
STATUTORY INSTRUMENTS

2012 No. 3038

The Greenhouse Gas Emissions
Trading Scheme Regulations 2012

PART 3

Aviation

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.

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(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—

- (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;

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- (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 or Wales; or
 - (ii) P does not have a registered office;
 - (b) SEPA, where P has its registered office in Scotland;
 - (c) the chief inspector, where P has its registered office in Northern Ireland.

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
 - (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—

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- (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.

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