



STATUTORY INSTRUMENTS.

S.I. No. 274 of 2009



EUROPEAN COMMUNITIES (GREENHOUSE GAS EMISSIONS
TRADING) (AVIATION) REGULATIONS 2009

(Prn. A9/1016)

EUROPEAN COMMUNITIES (GREENHOUSE GAS EMISSIONS TRADING) (AVIATION) REGULATIONS 2009

I, JOHN GORMLEY, Minister for the Environment, Heritage and Local Government, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving effect to Directive 2008/101/EC of the European Parliament and of the Council of 19 November 2008¹ hereby make the following regulations:

Citation

1. These Regulations may be cited as the European Communities (Greenhouse Gas Emissions Trading) (Aviation) Regulations 2009.

Interpretation

2. (1) In these Regulations–

“administering Member State” means the Member State responsible for administering the Community scheme in respect of an aircraft operator in accordance with Article 18a of the Directive;

“Agency” means the Environmental Protection Agency established under section 19 of the Environmental Protection Agency Act 1992 (No. 7 of 1992);

“aircraft operator” means the person who operates an aircraft at the time it performs an aviation activity listed in Schedule 1 or, where that person is not known or is not identified by the owner of the aircraft, the owner of the aircraft;

“allowance” means an allowance to emit one tonne of carbon dioxide equivalent during a specified period, which shall be valid only for the purposes of meeting the requirements of these Regulations;

“attributed aviation emissions” means emissions from all flights falling within the aviation activities listed in Schedule 1 which depart from an aerodrome situated in the territory of a Member State and those which arrive in such an aerodrome from a third country;

“commercial air transport operator” means an operator that, for remuneration, provides scheduled or non-scheduled air transport services to the public for the carriage of passengers, freight or mail;

“Commission for Aviation Regulation” means the Commission for Aviation Regulation established under section 5 of the Aviation Regulation Act 2001 (No. 1 of 2001);

¹ O.J. No. L8 13.1.2009 p. 3

Notice of the making of this Statutory Instrument was published in “Iris Oifigiúil” of 24th July, 2009.

“Commission's Interpretation of Aviation Activities” means Commission Decision of 8 June 2009² on the detailed interpretation of the aviation activities listed in Annex I to Directive 2003/87/EC³;

“Commission’s Monitoring and Reporting Guidelines” means Commission Decision of 18 July 2007⁴ establishing guidelines for the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87/EC³, as amended by Commission Decision of 17 December 2008⁵ as regards the inclusion of monitoring and reporting guidelines for emissions of nitrous oxide, and by Commission Decision of 16 April 2009⁶ as regards the inclusion of monitoring and reporting guidelines for emissions and tonne-kilometre data from aviation activities;

“Community scheme” means the scheme for greenhouse gas emission allowance trading within the European Community provided for in the Directive;

“competent authority” means, in respect of the State, the Agency, and in respect of other Member States of the European Communities, any competent authority specified in the national law of that State as notified by the Commission;

“direction” means a direction issued by the Agency pursuant to Regulation 13;

“Directive” means Directive 2003/87/EC of 13 October 2003³ establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC⁷, as amended by Directive 2004/101/EC of 27 October 2004⁸ in respect of the Kyoto Protocol's project mechanisms, and by Directive 2008/101/EC of 19 November 2008⁹ so as to include aviation activities in the scheme for greenhouse gas emission allowance trading within the Community;

“emissions” means the release of greenhouse gases into the atmosphere from an aircraft performing an aviation activity listed in Schedule 1 of the gases specified in respect of that activity;

“greenhouse gases” means the gases listed in Schedule 2;

“person” means any natural or legal person;

“public” means one or more persons and associations, organisations or groups of persons; and

“tonne of carbon dioxide equivalent” means one metric tonne of carbon dioxide (CO₂) or an amount of any other greenhouse gas listed in Schedule 2 with an equivalent global-warming potential.

² O.J. No. L149 12.6.2009 p. 69

³ O.J. No. L275 25.10.2003 p. 32

⁴ O.J. No. L229 31.8.2007 p. 1

⁵ O.J. No. L24 28.1.2009 p. 18

⁶ O.J. No. L103 23.4.2009 p. 10

⁷ O.J. No. L257 10.10.1996 p. 26

⁸ O.J. No. L338 13.11.2004 p. 18

⁹ O.J. No. L8 13.1.2009 p. 3

(2) A word or expression that is used in these Regulations and is also used in the Directive has the same meaning in these Regulations that it has in the Directive.

(3) A word or expression that is used in these Regulations and is also used in the Commission's Monitoring and Reporting Guidelines has the same meaning in these Regulations that it has in the Commission's Monitoring and Reporting Guidelines.

Scope

3. (1) These Regulations provide for the implementation in the State of a scheme for greenhouse gas emission allowance trading within the European Community in order to promote reductions of greenhouse gas emissions from aviation activities in a cost effective and economically efficient manner.

(2) These Regulations apply to emissions from aviation activities listed in Schedule 1.

Administering Member State

4. (1) The administering Member State in respect of an aircraft operator shall be the State—

(a) in the case of an aircraft operator with a valid operating licence granted by the Commission for Aviation Regulation in accordance with the provisions of Council Regulation (EEC) No. 2407/92 of 23 July 1992¹⁰ on licensing of air carriers, and

(b) in the case of an aircraft operator who does not have a valid operating licence in accordance with the provisions of Council Regulation (EEC) No. 2407/92 of 23 July 1992¹⁰ on licensing of air carriers from any Member State, where the greatest estimated aviation emissions from flights performed by that aircraft operator in the base year are attributable to the State.

(2) The administering Member State shall be the State for those aircraft operators assigned to the State in accordance with the list of aircraft operators published by the European Commission pursuant to Article 18a(3) of the Directive.

(3) For the purposes of this Regulation, “base year” means, in relation to an aircraft operator which started operating in the Community after 1 January 2006, the first calendar year of operation, and in all other cases, the calendar year starting on 1 January 2006.

(4) (a) Where in the first two years of any period referred to in Article 3c of the Directive, none of the attributed aviation emissions from flights performed by an aircraft operator falling within Regulation 4(1)(b) are attributed to the State, the aircraft operator shall be transferred to another administering Member State in respect of the next period.

¹⁰ O.J. No. L240 24.8.1992 p. 1

- (b) The new administering Member State shall be the Member State with the greatest estimated attributed aviation emissions from flights performed by that aircraft operator during the first two years of the previous period.

Competent Authority

5. (1) The Agency is designated as the competent authority in the State for the purposes of these Regulations and the Directive.

(2) As competent authority, the Agency shall be responsible for administering the Community scheme in respect of aircraft operators for whom the State is the administering Member State.

Monitoring Plan for Emissions

6. (1) An aircraft operator shall submit to the Agency a monitoring plan setting out measures to monitor and report emissions and in accordance with—

- (a) the principles set out in Schedule 3,
- (b) the Commission's Monitoring and Reporting Guidelines, and
- (c) any other requirements of the Agency which are necessary for the purposes of the administration and implementation of the Directive.

(2) The monitoring plan for monitoring and reporting emissions shall be approved by the Agency if the Agency is satisfied that an aircraft operator has complied with Regulations 6(1) and 8(1).

(3) A person who fails to comply with paragraph (1) is guilty of an offence.

Monitoring Plan for Tonne-Kilometre Data

7. (1) For the purpose of an application under Regulation 12, an aircraft operator shall submit to the Agency a monitoring plan setting out measures to monitor and report tonne-kilometre data and in accordance with—

- (a) the principles set out in Schedule 3,
- (b) the Commission's Monitoring and Reporting Guidelines, and
- (c) any other requirements of the Agency which are necessary for the purposes of the administration and implementation of the Directive.

(2) The monitoring plan for monitoring and reporting tonne-kilometre data shall be approved by the Agency if the Agency is satisfied that an aircraft operator has complied with Regulations 7(1) and 8(1).

Fee

8. (1) An administration fee, subject to a minimum fee of €200 and a maximum fee of €500, shall be determined by the Agency in respect of an application for the approval of a monitoring plan pursuant to Regulations 6 and 7.

(2) A fee charged under this Regulation shall be payable by an aircraft operator to which the approval relates and the Agency may refuse to grant or may revoke an approval of a monitoring plan if the fee has not been paid.

(3) A fee charged under this Regulation may be recovered by the Agency, as a simple contract debt in a court of competent jurisdiction.

(4) The Public Offices Fees Act 1879 does not apply in respect of fees payable under this Regulation.

Monitoring of Emissions

9. (1) From 1 January 2010, an aircraft operator shall monitor emissions from the aircraft which it operates in accordance with—

- (a) its monitoring plan for monitoring and reporting emissions as approved by the Agency under Regulation 6,
- (b) the principles set out in Schedule 3, and
- (c) the Commission's Monitoring and Reporting Guidelines.

(2) A person who fails to comply with paragraph (1) is guilty of an offence.

Monitoring of Tonne-Kilometre Data

10. For the purpose of an application under Regulation 12, an aircraft operator shall, from 1 January 2010, monitor tonne-kilometre data from the aircraft which it operates in accordance with—

- (a) its monitoring plan for monitoring and reporting tonne-kilometre data as approved by the Agency under Regulation 7,
- (b) the principles set out in Schedule 3, and
- (c) the Commission's Monitoring and Reporting Guidelines.

Reporting and Verification of Emissions

11. (1) An aircraft operator shall report the emissions from the aircraft which it operates during each calendar year commencing on 1 January 2010, to the Agency, not later than 31 March of the following year in accordance with—

- (a) its monitoring plan for monitoring and reporting emissions as approved by the Agency under Regulation 6,
- (b) the principles set out in Schedule 3, and
- (c) the Commission's Monitoring and Reporting Guidelines.

(2) The aircraft operator shall ensure that the report referred to in paragraph (1) is verified in accordance with—

- (a) the criteria set out in Schedule 4, and

- (b) any detailed provisions on verification adopted by the Commission pursuant to Article 15 of the Directive

to the satisfaction of the Agency, and shall provide a copy of the said verification report to the Agency when submitting the report specified in paragraph (1).

(3) An aircraft operator whose report has not been verified or has not submitted a verification report to the satisfaction of the Agency by 31 March each year in accordance with paragraph (1), for emissions during the preceding year, cannot make further transfers of allowances until a report from that operator has been verified as satisfactory.

(4) A person who fails to comply with paragraph (1) or (2) is guilty of an offence.

Application for Allowances free of charge

12. (1) An aircraft operator may apply to the Agency for an allocation of allowances that are to be allocated free of charge.

(2) An application under this Regulation shall—

(a) be accompanied by a report of the tonne-kilometre data for the aviation activities listed in Schedule 1 performed by that aircraft operator for the monitoring year in accordance with—

(i) the monitoring of tonne-kilometre data pursuant to Regulation 10,

(ii) its monitoring plan for monitoring and reporting tonne-kilometre data as approved by the Agency under Regulation 7,

(iii) the principles set out in Schedule 3,

(iv) the Commission's Monitoring and Reporting Guidelines, and

(b) be submitted to the Agency at least 21 months before the start of the period to which it relates or, in relation to the 2012 period, by 31 March 2011.

(3) The aircraft operator shall ensure that the report referred to in paragraph (2) is verified in accordance with—

(a) the criteria set out in Schedule 4, and

(b) any detailed provisions on verification adopted by the Commission pursuant to Article 15 of the Directive

to the satisfaction of the Agency, and shall provide a copy of the said verification report to the Agency when submitting the report specified in paragraph (2).

(4) For the purposes of this Regulation, the monitoring year shall be the calendar year ending 24 months before the start of the period to which it relates in accordance with Schedules 3 and 4 or, in relation to the 2012 period, 2010.

(5) At least 18 months before the start of the period to which the application relates or, in relation to the 2012 period, by 30 June 2011, the Agency shall submit applications received under this Regulation to the Commission if the Agency is satisfied that an aircraft operator has complied with Regulations 7, 10, 12(2) and 12(3).

Issue of Direction

13. (1) The Agency may issue a direction to an aircraft operator to comply with Regulation 6.

(2) An aircraft operator who fails to comply with a direction issued to him or her is guilty of an offence.

Direction

14. A direction issued by the Agency pursuant to Regulation 13 shall be—

- (a) in writing,
- (b) served in accordance with Regulation 15,
- (c) contain reasons for the direction, and
- (d) advise the recipient of his or her right of appeal pursuant to Regulation 16.

Service of Direction

15. (1) Where a direction is required to be issued by the Agency, the direction shall be in writing and shall be addressed to the aircraft operator and shall be given to the aircraft operator in one of the following ways—

- (a) by delivering it to the aircraft operator,
- (b) by leaving it at the address at which the aircraft operator carries on business,
- (c) by sending it by post in a pre-paid registered letter addressed to the aircraft operator at the address at which the aircraft operator carries on his or her business,
- (d) if an address for the service of a direction has been furnished by the aircraft operator, by leaving it at, or sending it by pre-paid registered post addressed to the aircraft operator, to that address,
- (e) by sending it by means of electronic mail or a facsimile machine, to a device or facility for the reception of electronic mail or facsimiles located at the address at which the aircraft operator carries on business or, if an address for the service of a direction has been furnished by the aircraft operator, that address:

provided that—

(i) the sender's—

(I) facility for the reception of electronic mail generates a message confirming a receipt of the electronic mail, or

(II) facsimile machine generates a message confirming successful transmission of the total number of pages of the direction, and

(ii) the direction is also given in one of the other ways mentioned in any of the preceding paragraphs.

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

(a) a company registered under the Companies Acts is deemed to be ordinarily resident at its registered office, and

(b) every other body corporate and every unincorporated body is deemed to be ordinarily resident at its principal office or place of business.

(3) A copy of a direction, which has endorsed on it a certificate purporting to be signed by an officer of the Agency authorised in that behalf by the Agency stating that the copy is a true copy of the direction or reply may, without proof of signature of that person, be produced in every court and in all legal proceedings and is evidence, unless the contrary is shown, of the direction or reply.

Appeal from a Direction issued under Regulation 13

16. (1) A direction referred to in Regulation 13 shall take effect—

(a) where it is received by the person on whom it is served, or

(b) where an appeal is brought against the direction, on the day immediately following—

(i) the day on which the direction is confirmed on appeal or the appeal is withdrawn, or

(ii) the day specified in the direction.

(2) The bringing of an appeal against a direction referred to in paragraph (1) shall not have the effect of suspending the operation of the direction, but the appellant may apply to the court to have the operation of the direction suspended until the appeal is disposed of and, on such application, the court may, if it thinks proper to do so, direct that the operation of the notice be suspended until the appeal is disposed of.

(3) A person on whom a direction referred to in paragraph (1) is served may, within 7 days beginning on the day on which the direction is served on him or her, appeal against the direction to a judge of the District Court in the district court district in which the direction was served and in determining the appeal

the judge may, if he or she is satisfied that it is reasonable to do so, confirm, vary or cancel the notice.

(4) Where, on the hearing of an appeal under this Regulation, a direction is confirmed, notwithstanding paragraph (1), the judge by whom the appeal is heard may, on the application of the appellant, suspend the operation of the direction for such period as in the circumstances of the case the judge considers appropriate.

(5) A person who—

(a) brings an appeal under paragraph (3), or

(b) applies for the suspension of the operation of a direction under paragraph (4) shall at the same time notify the Agency of the appeal or application, and the grounds for the appeal or application.

Injunctive Relief

17. (1) Where, on application by the Agency to the High Court, the Court is satisfied that an aircraft operator has failed to comply with a direction or a requirement of these Regulations, the Court may by order—

(a) direct the person to comply with the direction or requirement, and

(b) make such other provision, including provision in relation to the payment of costs, as the Court considers appropriate.

(2) An application for an order under this Regulation shall be by motion, and the High Court, when considering the matter, may make such interim or interlocutory order as it considers appropriate.

(3) An application for an order under this Regulation may be made whether or not there has been a prosecution for an offence under these Regulations in relation to the activity concerned, and shall not prejudice the initiation of a prosecution for an offence under these Regulations in relation to the activity concerned.

Offences

18. (1) A person guilty of an offence under Regulation 6, 9, 11 or 13 shall be liable—

(a) on summary conviction to a fine not exceeding €5,000 or imprisonment for a term not exceeding 6 months or both, or

(b) on conviction on indictment, to a fine not exceeding €500,000 or to imprisonment for a term not exceeding 3 years or both.

(2) A person who is convicted of an offence under these Regulations shall, on each day on which he or she continues to contravene the Regulations after having been so convicted be guilty of an offence and shall be liable—

(a) on summary conviction to a fine not exceeding €1,000, or

(b) on conviction on indictment to a fine not exceeding €20,000.

(3) Where a person is convicted of an offence under these Regulations, the court shall, unless it is satisfied that there are special and substantial reasons for not so doing, order the person to pay to the Agency the costs and expenses measured by the court, that were incurred by the Agency in relation to the investigation, detection and prosecution of the offence, including costs and expenses incurred in the taking of samples, the carrying out of tests, examinations and analyses and in respect of the remuneration and other expenses of employees or persons engaged by the Agency.

(4) Where a court imposes a fine or affirms or varies a fine imposed by another court for an offence under these Regulations, prosecuted by the Agency, it shall, on the application of the Agency (made before the time of such imposition, affirmation or variation), provide by order for the payment of the amount of the fine to the Agency and such payment may be enforced by the Agency, as if it were due to it on foot of a decree or order made by the court in civil proceedings.

(5) Where an offence under these Regulations is committed by a body corporate and is proved to have been so committed with the consent, connivance of or to be attributable to any neglect on the part of a person, being a director, manager, secretary or other officer of the body corporate, or a person who was purporting to act in any such capacity, that person, as well as the body corporate, is guilty of an offence and is liable to be proceeded against and punished as if he or she were guilty of the first mentioned offence.

(6) Summary proceedings for an offence under Regulation 6, 9, 11 or 13, as the case may be, may be brought and prosecuted by the Agency.

CATEGORIES OF ACTIVITIES

Activities	Greenhouse gases
<p>Aviation</p> <p>Flights which depart from or arrive in an aerodrome situated in the territory of a Member State to which the Treaty applies.</p> <p>The detailed interpretation of these aviation activities, including the exemptions, are set out in the Commission's Interpretation of Aviation Activities.</p> <p>This activity shall not include:</p> <ul style="list-style-type: none"> (a) flights performed exclusively for the transport, on official mission, of a reigning Monarch and his immediate family, Heads of State, Heads of Government and Government Ministers, of a country other than a Member State, where this is substantiated by an appropriate status indicator in the flight plan; (b) military flights performed by military aircraft and customs and police flights; (c) flights related to search and rescue, firefighting flights, humanitarian flights and emergency medical service flights authorised by the appropriate competent authority; (d) any flights performed exclusively under visual flight rules as defined in Annex 2 to the Chicago Convention; (e) flights terminating at the aerodrome from which the aircraft has taken off and during which no intermediate landing has been made; (f) training flights performed exclusively for the purpose of obtaining a licence, or a rating in the case of cockpit flight crew where this is substantiated by an appropriate remark in the flight plan provided that the flight does not serve for the transport of passengers and/or cargo or for the positioning or ferrying of the aircraft; (g) flights performed exclusively for the purpose of scientific research or for the purpose of checking, testing or certifying aircraft or equipment whether airborne or ground-based; (h) flights performed by aircraft with a certified maximum take-off mass of less than 5,700 kg; (i) flights performed in the framework of public service obligations imposed in accordance with Regulation (EEC) No. 2408/92¹¹ on routes within outermost regions, as specified in Article 299(2) of the Treaty, or on routes where the capacity offered does not exceed 30,000 seats per year; and (j) flights which, but for this point, would fall within this activity, performed by a commercial air transport operator operating either: <ul style="list-style-type: none"> —fewer than 243 flights per period for three consecutive four-month periods; or —flights with total annual emissions lower than 10,000 tonnes per year. <p>Flights performed exclusively for the transport, on official mission, of a reigning Monarch and his immediate family, Heads of State, Heads of Government and Government Ministers, of a Member State may not be excluded under this point.</p>	<p>Carbon dioxide (CO₂)</p>

¹¹ O.J. No. L240 24.8.1992 p.8

SCHEDULE 2

GREENHOUSE GASES

Carbon dioxide (CO₂)

Methane (CH₄)

Nitrous Oxide (N₂O)

Hydrofluorocarbons (HFCs)

Perfluorocarbons (PFCs)

Sulphur Hexafluoride (SF₆)

PRINCIPLES FOR MONITORING AND REPORTING
REFERRED TO IN REGULATIONS 6, 7, 9, 10, 11 AND 12

Monitoring and reporting of emissions from aviation activities

Monitoring of carbon dioxide emissions

Emissions shall be monitored by calculation. Emissions shall be calculated using the formula:

Fuel consumption × emission factor

Fuel consumption shall include fuel consumed by the auxiliary power unit. Actual fuel consumption for each flight shall be used wherever possible and shall be calculated using the formula:

Amount of fuel contained in aircraft tanks once fuel uplift for the flight is complete — amount of fuel contained in aircraft tanks once fuel uplift for subsequent flight is complete + fuel uplift for that subsequent flight.

If actual fuel consumption data are not available, a standardised tiered method shall be used to estimate fuel consumption data based on best available information.

Default IPCC emission factors, taken from the 2006 IPCC Inventory Guidelines or subsequent updates of these Guidelines, shall be used unless activity-specific emission factors identified by independent accredited laboratories using accepted analytical methods are more accurate. The emission factor for biomass shall be zero.

A separate calculation shall be made for each flight and for each fuel.

Reporting of emissions

Each aircraft operator shall include the following information in its report under Regulation 11:

A. Data identifying the aircraft operator, including:

- name of the aircraft operator,
- its administering Member State,
- its address, including postcode and country and, where different, its contact address in the administering Member State,
- the aircraft registration numbers and types of aircraft used in the period covered by the report to perform the aviation activities listed in Schedule 1 for which it is the aircraft operator,

- the number and issuing authority of the air operator certificate and operating licence under which the aviation activities listed in Schedule 1 for which it is the aircraft operator were performed,
- address, telephone, fax and e-mail details for a contact person, and
- name of the aircraft owner.

B. For each type of fuel for which emissions are calculated:

- fuel consumption,
- emission factor,
- total aggregated emissions from all flights performed during the period covered by the report which fall within the aviation activities listed in Schedule 1 for which it is the aircraft operator,
- aggregated emissions from:
 - all flights performed during the period covered by the report which fall within the aviation activities listed in Schedule 1 for which it is the aircraft operator and which departed from an aerodrome situated in the territory of a Member State and arrived at an aerodrome situated in the territory of the same Member State,
 - all other flights performed during the period covered by the report which fall within the aviation activities listed in Schedule 1 for which it is the aircraft operator,
- aggregated emissions from all flights performed during the period covered by the report which fall within the aviation activities listed in Schedule 1 for which it is the aircraft operator and which:
 - departed from each Member State, and
 - arrived in each Member State from a third country,
- uncertainty.

Monitoring of tonne-kilometre data for the purpose of Regulations 10 and 12

For the purpose of applying for an allocation of allowances in accordance with Regulation 12, the amount of aviation activity shall be calculated in tonne-kilometres using the following formula:

tonne-kilometres = distance × payload

where:

“distance” means the great circle distance between the aerodrome of departure and the aerodrome of arrival plus an additional fixed factor of 95 km; and

“payload” means the total mass of freight, mail and passengers carried.

For the purposes of calculating the payload:

- the number of passengers shall be the number of persons on-board excluding crew members,
- an aircraft operator may choose to apply either the actual or standard mass for passengers and checked baggage contained in its mass and balance documentation for the relevant flights or a default value of 100 kg for each passenger and his checked baggage.

Reporting of tonne-kilometre data for the purpose of Regulation 12

Each aircraft operator shall include the following information in its application under Regulation 12:

A. Data identifying the aircraft operator, including:

- name of the aircraft operator,
- its administering Member State,
- its address, including postcode and country and, where different, its contact address in the administering Member State,
- the aircraft registration numbers and types of aircraft used during the year covered by the application to perform the aviation activities listed in Schedule 1 for which it is the aircraft operator,
- the number and issuing authority of the air operator certificate and operating licence under which the aviation activities listed in Schedule 1 for which it is the aircraft operator were performed,
- address, telephone, fax and e-mail details for a contact person, and
- name of the aircraft owner.

B. Tonne-kilometre data:

- number of flights by aerodrome pair,
- number of passenger-kilometres by aerodrome pair,
- number of tonne-kilometres by aerodrome pair,
- chosen method for calculation of mass for passengers and checked baggage,
- total number of tonne-kilometres for all flights performed during the year to which the report relates falling within the aviation activities listed in Schedule 1 for which it is the aircraft operator.

SCHEDULE 4

Regulation 11

CRITERIA FOR VERIFICATION
REFERRED TO IN REGULATIONS 11 AND 12**Verification of emissions from aviation activities****General Principles**

1. Emissions from aviation activities listed in Schedule 1 shall be subject to verification.

2. The verification process shall include consideration of the report submitted pursuant to Regulation 11 and of monitoring during the preceding year. It shall address the reliability, credibility and accuracy of monitoring systems and the reported data and information relating to emissions, in particular—

- a. the reported activity data and related measurements and calculations;
- b. the choice and the employment of emission factors;
- c. the calculations leading to the determination of the overall emissions; and
- d. if measurement is used, the appropriateness of the choice and the employment of measuring methods.

3. Reported emissions may only be validated if reliable and credible data and information allow the emissions to be determined with a high degree of certainty. A high degree of certainty requires the aircraft operator to show that—

- a. reported data is free of inconsistencies;
- b. the collection of the data has been carried out in accordance with the applicable scientific standards; and
- c. the relevant records of the aircraft used to perform the aviation activities covered by the report are complete and consistent.

4. The verifier shall be given access to all sites and information in relation to the subject of the verification.

5. The verifier shall take into account whether the aircraft operator is registered under the Community eco-management and audit scheme (EMAS).

Methodology

Strategic analysis

6. The verification shall be based on a strategic analysis of all the aviation activities covered by the report carried out by the aircraft operator. This requires the verifier to have an overview of all the activities and their significance for emissions.

Process analysis

7. The verification of the information submitted shall, where appropriate, be carried out on the sites used by the aircraft operator to perform the aviation activities covered by the report. The verifier shall use spot-checks to determine the reliability of the reported data and information.

Risk analysis

8. The verifier shall submit all the sources of emissions of the aircraft for which the aircraft operator is responsible to an evaluation with regard to the reliability of the data of each source contributing to the overall emissions of the aircraft.

9. On the basis of this analysis the verifier shall explicitly identify those sources with a high risk of error and other aspects of the monitoring and reporting procedure which are likely to contribute to errors in the determination of the overall emissions. This especially involves the choice of the emission factors and the calculations necessary to determine the level of the emissions from individual sources. Particular attention shall be given to those sources with a high risk of error and the abovementioned aspects of the monitoring procedure.

10. The verifier shall take into consideration any effective risk control methods applied by the aircraft operator with a view to minimising the degree of uncertainty.

Report

11. The verifier shall prepare a report on the validation process stating whether the report pursuant to Regulation 11 is satisfactory. This report shall specify all issues relevant to the work carried out. A statement that the report pursuant to Regulation 11 is satisfactory may be made if, in the opinion of the verifier, the total emissions are not materially misstated.

Minimum competency requirements for the verifier

12. The verifier shall be independent of the aircraft operator, carry out his activities in a sound and objective professional manner, and understand—

- a. the provisions of this Directive, as well as relevant standards and guidance adopted by the Commission pursuant to Article 14(1) of the Directive;
- b. the legislative, regulatory, and administrative requirements relevant to the activities being verified; and
- c. the generation of all information related to each source of emissions of the aircraft for which the aircraft operator is responsible, in particular, relating to the collection, measurement, calculation and reporting of data.

13. The general principles and methodology set out in this Schedule shall apply to the verification of reports of emissions from flights falling within an aviation activity listed in Schedule 1.

Additional provisions for the verification of aviation emission reports

14. The verifier shall in particular ascertain that—
- a. all flights falling within an aviation activity listed in Schedule 1 have been taken into account. In this task the verifier shall be assisted by timetable data and other data on the aircraft operator's traffic including data from Eurocontrol requested by that operator;
 - b. there is overall consistency between aggregated fuel consumption data and data on fuel purchased or otherwise supplied to the aircraft performing the aviation activity.

Additional provisions for the verification of tonne-kilometre data submitted for the purposes of Regulation 12

15. The general principles and methodology for verifying emissions reports under Regulation 11 as set out in this Schedule, where applicable, also apply correspondingly to the verification of aviation tonne-kilometre data.

16. The verifier shall in particular ascertain that only flights actually performed and falling within an aviation activity listed in Schedule 1 for which the aircraft operator is responsible have been taken into account in that operator's application under Regulation 12. In this task the verifier shall be assisted by data on the aircraft operator's traffic including data from Eurocontrol requested by that operator. In addition, the verifier shall ascertain that the payload reported by the aircraft operator corresponds to records on payloads kept by that operator for safety purposes.



Given under my Official Seal,
23 July 2009.

JOHN GORMLEY,
Minister for the Environment, Heritage and Local
Government.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

These Regulations provide for the partial transposition of EU Directive 2008/101/EC which extends the EU Emissions Trading Scheme to aviation activities. The Aviation Directive (2008/101/EC) amends the EU Emissions Trading Scheme (ETS) Directive 2003/87/EC. All flights arriving at and departing from EU airports will be included in the ETS from 2012 onwards; there are some exemptions and these are identified in Schedule 1 to these Regulations.

The purpose of these Regulations is to provide for the submission of monitoring plans to the Environmental Protection Agency, which has been designated as the competent authority for the purposes of the Aviation Directive.

The European Commission's Monitoring and Reporting Guidelines for emissions and tonne-kilometre data from aviation activities, adopted pursuant to Article 14(1) of the EU ETS Directive, requires aircraft operators to submit their monitoring plans to the competent authority for approval at least four months prior to the start of the first reporting period. The first reporting year is 2010 in accordance with Article 1(12)(b) of the Aviation Directive. As such aircraft operators are required to submit their monitoring plans to the Environmental Protection Agency before the end of August 2009.

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