, in accordance with regulation 39 and Schedule 9.

(7) the regulator must, as soon as is reasonably practicable—

- (a) give notice to the authority of the service of any penalty notice or additional penalty notice; and
- (b) pass to the authority any civil penalty that has been paid to the regulator.

### **Discretion in imposing civil penalties**

**51.**—(1) Where the regulator considers it appropriate to do so, the regulator may (subject to paragraph (2))—

- (a) refrain from imposing a civil penalty;
- (b) reduce the amount of a penalty (including the amount of an additional daily penalty);
- (c) extend the time for payment specified in the penalty notice or additional penalty notice;

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- (d) withdraw a penalty notice or an additional penalty notice;
- (e) modify the notice by substituting a lower penalty.

(2) The powers under paragraph (1) do not apply in relation to any penalty arising under regulation 54(1).

### Carrying out a regulated activity contrary to regulation 9

**52.**—(1) Where in any scheme year a regulated activity is carried out that is not authorised by a permit, contrary to regulation 9, the operator of the installation (“P”) is at the end of that year liable to the civil penalty in paragraph (2).

(2) [<sup>F105</sup>Subject to paragraph (3), for each] such year, the civil penalty is  $A + (B \times \frac{1}{2} C)$ , where—

A is the estimated amount of the costs avoided by P in that year as a result of carrying out a regulated activity without such authorisation;

B is the estimated amount of reportable emissions from the installation in the period during which a regulated activity was carried out without such authorisation;

C is the carbon price for that year.

[<sup>F106</sup>(3) In imposing the penalty under paragraph (2), the regulator may increase the amount determined under that paragraph by a percentage designed to ensure that the penalty exceeds the amount of any economic benefit that P has obtained as result of the failure to comply with regulation 9.]

(4) The authority must exercise powers under section 40 of the Environment Act 1995 [<sup>F107</sup>, article 11 of the NRBW Order] or regulation 37 of the Northern Ireland Regulations to give the regulator directions as to—

- (a) the estimation by the regulator of A and B in paragraph (2); and
- (b) the exercise of the regulator's powers [<sup>F108</sup>under] paragraph (3).

#### Textual Amendments

**F105** Words in reg. 52(2) substituted (31.1.2014) by [The Greenhouse Gas Emissions Trading Scheme and National Emissions Inventory \(Amendment\) Regulations 2013 \(S.I. 2013/3135\)](#), regs. 1, **3(2)**

**F106** Reg. 52(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, **3(3)**

**F107** Words in reg. 52(4) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 4 para. 423** (with Sch. 7)

**F108** Word in reg. 52(4)(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, **3(4)**

### Failure to comply with a condition of a permit

**53.**—(1) An operator is liable to the civil penalties in paragraph (3) where the operator fails to comply (or comply on time) with a condition of a permit included pursuant to—

- (a) paragraph 2(1)(e)(ii) or (iv) of Schedule 4 (but excluding the condition mentioned in paragraph (4) below);
- (b) paragraph 3(1)(g), (h) or (i) of Schedule 5; or
- (c) regulation 10 of the 2005 Regulations, other than regulation 10(3) and (4) (or such a condition as modified by virtue of regulation 88(6) or (7) of these Regulations).

(2) However, an operator is not liable to those civil penalties where the failure to comply gives rise to a penalty under regulation 57.

(3) The civil penalties are—

(a) £3,750; and

(b) £375 for each day that the operator fails to comply with the condition following service of a penalty notice, up to a maximum of £33,750.

(4) An operator is liable to a civil penalty of £5,000 where the operator fails to comply with a condition of a permit included pursuant to paragraph 2(7)(a) of Schedule 4.

### Failure to surrender allowances

**54.**—(1) A person (“P”) is liable to the civil penalty in paragraph (2) where P fails to surrender sufficient allowances, contrary to regulation 41 or [<sup>F109</sup>regulation 42A] .

(2) The civil penalty (“excess emissions penalty”) is the sterling equivalent of 100 Euros for each allowance that P failed so to surrender.

(3) But paragraph (1) is subject to paragraphs (4) to (6).

(4) Where paragraph (5) applies, P is not liable to the excess emissions penalty for a failure to surrender allowances in respect of those reportable emissions in a scheme year that—

(a) were not reported in the verified emissions report submitted for that year, but

(b) have been determined by the regulator following a request under paragraph (5)(b).

(5) This paragraph applies where P, before the regulator serves on P a penalty notice imposing an excess emissions penalty in respect of emissions in that scheme year (or a notice of the regulator's intention to do so)—

(a) notifies the regulator that there are annual reportable emissions not included in the report that has been submitted for that year,

(b) requests the regulator to make a determination of the annual reportable emissions for that year, and

(c) has surrendered allowances equal to the reportable emissions as so determined.

(6) Where paragraph (5) applies, P is liable to the civil penalty of the sterling equivalent of 20 Euros for each allowance that P failed to surrender in respect of the unreported emissions by the relevant date.

(7) In this regulation—

(a) “allowance”, where P is a UK aircraft operator, includes an aviation allowance;

[<sup>F110</sup>(b) “relevant date” means—

(i) if the scheme year mentioned in paragraph (4) is the scheme year 2018, 15th March 2019; or

(ii) if the scheme year mentioned in paragraph (4) is any other scheme year, 30th April in the year following that scheme year;]

(c) “unreported emissions” means the emissions mentioned in paragraph (4);

(d) “sterling equivalent” means, subject to paragraph (8), the sterling equivalent converted by reference to the applicable rate of conversion; and

(e) for that purpose the applicable rate is the first rate of conversion to be published in September of the year preceding the scheme year in which P is liable to the penalty in the C series of the Official Journal of the European Union, adjusted in accordance with paragraph (8).

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(8) If the last Harmonised Index of Consumer Prices for the member States of the European Union (“HICP”) published by Eurostat before the end of April in the year in which P failed to surrender the allowances shows an average percentage price increase as compared with the last HICP published before the end of April 2012, the sterling equivalent is increased by the same percentage.

#### Textual Amendments

**F109** Words in reg. 54(1) substituted (22.12.2014) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2014 \(S.I. 2014/3125\)](#), regs. 1(1), **14**

**F110** Reg. 54(7)(b) substituted (27.12.2017) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2017 \(S.I. 2017/1207\)](#), regs. 1, **2(4)**

#### Exceeding an emissions target for an excluded installation

**55.**—(1) An operator of an excluded installation is liable to the civil penalty in paragraph (2) where in any scheme year the operator fails to comply with paragraph 5 of Schedule 5.

(2) The civil penalty is  $(A - B) \times \frac{1}{2} C$ , where—

- A is the amount of annual reportable emissions arising in the scheme year;
- B is the emissions target for that year;
- C is the carbon price for that year.

#### Failure to pay a penalty for exceeding an emissions target for an excluded installation

**56.**—(1) An operator of an excluded installation is liable to the civil penalties in paragraph (2) where the operator fails to pay a penalty imposed under regulation 55 by the date specified in the penalty notice.

(2) The civil penalties are—

- (a) 10% of the penalty imposed under regulation 55; and
- (b) £150 for each day that the operator fails to pay that penalty following service of a penalty notice in respect of the penalty under sub-paragraph (a), up to a maximum of £13,500.

#### Under-reporting of emissions from an excluded installation

**57.**—(1) An operator of an excluded installation is liable to the civil penalty in paragraph (2) where there are reportable emissions in a scheme year (“the unreported emissions”) that—

- (a) were not reported in the report submitted for that year under paragraph 3(8)(b) of Schedule 5; but
- (b) have been determined by the regulator under regulation 44(3).

(2) The civil penalty is  $A + (B \times \frac{1}{2} C)$  where—

- A is £3,750;
- B is the amount of the unreported emissions;
- C is the carbon price for that year.

#### Failure to notify when an excluded installation ceases to meet the criteria for being excluded

**58.**—(1) An operator of an excluded installation (“P”) is liable to the civil penalties in paragraphs (2) and (3) where P fails to comply (or comply on time) with a notification requirement under—

- (a) a condition of a permit included pursuant to paragraph 3(4) or (5) of Schedule 5; or



(b) paragraph 4(1) or (2) of Schedule 5.

(2) For the first scheme year in which P fails to comply with the requirement to notify by 31st March in that year, the civil penalty is £2,500.

(3) For the first and each subsequent scheme year in which P has still failed to comply with the notification requirement by 31st October in that year, P is at the end of the following scheme year (“S”) liable to the civil penalty in paragraph (4).

(4) The civil penalty is  $2 \frac{1}{2} (A + B)$ , where—

A is £2,500;

B is the avoided compliance costs.

(5) In paragraph (4) “avoided compliance costs” means  $((W - X) \frac{1}{2} Y) - Z$ , where—

W is the amount of annual reportable emissions arising in S;

X is the number of allowances for S to which P would have been entitled in accordance with Article 10a of the Directive, if the installation had not been an excluded installation and had been carrying out regulated activities;

Y is the carbon price for S;

Z is any penalty due under regulation 55 in respect of S.

#### **[<sup>F111</sup>Failure to notify when an excluded installation has had a significant capacity reduction or partial cessation of regulated activities**

**58A.** An operator is liable to a civil penalty of £5,000 where the operator fails to comply with a notification requirement under paragraph 7(2) or 9(2) of Schedule 6A.

##### **Textual Amendments**

**F111** Reg. 58A 58B inserted (4.12.2015) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2015 \(S.I. 2015/1849\)](#), regs. 1(1), 6

#### **Failure to notify when the operator of an excluded installation has suspended the carrying out of regulated activities at the installation**

**58B.** An operator is liable to a civil penalty of £3,750 where the operator fails to comply with a notification requirement under paragraph 8(10) or Schedule 6A.]

##### **Textual Amendments**

**F111** Reg. 58A 58B inserted (4.12.2015) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2015 \(S.I. 2015/1849\)](#), regs. 1(1), 6

#### **Failure to surrender a permit**

**59.** Where an operator fails to make an application to surrender a permit, contrary to regulation 13(1) and (2), the operator is liable to a civil penalty of £5,000.

#### **Failure to submit or resubmit an application for an emissions plan**

**60.**—(1) [<sup>F112</sup>Subject to paragraphs (3) and (4), a UK administered operator] (“A”) is liable to the civil penalties in paragraph (2) where A fails to—

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- (a) submit (or to submit on time) an application for an emissions plan, contrary to <sup>F113</sup>regulation 32(1), 32A(2) or 32B(2)];
  - (b) provide a satisfactory explanation, contrary to <sup>F114</sup>regulation 32(4), 32A(3)(b), 32A (5) (b), 32B(3)(b) or 32B(5)(b)]; or
  - (c) resubmit (or to resubmit on time) an application for an emissions plan, where required to do so by regulation 34(4).
- (2) The civil penalties are—
- (a) £1,500; and
  - (b) £150 for each day that the application or resubmission of an application is not provided, following the service of a penalty notice, up to a maximum of £13,500.
- <sup>F115</sup>(3) A is not liable to a civil penalty for a failure to apply to the regulator for a monitoring plan, contrary to regulation 32(1), in so far as the duty to apply arose—
- (a) before 1st January 2015; and
  - (b) only in relation to excluded aviation activities.
- (4) To the extent that A was required to apply to the regulator for a monitoring plan under regulation 32(1), A is not liable to a civil penalty for a failure to apply where—
- (a) the duty to apply arose before 1st January 2015; and
  - (b) when the duty arose, A was an exempt non-commercial air transport operator.]

#### Textual Amendments

- F112** Words in reg. 60(1) substituted (22.12.2014) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2014 \(S.I. 2014/3125\)](#), regs. 1(1), **15(2)**
- F113** Words in reg. 60(1)(a) substituted (22.12.2014) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2014 \(S.I. 2014/3125\)](#), regs. 1(1), **15(3)**
- F114** Words in reg. 60(1)(b) substituted (22.12.2014) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2014 \(S.I. 2014/3125\)](#), regs. 1(1), **15(4)**
- F115** Reg. 60(3)(4) inserted (22.12.2014) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2014 \(S.I. 2014/3125\)](#), regs. 1(1), **15(5)**

#### Failure to notify the regulator if an emissions plan is not applied for

**61.**—(1) [<sup>F116</sup>Subject to paragraph (3), a UK administered operator] (“A”) is liable to the civil penalty in paragraph (2) where A fails to comply with the requirements of regulation 33(1) [<sup>F117</sup>or regulation 33A(1)].

(2) The civil penalty is £5,000.

<sup>F118</sup>(3) A is not liable to a civil penalty for a failure to comply with regulation 33(1), where the duty under that regulation arose before 1st January 2015 and, at the time the duty arose—

- (a) A carried out only excluded aviation activities; or
- (b) A was an exempt non-commercial air transport operator.]

#### Textual Amendments

- F116** Words in reg. 61(1) substituted (22.12.2014) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2014 \(S.I. 2014/3125\)](#), regs. 1(1), **16(2)**

**F117** Words in reg. 61(1) inserted (22.12.2014) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2014 \(S.I. 2014/3125\)](#), regs. 1(1), **16(2)**

**F118** Reg. 61(3) inserted (22.12.2014) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2014 \(S.I. 2014/3125\)](#), regs. 1(1), **16(3)**

### Failure to comply with a condition of an emissions plan

**62.**—(1) A UK administered operator (“A”) is liable to the civil penalties in paragraph (2) where A fails to comply (or to comply on time) with a condition in an emissions plan, contrary to regulation 36(2).

(2) The civil penalties are—

- (a) £1,500; and
- (b) £150 for each day that A fails to comply with the condition following the service of a penalty notice, up to a maximum of £13,500.

### Failure to monitor aviation emissions

**63.**—(1) [<sup>F119</sup>Subject to paragraph (3), a UK administered operator] (“A”) is liable to the civil penalties in paragraph (2) where A fails to monitor aviation emissions, contrary to regulation 35(1).

(2) The civil penalties are—

- (a) £1,500; and
- (b) £150 for each day that A fails to monitor aviation emissions following the service of a penalty notice, up to a maximum of £13,500.

[<sup>F120</sup>(3) A is not liable to a civil penalty for a failure to monitor aviation emissions for the scheme years 2013 or 2014 in so far as—

- (a) the duty to monitor arose in respect of excluded aviation activities; or
- (b) in that scheme year, A was an exempt non-commercial air transport operator.]

### Textual Amendments

**F119** Words in reg. 63(1) substituted (22.12.2014) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2014 \(S.I. 2014/3125\)](#), regs. 1(1), **17(2)**

**F120** Reg. 63(3) inserted (22.12.2014) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2014 \(S.I. 2014/3125\)](#), regs. 1(1), **17(3)**

### Failure to report aviation emissions

**64.**—[<sup>F121</sup>(1) Subject to paragraph (3), a UK administered operator (“A”) is liable to the civil penalties in paragraph (2) where A fails to report (or to report on time) aviation emissions, contrary to—

- (a) for the scheme year 2013, regulation 35(8); or
- (b) for any other scheme year, regulation 35(4).]

(2) The civil penalties are—

- (a) £3,750; and
- (b) £375 for each day that the report is not submitted, following the service of a penalty notice, up to a maximum of £33,750.

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[<sup>F122</sup>(3) A is not liable for a civil penalty for a failure to report, by 31st March 2014, aviation emissions for the scheme year 2013.]

#### Textual Amendments

- F121** Reg. 64(1) substituted (22.12.2014) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2014 \(S.I. 2014/3125\)](#), regs. 1(1), **18(2)**
- F122** Reg. 64(3) inserted (22.12.2014) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2014 \(S.I. 2014/3125\)](#), regs. 1(1), **18(3)**

#### Failure to provide assistance and advice

**65.** Where an aerodrome operator fails to provide reasonable assistance and advice, contrary to paragraph 7(1) of Schedule 9, the aerodrome operator is liable to a civil penalty of £50,000.

#### Failure to comply with a direction relating to an operating ban

**66.** Where a person fails to comply with a direction, contrary to paragraph 2(4)(a) of Schedule 10, that person is liable to a civil penalty of £50,000.

#### Failure to return allowances

**67.—(1)** An operator or a UK administered operator (“P”) is liable to the civil penalties in paragraph (2) where P—

- (a) receives allowances or aviation allowances to which P is not entitled; and
- (b) fails to return (or return on time) such allowances or aviation allowances, contrary to—
  - (i) paragraph 11(4) of Schedule 6; <sup>F123</sup>...
  - [<sup>F124</sup>(ia) paragraph 12(4) of Schedule 6A; or]
  - (ii) paragraph 10(4) of Schedule 7.

(2) The civil penalties are—

- (a) £20,000; and
- (b) £1,000 for each day that P fails to return the allowances following the service of a penalty notice.

#### Textual Amendments

- F123** Word in reg. 67(1)(b)(i) omitted (4.12.2015) by virtue of [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2015 \(S.I. 2015/1849\)](#), regs. 1(1), **7(2)**
- F124** Reg. 67(1)(b)(ia) inserted (4.12.2015) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2015 \(S.I. 2015/1849\)](#), regs. 1(1), **7(3)**

#### Failure to comply with an enforcement notice

**68.—(1)** A person (“P”) is liable to the civil penalties in paragraph (2) where P fails to comply (or to comply on time) with the requirements of an enforcement notice, contrary to regulation 43(4).

(2) The civil penalties are—

- (a) £20,000; and

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- (b) £1,000 for each day that P fails to comply with the requirements of the enforcement notice, following service of a penalty notice, up to a maximum of £30,000.

### Failure to comply with an information notice

**69.**—(1) A person (“P”) is liable to the civil penalties in paragraph (2) where P fails to comply (or to comply on time) with the requirements of [<sup>F125</sup>a notice] served under regulation 45(2) (an “information notice”).

(2) The civil penalties are—

- (a) £1,500; and  
 (b) £150 for each day that P fails to comply with the requirements of the information notice, following service of a penalty notice, up to a maximum of £13,500.

#### Textual Amendments

**F125** Words in reg. 69(1) 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(1)**

### Providing false or misleading information

**70.**—(1) A person (“P”) is liable to the civil penalty in paragraph (2) where P provides false or misleading information, or makes a statement which is false or misleading in a material particular, where the statement is made or the information is provided—

- (a) in any application made under these Regulations, or in response to a notice served under paragraph 1(12) of Schedule 3;  
 (b) in a notice under regulation 33(1)(b);  
 (c) in an aviation emissions report prepared under regulation 35(3);  
 (d) in response to a notice served under regulation 45(2);  
 (e) pursuant to a requirement mentioned in regulation 80(2) or (4);  
 (f) in purported compliance with the conditions of a permit or an aviation emissions plan;  
<sup>F126</sup>  
 ...

[<sup>F127</sup>(g) pursuant to paragraph 6(2), 8(4)(a), or 8(5)(a) of Schedule 6; or]

[<sup>F128</sup>(h) pursuant to paragraph 7(2) or 9(2) of Schedule 6A.]

(2) The civil penalty is £1,000.

#### Textual Amendments

**F126** Word in reg. 70(1)(f) omitted (4.12.2015) by virtue of [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2015 \(S.I. 2015/1849\)](#), regs. 1(1), **8(2)**

**F127** Reg. 70(1)(g) substituted (4.12.2015) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2015 \(S.I. 2015/1849\)](#), regs. 1(1), **8(3)**

**F128** Reg. 70(1)(h) inserted (4.12.2015) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2015 \(S.I. 2015/1849\)](#), regs. 1(1), **8(4)**

### Publication of names of persons subject to penalties under regulation 54(1)

**71.**—(1) As soon as possible after—

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- (a) the expiry of the period for appealing the imposition of a penalty by the regulator under regulation 54(1), or
  - (b) if such an appeal is made, the determination or withdrawal of the appeal,
- the regulator must (subject to paragraph (2)) publish the name of the person on whom that penalty was imposed.
- (2) The name must not be published if, following such an appeal, the person is found not to be liable to any of the penalty imposed under regulation 54(1).
  - (3) Paragraph (1) is subject to regulation 47 (national security).

## PART 8

### Appeals

#### CHAPTER 1

##### General

#### Interpretation

72. In this Part—

- (a) “appeal body” has the meaning given by regulation 75;
- (b) “decision” means—
  - (i) a notice or deemed refusal under these Regulations; or
  - (ii) an action or decision of the registry administrator or the KP registry administrator;
- (c) “notice” includes—
  - (i) in the case of a notice determining an application for a permit or the transfer of the permit, the provisions of any permit attached to the notice; and
  - (ii) in the case of a notice determining an application for an aviation emissions plan, the conditions included in the plan issued by the notice.

#### Rights of appeal

73.—(1) Subject to paragraph (3), the following persons may appeal to the appeal body—

- (a) a person who is aggrieved by a decision determining any application made by them under these Regulations;
  - (b) a person who is aggrieved by a notice served on them [<sup>F129</sup>or notification given to them] under any provision mentioned in paragraph (2).
- (2) Those provisions are—
- (a) regulation 11(2), (3)(b) or (4);
  - (b) regulation 14(1);
  - (c) regulation 26(2);
  - (d) regulation 37(1), (2)(b) or (3);
  - (e) regulation 43(1);
  - (f) regulation 44(4);
  - (g) regulation 45(2);

- (h) regulation 50(1) or (3);
- (i) paragraph 8(1) or (4) of Schedule 5;
- (j) paragraph 6(7)(a) of Schedule 6, in relation to a decision to make a request under paragraph 6(5)(a) or (b) of that Schedule;
- (k) paragraph 7(11)(a) of Schedule 6, in relation to a decision to make a request under paragraph 7(9)(a) of that Schedule;
- (l) paragraph 7(11)(b) of Schedule 6;
- (m) paragraph 8(11)(a) of Schedule 6, in relation to a decision to make a request under paragraph 8(9)(a) or (b) of that Schedule;
- (n) paragraph 11(2) of Schedule 6;
- [<sup>F130</sup>(na) paragraph 7(7)(a) of Schedule 6A, in relation to a decision to notify the registry administrator to withhold allowances under paragraph 7(5)(a) or (b) of that Schedule;
- (nb) paragraph 8(14)(a) of Schedule 6A, in relation to a decision to notify the registry administrator to withhold allowances under paragraph 8(12)(a) or (b) of that Schedule;
- (nc) paragraph 8(14)(b) of Schedule 6A;
- (nd) paragraph 9(7)(a) of Schedule 6A, in relation to a decision to notify the registry administrator to withhold allowances under paragraph 9(5)(a) or (b) of that Schedule;
- (ne) paragraph 12(2) of Schedule 6A;]
- (o) paragraph 10(2) of Schedule 7.
- (3) An appeal under paragraph (1) may not be made to the extent that the decision implements—
  - (a) a direction given by the authority under section 40 of the Environment Act 1995 [<sup>F131</sup>, article 11 of the NRBW Order] or regulation 37 of the Northern Ireland Regulations <sup>F132</sup>, or
  - (b) a direction given by an appeal body under these Regulations.

#### Textual Amendments

**F129** Words in reg. 73(1)(b) inserted (4.12.2015) by The Greenhouse Gas Emissions Trading Scheme (Amendment) Regulations 2015 (S.I. 2015/1849), regs. 1(1), **9(2)**

**F130** Reg. 73(2)(na)-(ne) inserted (4.12.2015) by The Greenhouse Gas Emissions Trading Scheme (Amendment) Regulations 2015 (S.I. 2015/1849), regs. 1(1), **9(3)**

**F131** Words in reg. 73(3)(a) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 4 para. 423** (with Sch. 7)

**F132** Regulation 37 is modified by regulation 7(2) of these Regulations.

#### Rights of appeal: registries

**74.**—(1) A person who is aggrieved by a decision of the registry administrator [<sup>F133</sup>or KP registry administrator] referred to in a provision of the Registries Regulation [<sup>F134</sup>2013] mentioned in paragraph (2) may exercise the right to object given by that provision by appealing to the appeal body.

[<sup>F135</sup>(2) Those provisions are—

- (a) Article 22(3);
- (b) Article 24(6);
- (c) Article 25(3);
- (d) Article 33(5);

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(e) Article 34(6).]

<sup>F136</sup>(3) .....

<sup>F136</sup>(4) .....

(5) On receiving notice under regulation 80(10), the account holder may appeal to the appeal body against the decision to set a registry account to blocked status.

#### Textual Amendments

**F133** Words in reg. 74(1) inserted (31.1.2014) by The Greenhouse Gas Emissions Trading Scheme and National Emissions Inventory (Amendment) Regulations 2013 (S.I. 2013/3135), regs. 1, **5(5)(a)(i)**

**F134** Word in reg. 74(1) 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(5)(a)(ii)**

**F135** Reg. 74(2) 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(5)(b)**

**F136** Reg. 74(3)(4) omitted (31.1.2014) by virtue of The Greenhouse Gas Emissions Trading Scheme and National Emissions Inventory (Amendment) Regulations 2013 (S.I. 2013/3135), regs. 1, **5(5)(c)**

#### Appeal body

**75.**—(1) In the case of an appeal against a decision of SEPA, the appeal body is the Scottish Ministers.

(2) In the case of an appeal against a decision of the chief inspector, the appeal body is the Planning Appeals Commission.

(3) In the case of an appeal against any other decision the appeal body is the First-tier Tribunal.

#### Effect of an appeal

**76.**—(1) Subject to paragraphs (2) to (4), the bringing of an appeal under regulation 73 suspends the effect of the decision pending the final determination or withdrawal of the appeal.

(2) The bringing of an appeal does not suspend the effect of—

(a) a decision refusing an application;

(b) a deemed refusal;

(c) a notice [<sup>F137</sup>or notification] under—

(i) regulation 11(2), (3)(b) or (4);

(ii) regulation 37(1), (2)(b) or (3);

(iii) regulation 43(1);

(iv) paragraph 8(1) or (4) of Schedule 5; <sup>F138</sup> ...

(v) paragraphs 6(7)(a), 7(11)(a) or (b), or 8(11)(a) of Schedule 6 [<sup>F139</sup>; or]

[<sup>F140</sup>(vi) paragraph 7(7)(a), 8(14)(a) or (b), or 9(7)(a) of Schedule 6A.]

(3) Where (following an application for a permit or for the transfer of a permit) a permit has been granted or varied, the bringing of an appeal against the provisions of the permit or the terms of the variation does not suspend the effect of those provisions or terms.

(4) Where an aviation emissions plan has been issued following an application under regulation 32, the bringing of an appeal against the conditions included in the plan does not suspend the effect of those conditions.



(5) The bringing of an appeal against a determination of emissions under regulation 44(4) suspends the effect of the decision only for the purpose of assessing whether there has been compliance with regulation 41 or 42.

(6) The bringing of an appeal under regulation 74 does not suspend the effect of the decision pending the final determination or withdrawal of the appeal.

#### Textual Amendments

- F137** Words in reg. 76(2)(c) inserted (4.12.2015) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2015 \(S.I. 2015/1849\)](#), regs. 1(1), **10(2)**
- F138** Word in reg. 76(2)(c)(iv) omitted (4.12.2015) by virtue of [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2015 \(S.I. 2015/1849\)](#), regs. 1(1), **10(3)**
- F139** Word in reg. 76(2)(c)(v) substituted (4.12.2015) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2015 \(S.I. 2015/1849\)](#), regs. 1(1), **10(4)**
- F140** Reg. 76(2)(c)(vi) inserted (4.12.2015) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2015 \(S.I. 2015/1849\)](#), regs. 1(1), **10(5)**

#### Determination of an appeal

77.—(1) In determining an appeal under regulation 73(1) the appeal body may, subject to paragraph (3)—

- (a) affirm the decision;
- (b) quash the decision or vary any of its terms;
- (c) substitute a deemed refusal with a decision of the appeal body; or
- (d) give directions to the regulator as to the exercise of the regulator's functions under these Regulations.

[<sup>F141</sup>(2) In determining an appeal under regulation 74, the appeal body may give directions to the registry administrator or the KP registry administrator as to the exercise of their functions under the Registries Regulation 2013.]

(3) The appeal body may not make a determination that would result in a decision which could not otherwise have been made under these Regulations or under the Registries Regulation [<sup>F142</sup>2013].

#### Textual Amendments

- F141** Reg. 77(2) 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(6)(a)**
- F142** Word in reg. 77(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, **5(6)(b)**

## CHAPTER 2

### Appeals: Scotland and Northern Ireland

#### Procedure for appeals

78.—(1) Schedule 11, Part 1, has effect in relation to the making and determination of an appeal to the Scottish Ministers.

(2) The Scottish Ministers may—

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- (a) appoint any person to exercise on their behalf, with or without payment, the function of determining an appeal under this Part or any matter or question involved in such an appeal; or
  - (b) refer any matter or question involved in such an appeal to such person as they may appoint for the purpose, with or without payment.
- (3) Schedule 11, Part 2, has effect in relation to appointments under paragraph (2)(a).
- (4) Schedule 12 has effect in relation to the making and determination of an appeal to the Planning Appeals Commission.

## PART 9

### The Union Registry and the UK Registry

#### Interpretation

**79.**—<sup>F143</sup>(1) In this Part, a reference to a numbered Article is to that Article of the Registries Regulation 2013.]

(2) In regulation 80—

“the allocation table” means the national allocation table notified to the European Commission by the United Kingdom under <sup>F144</sup>Article 51(1)];

“the aviation allocation table” means the national aviation allocation table notified by the United Kingdom to the European Commission under <sup>F144</sup>Article 54(1)].

#### Textual Amendments

**F143** Reg. 79(1) 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(7)(a)**

**F144** Words in reg. 79(2) 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(7)(b)**

#### The Union Registry

**80.**—<sup>F145</sup>(1) .....

(2) It is the duty of the account holder to comply with the requirement to enter emissions data in accordance with <sup>F146</sup>Article 35(2)]; furthermore, an amount of zero must be entered by the account holder if the latter is—

- (a) an operator who carried out no regulated activity in the year to which the data would relate; or
- (b) a UK administered operator who carried out no aviation activity in that year.

(3) The verifier is responsible under <sup>F147</sup>Article 35(4) and (5)] for—

- (a) approving the annual verified emissions; and
- (b) marking the emissions as verified.

(4) The operator or the UK administered operator is responsible for complying with the requirement under <sup>F148</sup>Article 16(1) or 17(1)] to provide information to the registry administrator and request the opening of a registry account.

(5) In complying with the requirement mentioned in paragraph (4), the operator or the UK administered operator must provide such evidence of identity and address as may be required by the registry administrator.

(6) Where—

- (a) an operator fails to comply with regulation 41, or
- (b) a UK aircraft operator fails to comply with regulation 42,

the registry administrator must set the relevant registry account to blocked status until the compliance status figure for the installation or UK aircraft operator, calculated in accordance with [F149 Article 37], is greater than or equal to zero.

(7) This paragraph applies where—

- (a) an operator is required to submit a report to the regulator by the terms of a notice of surrender or a revocation notice; and
- (b) the operator—
  - (i) fails to submit the report to the regulator within the time specified in the report;
  - (ii) submits an incomplete report to the regulator within the time so specified; or
  - (iii) submits within the time so specified a report to the regulator that cannot be verified in whole or in part in accordance with the monitoring and reporting requirements for the installation.

(8) Where paragraph (7) applies, the registry administrator must set the relevant operator holding account to blocked status until—

- (a) the report has been prepared and verified in accordance with the requirements of paragraph 4(1)(b) or 5(1)(b) of Schedule 4 and has been submitted to the regulator; or
- (b) the regulator has notified, in accordance with regulation 44(4)(a), a determination of the reportable emissions referred to in paragraph 4(1)(a) or 5(1)(a) of that Schedule.

(9) Where an operator is in breach of the requirement to comply with a notice given under paragraph 11(2) of Schedule 6 or paragraph 10(2) of Schedule 7, the registry administrator must set the operator holding account to blocked status until that notice has been complied with.

(10) Where the registry administrator sets a registry account to blocked status pursuant to paragraph (6), (8) or (9) it must notify the account holder specifying the reason why, and the period during which, the relevant registry account will be blocked.

(11) The regulator must, as soon as is reasonably practicable, notify the registry administrator where a change to the allocation table or aviation allocation table becomes necessary—

- (a) by virtue of [F150 Article 52(1) or 55(1)], or
- [F151(b) for any other reason (and in particular in consequence of paragraph 8(1) or 8(5) of Schedule 5, paragraph 5 or 10 of Schedule 6, or paragraph 6 or 11 of Schedule 6A).]

(12) The registry administrator must, as soon as is reasonably practicable, notify the European Commission in accordance with [F152 Article 52(2) or 55(2)] of any changes to the allocation table or aviation allocation table (other than those falling within paragraph (11)(a)).

(13) This paragraph applies where—

- (a) a notice of surrender or a revocation notice has been given and has taken effect; and
- (b) the operator is unable to comply with the requirement to surrender allowances imposed by that notice by the date specified in the notice, due to the suspension of access to the relevant registry account by the registry administrator pursuant to Article 31.

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(14) Where paragraph (13) applies, the registry administrator must, if so requested by the operator, surrender the number of allowances specified in the notice of surrender or the revocation notice.

(15) The registry administrator or the KP registry administrator may refuse to—

- (a) open any account in the Union Registry or the UK Registry, or
- (b) approve an authorised representative or an additional authorised representative in relation to such an account,

where it is satisfied that the proposed account holder, authorised representative or additional authorised representative is not a fit and proper person to hold such an account or, as the case may be, act as such a representative.

(16) The registry administrator may extend the suspension of the running of delays under [F153 Article 39(3)] to all days in a scheme year that are not working days, provided that the decision to do so is published by the registry administrator by 1st December in the previous scheme year.

**Textual Amendments**

- F145** Reg. 80(1) omitted (31.1.2014) by virtue of [The Greenhouse Gas Emissions Trading Scheme and National Emissions Inventory \(Amendment\) Regulations 2013 \(S.I. 2013/3135\)](#), regs. 1, **5(8)(a)**
- F146** Words in reg. 80(2) 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(8)(b)**
- F147** Words in reg. 80(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, **5(8)(c)**
- F148** Words in reg. 80(4) 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(8)(d)**
- F149** Words in reg. 80(6) 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(8)(e)**
- F150** Words in reg. 80(11) 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(8)(f)**
- F151** Reg. 80(11)(b) substituted (4.12.2015) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2015 \(S.I. 2015/1849\)](#), regs. 1(1), **11**
- F152** Words in reg. 80(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(8)(g)**
- F153** Words in reg. 80(16) 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(8)(h)**

**The UK Registry**

**81.**—(1) The Environment Agency must continue to operate the UK Registry for the purposes of meeting the obligations of the United Kingdom referred to in [F154 Article 5(1) of the Registries Regulation 2013] (obligations as a Party to the Kyoto Protocol F155 and under Article 6 of Decision No 280/2004/EC F156), and in that capacity is referred to in these Regulations as the “KP registry administrator”.

F157(2) .....

**Textual Amendments**

- F154** Words in [reg. 81\(1\)](#) 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(9)**
- F155** Kyoto Protocol to the United Nations Framework Convention on Climate Change (Cm 6485).

**F156** OJ No L 49, 19.2.2004, p 1.

**F157** Reg. 81(2) omitted (31.1.2014) by virtue of The Greenhouse Gas Emissions Trading Scheme and National Emissions Inventory (Amendment) Regulations 2013 (S.I. 2013/3135), regs. 1, 5(10)

## PART 10

### Supplementary

#### Recovery of fees

- 82.**—(1) In this regulation “allowances” includes aviation allowances.
- (2) Any fee payable by virtue of these Regulations may be recovered by the regulator—
- (a) as a civil debt; or
  - (b) by the seizure and sale of a number of allowances held by the operator or UK administered operator liable to the fee (“the debtor”) in accordance with paragraph (3).
- (3) Where the regulator proposes to recover an unpaid fee by the seizure and sale of allowances held by the debtor, the regulator must—
- (a) notify the registry administrator and the debtor;
  - (b) instruct the registry administrator to transfer a number of allowances sufficient to cover the unpaid fee, and any expenses incurred in recovering it from the debtor, to the regulator's person holding account in the Union Registry;
  - (c) sell the allowances transferred under sub-paragraph (b) for the best price that can reasonably be obtained, though a failure to do so does not make a sale under this paragraph void or voidable; and
  - (d) apply the proceeds of sale in the following order—
    - (i) in payment of the unpaid fee in respect of which the allowances were seized and sold;
    - (ii) in payment of any expenses incurred by the regulator in seizing and selling the allowances,and pay any residue from the proceeds of sale to the debtor.

#### Consequences of non-payment

**83.** The regulator is not required to perform a function for which a fee is payable in relation to a person who has not paid a fee which that person is liable to pay.

#### Guidance

**84.**—(1) The authority may issue guidance to the regulator with respect to the carrying out of any of the regulator's functions under these Regulations, the Monitoring and Reporting Regulation or the Verification Regulation.

(2) The Secretary of State may issue guidance to the registry administrator or the KP registry administrator with respect to the carrying out of any of its functions under these Regulations, [<sup>F158</sup>the Registries Regulations 2013].

(3) The regulator, the registry administrator or the KP registry administrator must have regard to any guidance issued under paragraph (1) or (2).

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### Textual Amendments

**F158** Words in reg. 84(2) 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(11)**

## PART 11

### Revocations, savings and transitional provisions.

#### Revocations

- 85.** The following enactments are revoked—
- (a) the 2005 Regulations;
  - (b) the following enactments amending the 2005 Regulations—
    - (i) S.I. 2006/737;
    - (ii) S.I. 2007/465;
    - (iii) S.I. 2007/1096;
    - (iv) S.I. 2007/3433;
    - (v) regulation 3 of S.R. (N.I.) 2010/92;
    - (vi) regulation 4 of S.I. 2005/2903;
    - (vii) regulation 8 of S.I. 2010/1513;
    - (viii) regulations 3 and 4 of S.I. 2011/1506;
    - (ix) paragraphs 1 to 20 of the Schedule to S.I. 2011/2911;
  - (c) the Greenhouse Gas Emissions Data and National Implementation Measures Regulations 2009 <sup>F159</sup>;
  - (d) the 2010 Regulations;
  - (e) the Aviation Greenhouse Gas Emissions Trading Scheme (Amendment) Regulations 2011 <sup>F160</sup>.

### Textual Amendments

**F159** [S.I. 2009/3130](#).

**F160** [S.I. 2011/765](#).

#### Savings and transitional provisions: the 2005 Regulations

**86.**—(1) Notwithstanding the revocations made by regulation 85, the following provisions of the 2005 Regulations (“the relevant provisions”) continue to have effect to the extent specified below.

[<sup>F161</sup>(“1A) the relevant provisions have effect as if—

- (a) in regulation 2(1) the definition of “regulator” was amended as follows—
  - (i) in sub-paragraph (i) omit “and Wales”;
  - (ii) after sub-paragraph (i) insert—

- “(ia) in relation to an installation (other than an offshore installation) which is (or will be) situated in Wales, the Natural Resources Body for Wales;”;
- (b) regulation 35(5) was amended as follows—
- (i) in sub-paragraph (a) omit “and Wales”; and
  - (ii) in sub-paragraph (b) after “in relation to” insert “Wales,.”.]
- (2) Part 1 and Schedule 1 have effect for the purpose of the relevant provisions.
- (3) Regulations 16 and 17 have effect for the purposes of making an application for the surrender of a permit, or the service of a notice of revocation in respect of a failure to make such an application, where the circumstances giving rise to the requirement to make the application occurred before 1st January 2013.
- (4) Regulation 18(3) to (5) has effect in relation to the charging schemes referred to in that regulation.
- (5) Regulation 22 (other than paragraph (2)) has effect for the purpose of allowing an operator to make an application for an allocation from the new entrant reserve (as defined by regulation 2 of the 2005 Regulations).
- (6) But for the purpose of paragraph (5) above, the reference in regulation 22(2) to regulation 15(1) of the 2005 Regulations is to be read as a reference to regulation 12(1) of these Regulations (and the reference to the proposed transferee is accordingly to be read as a reference to the new operator).
- (7) Subject to paragraph (8) below, regulation 26 has effect for all purposes relating to the registry referred to in Article 3(2) of the Registries Regulation 2010.
- (8) In regulation 26—
- (a) paragraphs (2) to (5) do not have effect; and
  - (b) paragraph (8) has effect as if the references to Articles 18, 20(4) and 27(5) were omitted.
- (9) The following provisions have effect in so far as they relate to any activities carried out, or emissions arising, prior to 1st January 2013—
- (a) regulation 27A;
  - (b) Part 4.
- (10) Subject to paragraph (11) below, Part 5 and Schedules 2 to 4 have effect in relation to any appeal brought against a decision or notice specified in regulation 32(1) to (5) of the 2005 Regulations.
- (11) Regulation 32(4) has effect as if the reference to the appropriate authority were a reference to the First-tier tribunal (and the reference to the appropriate authority in regulation 32(7) is to be construed accordingly).
- (12) Regulation 35 has effect in so far as it relates to functions carried out before 1st January 2013 or under the relevant provisions.
- (13) Regulation 36 has effect in so far as it relates to a civil penalty in respect of emissions arising before 1st January 2013.
- (14) Regulation 37 has effect.
- (15) Paragraph (1)(c) to (f) of regulation 38 has effect in so far as it relates to the relevant provisions, but where the conduct giving rise to the offence occurs after 31st December 2012 the following civil penalties apply [<sup>F162</sup>(subject to the regulator’s discretion under regulation 51 above)] instead of the offences under that paragraph—
- (a) the penalty in regulation 59 above applies instead of the offence of failing to making an application to surrender a permit;

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- (b) the penalties in regulation 53 above apply instead of the offence of failing to comply with a notice under regulation 22(13)(a) (and for that purpose the condition of the notice is deemed to be a condition falling within paragraph (1)(c) of regulation 53);
  - (c) the penalties in regulation 68 above apply instead of the offence of failing to comply with an enforcement notice; and
  - (d) the penalty in regulation 70 above applies instead of an offence under paragraph (1)(f) of regulation 38.
- (16) Subject to paragraph (17) below, regulation 38(2) and (3) has effect.
- (17) No prosecution may be brought in respect of an offence under regulation 38(1)(a) if—
- (a) the conduct that gave rise to the offence continues after 31st December 2012; and
  - (b) the person who has committed the offence will be liable to a civil penalty under regulation 52 above.
- (18) <sup>F163</sup>Subject to regulation 87B below, regulations 39 to 41 have effect in relation to a failure to surrender allowances in respect of emissions arising before 1st January 2013, and regulation 40 has effect in relation to an understatement of such emissions.
- (19) Parts 8 to 10 have effect in so far as they relate to functions carried out, or powers exercised, under the relevant provisions or as national administrator under the Registries Regulation 2010.

#### Textual Amendments

**F161** Reg. 86(1A) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 4 para. 424** (with Sch. 7)

**F162** Words in reg. 86(15) inserted (31.1.2014) by [The Greenhouse Gas Emissions Trading Scheme and National Emissions Inventory \(Amendment\) Regulations 2013 \(S.I. 2013/3135\)](#), regs. 1, **4(2)(a)**

**F163** Words in reg. 86(18) substituted (31.1.2014) by [The Greenhouse Gas Emissions Trading Scheme and National Emissions Inventory \(Amendment\) Regulations 2013 \(S.I. 2013/3135\)](#), regs. 1, **4(2)(b)**

#### Savings and transitional provisions: the 2010 Regulations

**87.**—(1) Notwithstanding the revocations made by regulation 85, the following provisions of the 2010 Regulations (“the relevant provisions”) continue to have effect to the extent specified below.

<sup>F164</sup>(1A) The relevant provisions have effect as if the 2010 Regulations were amended as follows—

- (a) in regulation 4(1)—
  - (i) in sub-paragraph (a)(i) omit “or Wales”;
  - (ii) after sub-paragraph (a) insert—
    - “(aa) the Natural Resources Body for Wales, where the UK operator has its registered office in Wales;”;
- (b) in regulation 7, for sub-paragraph (a) substitute—
  - “(a) the Welsh Ministers, where the regulator is the Natural Resources Body for Wales;”;
- (c) in regulation 52(9)—
  - (i) for sub-paragraph (a) substitute—
    - “(a) in respect of an appeal against a notice or deemed refusal of the Environment Agency, the Secretary of State;”;
  - (ii) after sub-paragraph (a) insert—



- “(aa) in respect of an appeal against a notice or deemed refusal of the Natural Resources Body for Wales, the Welsh Ministers;”;
- (d) in regulation 60—
- (i) in paragraph (5)(a) for “paragraph (5A)” substitute “paragraphs (5A) to (5C)”;
- (ii) in paragraph (5)(g) after “and 9” insert “, as modified by paragraph (7A)”;
- (iii) for paragraph (5A) substitute—
- “(5A) In regulation 2—
- (a) in the definition of “area”—
- (i) in sub-paragraph (a) omit “and Wales”
- (ii) after sub-paragraph (a) insert—
- “(aa) in respect of the Natural Resources Body for Wales, Wales;”;
- (b) in the definition of “UK operator”, after “means” insert “(subject to regulation 2A of the Aviation Greenhouse Gas Emissions Trading Scheme Regulations 2010)”.
- (iv) after paragraph (5A) insert—
- “(5B) In regulation 4—
- (a) in sub-paragraph (a)(i) omit “or Wales”;
- (b) after sub-paragraph (a) insert—
- “(aa) the Natural Resources Body for Wales, where the UK operator has its registered office in Wales;”.
- (5C) In regulation 7, for sub-paragraph (a) substitute—
- “(a) the Welsh Ministers, where the regulator is the Natural Resources Body for Wales;”.
- (v) after paragraph (7) insert—
- “(7A) In regulation 36(6)—
- (a) for sub-paragraph (a) substitute—
- “(a) in respect of an appeal against a notice or deemed refusal of the Environment Agency, the Secretary of State;”;
- (b) after sub-paragraph (a) insert—
- “(aa) in respect of an appeal against a notice or deemed refusal of the Natural Resources Body for Wales, the Welsh Ministers;”.]
- (2) Part 1 has effect for the purpose of the relevant provisions.
- (3) The time period in regulation 18(1) has effect in relation to a person who became an aircraft operator under the 2010 Regulations before 1st January 2013, but the application for an emissions plan must otherwise be made under regulation 32 of these Regulations.
- (4) Regulations 21 and 22 have effect in relation to aviation emissions arising before 1st January 2013.
- (5) [F165Subject to regulation 87AA, regulations] 26 and 27 have effect in relation to aviation emissions arising before 1st January 2013.
- (6) Regulation 28 has effect in relation to the charging schemes referred to in that regulation.
- (7) Regulation 29 has effect in relation to the functions referred to in that regulation.

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(8) <sup>F166</sup>[<sup>F167</sup>Subject to paragraph (8A) and to regulations 87A and 87B below], the following] have effect in relation to civil penalties arising under the 2010 Regulations—

- (a) Part 8;
- (b) regulation 49.

<sup>F168</sup>(8A) Regulation 51 above applies in relation to the penalty under regulation 35 of the 2010 Regulations as it applies in relation to the penalty under regulation 64 above.]

(9) Part 11 and Schedules 3 to 5 have effect in relation to any appeal brought against any decision made or notice served under the 2010 Regulations.

(10) The following have effect in relation to decisions or functions of the regulator under the 2010 Regulations—

- (a) Part 12;
- (b) regulations 58 and 59.

(11) Regulations 55 to 57, and Schedule 6, have effect in relation to information provided, reports submitted, or notices served under the 2010 Regulations.

(12) Paragraph (3), and (5) to (8), of regulation 60 have effect.

#### Textual Amendments

**F164** Reg. 87(1A) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 4 para. 425** (with Sch. 7)

**F165** Words in reg. 87(5) substituted (22.12.2014) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2014 \(S.I. 2014/3125\)](#), regs. 1(1), **19(1)**

**F166** Words in reg. 87(8) substituted (23.5.2013) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2013 \(S.I. 2013/1037\)](#), regs. 1(1), **2(2)**

**F167** Words in reg. 87(8) substituted (31.1.2014) by [The Greenhouse Gas Emissions Trading Scheme and National Emissions Inventory \(Amendment\) Regulations 2013 \(S.I. 2013/3135\)](#), regs. 1, **4(3)**

**F168** Reg. 87(8A) inserted (31.1.2014) by [The Greenhouse Gas Emissions Trading Scheme and National Emissions Inventory \(Amendment\) Regulations 2013 \(S.I. 2013/3135\)](#), regs. 1, **4(4)**

#### <sup>F169</sup>Obligations in relation to aviation emissions arising before 2013

**87A.**—(1) In this regulation—

“international activity” means an aviation activity performed in 2010, 2011 or 2012 and consisting in a flight departing from, or arriving in, an aerodrome situated in any country or territory other than—

- (a) an EEA state;
- (b) Croatia;
- (c) Switzerland; or
- (d) a country or territory listed in paragraph (6);

“international allowance” means an aviation allowance that has been allocated free of charge for 2012 in consequence of an international activity;

“international emissions” means aviation emissions arising from an international activity;

“P” is any person on whom a duty is imposed under regulation 20, 21 or 26 of the 2010 Regulations.

(2) Where the condition in paragraph (3) is satisfied, P is not liable to any civil penalty in respect of a failure to—

- (a) monitor aviation emissions, contrary to regulation 20 of the 2010 Regulations, in so far as the duty to monitor arises in respect of P's international emissions;
  - (b) report aviation emissions, contrary to regulation 21 of the 2010 Regulations, in so far as the duty to report arises in respect of P's international emissions; or
  - (c) surrender sufficient allowances or project credits, contrary to regulation 26(1) of the 2010 Regulations, in so far as the duty to surrender arises in respect of P's international emissions.
- (3) The condition is that P—
- (a) has not been issued with any international allowances; or
  - (b) has, before 29th May 2013, returned a sum of aviation allowances allocated for 2012 equal to the international allowances that were issued to P.
- (4) For the purposes of paragraph (3)(b), an allowance is returned if it is transferred to an account in the Union Registry opened by the registry administrator with the name “aviation return account”.
- (5) The registry administrator must cancel any allowances returned under paragraph (3)(b).
- (6) The countries or territories are—
- Greenland;
  - Faeroe Islands;
  - French Polynesia;
  - Mayotte;
  - New Caledonia,
  - Saint Barthélemy;
  - Saint Pierre and Miquelon;
  - Wallis and Futuna;
  - Aruba;
  - Bonaire;
  - Saba;
  - Sint Eustasius;
  - Curaçao;
  - Sint Maarten;
  - Svalbard;
  - Anguilla;
  - Bermuda;
  - British Antarctic Territory;
  - British Indian Ocean Territory;
  - British Virgin Islands;
  - Cayman Islands;
  - Falkland Islands;
  - Bailiwick of Guernsey;
  - Isle of Man;
  - Bailiwick of Jersey;
  - Montserrat;

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Pitcairn Islands;  
 Saint Helena;  
 Ascension and Tristan da Cunha;  
 South Georgia and the South Sandwich Islands;  
 Turks and Caicos Islands;  
 Sovereign Base Areas of Akrotiri and Dhekelia;  
 Andorra;  
 Monaco;  
 San Marino;  
 Vatican City.]

#### Textual Amendments

**F169** Reg. 87A inserted (23.5.2013) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2013 \(S.I. 2013/1037\)](#), regs. 1(1), 2(3)

#### [<sup>F170</sup>Obligations in relation to aviation emissions arising before 2013: deficits

**87AA.**—(1) Paragraph (2) applies where—

- (a) a duty is imposed on a person (“P”) under regulation 26 of the 2010 Regulations;
- (b) the condition in regulation 87A(3) is satisfied; and
- (c) P fails to surrender sufficient allowances or project credits, contrary to regulation 26(1) of the 2010 Regulations.

(2) Where this paragraph applies, no duty arises to surrender allowances or project credits equal to the deficit to which regulation 26(2) of the 2010 Regulations applies, in so far as the duty to surrender arises in respect of P’s international emissions.

(3) Paragraph (4) applies where—

- (a) the regulator has given a person (“Q”)—
  - (i) a 2012 excess emissions penalty notice; and
  - (ii) a deficit notice; and
- (b) Q brings a 2012 excess emissions penalty notice appeal.

(4) Where this paragraph applies—

- (a) the 2012 excess emissions penalty appeal is deemed to include an appeal against the deficit notice; and
- (b) the bringing of the 2012 excess emissions penalty appeal suspends the operation of the deficit notice pending the final determination or withdrawal of the appeal.

(5) Where paragraph (4) applies, the appeal body may, in respect of the deficit notice—

- (a) affirm it;
- (b) quash all or part of it;
- (c) vary it; or
- (d) give directions to the regulator in relation to it.

(6) In this regulation—

- (a) “2012 excess emissions penalty appeal” means an appeal under regulation 52(3)(b) of the 2010 Regulations, against a 2012 excess emissions penalty notice;
- (b) “2012 excess emissions penalty notice” means a notice under regulation 30(1)(a) of the 2010 Regulations that P is liable to a civil penalty under regulation 38(1)(a) of the 2010 Regulations, for a failure to surrender sufficient allowances or project credits for the calendar year beginning on 1st January 2012;
- (c) “deficit notice” means a notice given under regulation 26(2)(a) of the 2010 Regulations; and
- (d) “international emissions” has the meaning given in regulation 87A(1).]

#### Textual Amendments

**F170** Reg. 87AA inserted (22.12.2014) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Regulations 2014 \(S.I. 2014/3125\)](#), regs. 1(1), **19(2)**

#### [<sup>F171</sup>Unreported emissions arising before 2013

**87B.**—(1) Where paragraph (2) applies, a person (“P”) is not liable to an excess emissions penalty for a failure to surrender allowances in respect of those reportable emissions in a relevant year (“Y”) that—

- (a) were not reported in the verified emissions report submitted for Y; but
- (b) have been determined by the regulator.

(2) This paragraph applies where P, before the regulator serves on P a penalty notice imposing an excess emissions penalty in respect of emissions in Y (or a notice of the regulator’s intention to do so)—

- (a) notifies the regulator that there are reportable emissions not included in the report that has been submitted for Y; and
- (b) has surrendered allowances equal to the reportable emissions for Y as determined by the regulator.

(3) Where paragraph (2) applies, P is liable to the civil penalty of the sterling equivalent of 20 Euros for each allowance that P failed to surrender by 30th April in the year following Y in respect of the unreported emissions.

(4) Regulation 51(1) above applies to a penalty under paragraph (3) as it applies to a penalty under Part 7.

(5) In this regulation—

- (a) “allowance” includes—
  - (i) where the excess emission penalty would arise under the 2010 Regulations, an aviation allowance; and
  - (ii) within the limits allowed by regulation 27A of the 2005 Regulations or regulation 26 of the 2010 Regulations, a project credit as defined by regulation 27 of the 2010 Regulations;
- (b) “determined” means determined under regulation 30 of the 2005 Regulations or regulation 22 of the 2010 Regulations;
- (c) “excess emissions penalty” means the penalty under regulation 39 of the 2005 Regulations or regulation 38(1)(a) of the 2010 Regulations;

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- (d) “penalty notice” means a notice under regulation 41(2) of the 2005 Regulations or regulation 30(1) of the 2010 Regulations;
- (e) “relevant year” means a calendar year prior to 2013;
- (f) “unreported emissions” means the emissions mentioned in paragraph (1);
- (g) “sterling equivalent” has the meaning given in regulation 54(7) above.]

#### Textual Amendments

**F171** Reg. 87B inserted (31.1.2014) by [The Greenhouse Gas Emissions Trading Scheme and National Emissions Inventory \(Amendment\) Regulations 2013 \(S.I. 2013/3135\)](#), regs. 1, **4(5)**

#### Transitional provisions: permits

**88.**—(1) An application under regulation 8 of the 2005 Regulations for a greenhouse gas emissions permit that is made to the regulator before 1st January 2013, and not determined before that date, may be treated by the regulator as an application made under—

- (a) regulation 10(1) above; or
- (b) if the installation to which the application relates is an excluded installation, regulation 10(2) above.

(2) An application under regulation 14 of the 2005 Regulations for the variation of a permit that is made to the regulator before 1st January 2013, and not determined before that date, may be treated by the regulator as an application made under regulation 11(3)(a) above.

(3) An application under regulation 15 of the 2005 Regulations for the transfer of a permit (other than for a partial transfer) that is made to the regulator before 1st January 2013, and not determined before that date, may be treated by the regulator as an application made under regulation 12(1) above.

(4) An application under regulation 15 of the 2005 Regulations for the partial transfer of a permit that is made to the regulator before 1st January 2013 and not determined before that date may be treated by the regulator as an application made under regulation 12(1) above, provided that the application has been amended to the satisfaction of the regulator (and is otherwise deemed to have been withdrawn).

(5) Subject to paragraphs (6) and (7), a permit granted under regulation 9 of the 2005 Regulations that is in force immediately before 1st January 2013 (“the permit”) continues to have effect until it is revoked or surrendered under these Regulations.

(6) The regulator must vary the permit as necessary to bring it into a form in which it could have been granted under regulation 10 above.

(7) Until such variations are made, the permit has effect in relation to emissions in the year beginning with 1st January 2013, or in any subsequent scheme year, as if—

- (a) any reference in the permit to Commission Decision [2007/589/EC](#) of 18 July 2007 were a reference to the Monitoring and Reporting Regulation, and any reference to Section 5.2, 5.3 or Section 9 of Annex 1 to that Decision were a reference to the corresponding provision of that Regulation;
- (b) any reference in the permit to Annex 5 to the Directive were a reference to the Verification Regulation;
- (c) any reference in the permit to the Emission Trading Registry for the UK were a reference to the Union Registry; and

(d) any requirement of the permit to submit a report to the regulator by 30th June each year, setting out proposed improvements in monitoring at the installation, applied only in relation to the report required to be submitted by 30th June 2013.

(8) Notwithstanding the variations made pursuant to paragraph (6), the permit as it had effect immediately before 1st January 2013 continues to have such effect in relation to any emissions arising before that date and any obligations relating to them.

### **Transitional provisions: aviation emissions plans**

**89.**—(1) An application for an emissions plan under regulation 18 of the 2010 Regulations that has not been determined under those Regulations may be treated by the regulator as an application made under regulation 32 above.

(2) An application for the variation of an emissions plan, pursuant to a condition of the plan, that is made to the regulator before 1st January 2013 may be treated by the regulator as an application made under regulation 37(2)(a) above.

(3) Subject to paragraph (4) and (5), an aviation emissions plan that is in force immediately before 1st January 2013 (“the plan”) continues to have effect.

(4) The regulator must vary the plan as necessary to bring it into a form in which it could have been issued under regulation 34 above.

(5) Until such variations are made, the plan has effect in relation to emissions in the year beginning with 1st January 2013, or in any subsequent scheme year, as if—

(a) any reference in the plan to Commission Decision [2007/589/EC](#) of 18 July 2007 were a reference to the Monitoring and Reporting Regulation, and any reference to Section 9 of Annex 1 and Sections 2, 3 and 4 of Annex 14 to that Decision were a reference to the corresponding provision of that Regulation; and

(b) any requirement of the plan to submit a report to the regulator by 30th June each year, setting out proposed improvements in monitoring of aviation activities, applied only in relation to the report required to be submitted by 30th June 2013.

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**Changes to legislation:**

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