

**2010 No. 1996**

**CLIMATE CHANGE**

**The Aviation Greenhouse Gas Emissions Trading Scheme  
Regulations 2010**

<i>Made</i> - - - -	<i>3rd August 2010</i>
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The Secretary of State is a Minister designated<sup>(a)</sup> for the purposes of section 2(2) of the European Communities Act 1972<sup>(b)</sup> in relation to the environment.

These Regulations make provision for a purpose mentioned in section 2(2) of that Act, and it appears to the Secretary of State that it is expedient for the references to EU instruments in these Regulations to be construed as references to those instruments as amended from time to time.

In accordance with section 2(4) of the Pollution Prevention and Control Act 1999<sup>(c)</sup> (the “1999 Act”) the Secretary of State has consulted the Environment Agency, the Scottish Environment Protection Agency, and such bodies or persons appearing to the Secretary of State to be representative of the interests of local government, industry, agriculture and small businesses, and such other bodies and persons, as the Secretary of State considers appropriate.

Accordingly the Secretary of State, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 and section 2 of the 1999 Act, as read with paragraph 1A of Schedule 2 to the European Communities Act 1972<sup>(d)</sup>, makes the following Regulations:

## PART 1

### General

#### Citation and commencement

1. These Regulations may be cited as the Aviation Greenhouse Gas Emissions Trading Scheme Regulations 2010 and come into force on 31st August 2010.

#### Interpretation

2. In these Regulations—

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

“additional daily penalty” has the meaning given by regulation 30(1)(b);

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

“aerodrome operator” has the meaning given by regulation 48(b);

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

“allowance” has the meaning given by Article 3 of the EU ETS Directive;

“appeal body” has the meaning given by regulation 52(9);

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

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

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(a) S.I. 2008/301.

(b) 1972 c. 68; section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51) and by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7).

(c) 1999 c. 24. Under section 57 of the Scotland Act 1998 (c. 46), despite the transfer to the Scottish Ministers of functions in relation to implementing obligations under Community law in respect of devolved matters, the function of the Secretary of State in relation to implementing those obligations continues to be exercisable by the Secretary of State as regards Scotland. And similarly, under paragraph 5 of Schedule 3 to the Government of Wales Act 2006 (c. 32), despite the transfer to the Welsh Ministers of functions under section 2 of the 1999 Act so far as exercisable in relation to Wales (except in relation to offshore oil and gas exploration and exploitation), those functions continue to be exercisable by the Secretary of State in relation to Wales for the purpose of implementing any Community obligation of the United Kingdom.

(d) Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 and amended by S.I. 2007/1388 and by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008.

(e) S.I. 2009/2301.

- (b) in respect of the Scottish Environment Protection Agency, Scotland;
- (c) in respect of the chief inspector, Northern Ireland;
- “authority” has the meaning given by regulations 7 and 51(7);
- “aviation activity” means the category of aviation activity listed in Annex I to the EU ETS Directive, but with the reference to 1st January 2012 omitted;
- “aviation emissions” means emissions from an aviation activity;
- “benchmarking plan” means a plan issued under—
- (a) regulation 10(1)(a); or
- (b) regulation 10(1)(a) of the 2009 Regulations;
- “benchmarking year” means—
- (a) for the trading period 2013 to 2020, 2010; and
- (b) for subsequent trading periods of eight calendar years, the calendar year ending 24 months before the beginning of the period;
- “chief inspector” means the chief inspector constituted under regulation 8(3) of the Northern Ireland Regulations;
- “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(a), as amended from time to time;
- “electronic communication” has the same meaning as in the Electronic Communications Act 2000(b);
- “eligible UK operator” has the meaning given by regulation 15;
- “emissions” means the release of greenhouse gases into the atmosphere;
- “emissions plan” means a plan issued under—
- (a) regulation 19(1)(a); or
- (b) regulation 15(1)(a) of the 2009 Regulations;
- “EU ETS Directive” means Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emissions allowance trading within the Community and amending Council Directive 96/61/EC(c), as amended from time to time;
- “greenhouse gases” has the meaning given by Article 3 of the EU ETS Directive;
- “independent verifier” means a person or body accredited or endorsed by UKAS to carry out the verification requirements of Article 15 of the EU ETS Directive;
- “Monitoring and Reporting Decision” means Commission Decision 2007/589/EC establishing guidelines for the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87/EC of the European Parliament and of the Council(d), as amended from time to time;
- “Northern Ireland Regulations” means the Pollution Prevention and Control Regulations (Northern Ireland) 2003(e);

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(a) OJ No L 219, 22.8.2009, p 1; the Regulation is amended by Commission Regulation (EU) No 82/2010 (OJ No L 25, 29.1.2010, p 12).

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

(c) OJ No L 275, 25.10.03, p 32. The Directive is 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).

(d) OJ No. L 229, 31.8.2007, p.1; the Decision is amended as regards the inclusion of monitoring and reporting guidelines for emissions and tonne-kilometre data from aviation activities by Commission Decision 2009/339/EC (OJ No L 103, 23.4.2009, p. 10).

(e) S.R. (NI) 2003 No 46, amended by S.R. (NI) 2003 No 496 and S.I. 2003/3311; there is another amending instrument which is not relevant.

“Planning Appeals Commission” means the Planning Appeals Commission established under Article 110 of the Planning (Northern Ireland) Order 1991(a);

“registered office” (except in Schedule 6) means the registered office in the United Kingdom that is required under section 86 of the Companies Act 2006(b);

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

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

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

“trading period” means one of the following periods—

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

“UK operator” means a person who is—

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

“UKAS” means the United Kingdom Accreditation Service(c).

### **Aircraft operator**

3.—(1) A person is an “aircraft operator” in relation to each calendar year from 1st January 2010 where in respect of that calendar year that person—

- (a) is a UK 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 UK operator that performed an aviation activity it may, where the owner of the aircraft at the time it was used to perform the activity (“the owner”) is a UK 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 deadline specified in a notice given under paragraph (2) may be extended by the regulator.

(5) Where the owner does not comply with a notice served under paragraph (2) by the deadline as so specified or extended, the owner is, following that deadline, deemed to be the person that performed the aviation activity.

### **Regulator: general**

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

- (a) the Environment Agency, where the UK operator—

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(a) S.I. 1991/1220 (N.I.11); relevant amending instruments are S.I. 1999/660 (N.I.4), 2003/430 (N.I.8).

(b) 2006 c. 46.

(c) The United Kingdom Accreditation Service (company number 03076190) is a company limited by guarantee and which operates under a memorandum of understanding made on 1st August 1995 between it and the then Secretary of State for Trade and Industry.

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

(2) For the purposes of regulation 51, the regulator of an operator who is not a UK operator is the Environment Agency.

**Regulator: assessment of emissions**

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

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

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

(3) Where—

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

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

**Regulator: change in registered office**

**6.**—(1) Where—

- (a) a UK operator changes its registered office to the area of a different regulator (“A”); and
- (b) the UK operator gives notice of the change to A and its existing regulator,

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

(2) Where—

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

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

**Authority**

**7.** In these Regulations the authority, in relation to a UK operator, is—

- (a) the Welsh Ministers, where the UK operator—
  - (i) is regulated by the Environment Agency; and
  - (ii) has its registered office in Wales;
- (b) the Scottish Ministers, where the regulator is the Scottish Environment Protection Agency;

- (c) the Department of the Environment in Northern Ireland, where the regulator is the chief inspector;
- (d) otherwise, the Secretary of State.

## PART 2

### Application for a free allocation

#### Application of this Part

**8.**—(1) This Part sets out the requirements that must be satisfied by a UK operator who wishes to apply for allowances to be issued to it under Article 3e of the EU ETS Directive in a relevant trading period.

- (2) For that purpose, “relevant trading period” means any trading period other than—
  - (a) 2012; or
  - (b) 2013 to 2020.

#### Application for a benchmarking plan

**9.**—(1) The UK operator must apply to the regulator for a benchmarking plan by 31st December in the calendar year preceding the benchmarking year.

- (2) That application must contain—
  - (a) the name, telephone number and—
    - (i) the postal address (including postcode) in the United Kingdom for service; or
    - (ii) the address for service using electronic communication, of the UK operator;
  - (b) a proposed plan to monitor tonne-kilometre data from its aviation activity in accordance with the Monitoring and Reporting Decision; and
  - (c) a fee in accordance with Schedule 1.

#### Issue of a benchmarking plan

**10.**—(1) Where a UK operator has made an application under regulation 9 the regulator must, by notice given to the UK operator—

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

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

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

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

#### Monitoring tonne-kilometre data

**11.** The UK operator must monitor tonne-kilometre data from its aviation activity carried out in the benchmarking year in accordance with a benchmarking plan issued to it under regulation 10(1)(a) and the Monitoring and Reporting Decision.



## **Reporting tonne-kilometre data**

**12.** The UK operator must—

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

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

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

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

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

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

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

(4) Where the regulator fails to submit or refuse to submit a report in accordance with paragraph (1), the submission of the report is deemed to be refused.

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

## **PART 3**

### **Application to the special reserve**

#### **Application of this Part**

**14.** This Part sets out the requirements that must be satisfied by an eligible UK operator who wishes to apply for allowances to be issued to it from the special reserve under Article 3f of the EU ETS Directive in any trading period other than 2012.

#### **Eligible UK operator**

**15.**—(1) Subject to paragraph (2), an eligible UK operator in a trading period is—

- (a) a person who becomes an aircraft operator, for the first time, after the benchmarking year for that trading period; or
- (b) an aircraft operator whose tonne-kilometre data in the second calendar year in the trading period exceeds by more than 93.9% its tonne-kilometre data in the benchmarking year for that trading period.

(2) A person within paragraph (1)(a), or an aircraft operator within paragraph (1)(b), who would otherwise qualify as an eligible UK operator under paragraph (1) by virtue of performing an aviation activity does not so qualify where that aviation activity is in whole or part a continuation of an activity previously performed by a person who is or has been a person falling within the definition of “aircraft operator” in Article 3(o) of the EU ETS Directive.

### **Application to the regulator**

**16.—**(1) The eligible UK operator must apply to the regulator by 30th June in the third year of a trading period.

(2) That application must—

- (a) contain evidence of eligibility under regulation 15;
- (b) contain tonne-kilometre data for the second year of that trading period that—
  - (i) complies with the Monitoring and Reporting Decision and Annex IV to the EU ETS Directive; and
  - (ii) is verified by an independent verifier in accordance with the Monitoring and Reporting Decision and Annex V to the EU ETS Directive;
- (c) where the applicant is eligible under regulation 15(1)(b), state—
  - (i) the percentage increase in its tonne-kilometres from the benchmarking year to the second calendar year in the trading period;
  - (ii) the increase in its tonne-kilometres from the benchmarking year to the second calendar year in the trading period; and
  - (iii) the amount in tonne-kilometres by which the aircraft operator exceeds the percentage in regulation 15(1)(b) in the second calendar year in the trading period; and
- (d) contain a fee in accordance with Schedule 1.

### **Submission of an application to the Secretary of State and the European Commission**

**17.—**(1) Where the eligible UK operator has submitted an application under regulation 16(1) the regulator must, within 4 months of the deadline for submitting that application—

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

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

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

(3) Where the regulator fails to submit or refuse to submit the application under paragraph (1) within the period specified in that paragraph the application is deemed to be refused.

(4) The Secretary of State must submit an application submitted to it under paragraph (1)(a) to the European Commission within 6 months of the deadline for an eligible UK operator to submit an application under regulation 16(1).

## **PART 4**

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

#### **Application for an emissions plan**

**18.—**(1) Subject to paragraph (3), a person that becomes an aircraft operator after these Regulations come into force must apply to the regulator for an emissions plan within 8 weeks of becoming an aircraft operator.

(2) An application for an emissions plan under paragraph (1) must contain—

- (a) the name, telephone number and—
    - (i) the postal address (including postcode) in the United Kingdom for service; or
    - (ii) the address for service using electronic communication,
- of the aircraft operator;

- (b) a proposed plan to monitor the emissions from its aviation activity in accordance with the Monitoring and Reporting Decision; and
- (c) a fee in accordance with Schedule 1.

(3) An aircraft operator must not apply for an emissions plan where it has previously been issued such a plan under regulation 19 or under regulation 15 of the 2009 Regulations.

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

**19.**—(1) Where an aircraft operator has applied for an emissions plan under regulation 18 the regulator must, by notice given to the aircraft operator—

- (a) issue to the aircraft operator a plan setting out how it must monitor emissions from the aircraft operator's aviation activity; or
- (b) refuse to do so where it is not satisfied that the proposed plan complies with the Monitoring and Reporting Decision or Annex IV to the EU ETS Directive.

(2) A notice under paragraph (1) must be given as soon as is reasonably practicable and in any event within 4 months of the date of the application under regulation 18.

(3) Where the regulator by notice refuses to issue an emissions plan under paragraph (1)(b) it must state in that notice what changes must be made to the application under regulation 18.

(4) Where an application for an emissions plan is refused under paragraph (1) the aircraft operator must resubmit the amended application within 31 days of the refusal.

(5) Following the resubmission of an application under paragraph (4), the regulator must within 24 days comply with paragraph (1).

(6) Where the regulator fails to give notice by the deadline specified in paragraph (2) or (5) the application for an emissions plan is deemed to be refused.

#### **Monitoring emissions**

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

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

#### **Reporting emissions**

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

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

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

#### **Duty of the regulator to determine emissions**

**22.**—(1) Where an aircraft operator fails to comply with regulation 21, the regulator must determine the aviation emissions of the aircraft operator that have not been reported in accordance with that regulation.

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

- (a) if an aircraft operator submits a report that complies with regulation 21 late but before the regulator makes a determination under paragraph (1), use the emissions reported for its determination;
- (b) so far as possible, ensure that determination complies with the Monitoring and Reporting Decision and Annexes IV and V to the EU ETS Directive; and
- (c) give notice of any determination under paragraph (1) to the aircraft operator.

(3) Where the regulator makes a determination under paragraph (1) it may charge a fee in accordance with Schedule 1.

### **Emissions plan conditions**

**23.**—(1) Each regulator must ensure that the emissions plans of the aircraft operators that it regulates include the conditions necessary to ensure compliance with those requirements of the Monitoring and Reporting Decision that are not covered by these Regulations.

(2) The regulator must prepare a list of the conditions that are to be included in accordance with paragraph (1).

(3) Before preparing such a list the regulator must (after consulting the other regulators) draw up a proposed list and—

- (a) consult—
  - (i) the Secretary of State;
  - (ii) the Scottish Ministers;
  - (iii) the Department of the Environment in Northern Ireland;
  - (iv) the Welsh Ministers; and
  - (v) any person it considers may be affected;
- (b) state in the consultation the period for making representations or objections; and
- (c) take into account any representations or objections duly made.

(4) Once it has been prepared the list must be published by the regulator.

(5) The consultation under paragraph (3) may be undertaken jointly by two or more regulators.

(6) The regulator may from time to time—

- (a) amend the list of conditions prepared under paragraph (2) by following the process set out in paragraphs (3) to (5); and
- (b) make any amendments to emissions plans that are necessary to ensure that the plans include the conditions in that list (or in that list as so amended).

### **Duty to comply with conditions in an emissions plan**

**24.** An aircraft operator must comply with any conditions included in its emissions plan under regulation 23.

### **Variation of emissions plan**

**25.**—(1) The regulator may by giving notice to the aircraft operator amend the emissions plan of the aircraft operator where—

- (a) the aircraft operator applies to the regulator for an amendment to the emissions plan pursuant to a condition included in an emissions plan under regulation 23; or
- (b) the aircraft operator has failed to comply with a requirement in an emissions plan to apply for an amendment to the emissions plan.

(2) Where the regulator amends the emissions plan of an aircraft operator under paragraph (1) it may charge a fee in accordance with Schedule 1.

## PART 5

### Surrendering allowances

#### **Duty to surrender allowances**

**26.**—(1) An aircraft operator must, for each calendar year from 1st January 2012, surrender allowances or project credits equal to its aviation emissions by 30th April in the following year.

(2) Where an aircraft operator fails to surrender sufficient allowances or project credits under paragraph (1)—

- (a) the regulator must give notice to the aircraft operator; and
- (b) the aircraft operator must, by 30th April in the year after it is given that notice, surrender allowances or project credits equal to the deficit.

(3) For the trading period 2012, in complying with its obligations under paragraph (1) and (where applicable) paragraph (2) an aircraft operator must not surrender more than 15% of project credits in the total amount of allowances and project credits surrendered.

#### **Interpretation**

**27.** In this Part—

- (a) “project credits” means—
  - (i) CERs from project activities; and
  - (ii) ERUs from project activities,but excluding CERs or ERUs generated from nuclear facilities or land use, land use change and forestry activities;
- (b) “CER” means a certified emission reduction as defined by Article 3 of the EU ETS Directive;
- (c) “ERU” means an emission reduction unit as defined by Article 3 of the EU ETS Directive;
- (d) “project activity” has the meaning given to it in Article 3 of the EU ETS Directive.

## PART 6

### Charging

#### **Charging**

**28.** Schedule 1 (charging) has effect.

## PART 7

### Information

#### **Information**

**29.**—(1) For the purpose of discharging the regulator’s functions under these Regulations (or under the 2009 Regulations) the regulator may serve a notice on a UK operator requiring the UK operator to provide information.

(2) A notice under paragraph (1)—

- (a) must set out the information required;
- (b) may state the form in which that information is to be provided; and

- (c) must state the deadline for the provision of that information.

## PART 8

### Civil penalties

#### Procedure

**30.**—(1) Where the regulator is satisfied that a person is liable to a civil penalty under regulations 33 to 41 the regulator must—

- (a) serve a notice on the person liable to the civil penalty; and
- (b) state in that notice whether or not the person is liable to a daily penalty in accordance with regulation 33(2), 34(2), 35(2), 37(2) or 39(2) (“additional daily penalty”).

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

(3) Where a civil penalty does not include an additional daily penalty the notice under paragraph (1) must specify the total amount due; and that penalty is due one month after notice is served under that paragraph.

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

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

(6) Any civil penalty imposed by virtue of a notice under paragraphs (1) or (2) is recoverable by the regulator—

- (a) as a civil debt; and
- (b) where appropriate, in accordance with Part 9.

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

- (a) give notice to the authority of any notice of a civil penalty served under paragraph (1) or (2), or any further notice served under paragraph (8); and
- (b) pass any civil penalty paid to it to the authority.

(8) Where the regulator has served a notice on a person under paragraph (1) or (2), and paragraph (9) applies, the regulator may (by serving a further notice)—

- (a) withdraw the notice; or
- (b) modify the notice by substituting a lower civil penalty.

(9) This paragraph applies where, at any time before the penalty specified in the notice is due, the regulator ceases to be satisfied that the person is liable to the penalty specified.

#### Variable amounts

**31.**—(1) Where—

- (a) an aircraft operator is liable to a civil penalty under regulation 34 or 37;
- (b) a UK operator is liable to a civil penalty under regulation 39;
- (c) an aerodrome operator is liable to a civil penalty under regulation 40; or
- (d) a person is liable to a civil penalty under regulation 41,

the regulator may, in a notice given under regulation 30, substitute a lower amount than specified in those regulations.

(2) Before substituting a lower amount under paragraph (1) the regulator must—

- (a) take into account the seriousness of the failure to comply; and

- (b) ensure that the new amount provides for an effective and dissuasive penalty.

### **Waiver and modification**

**32.**—(1) Subject to paragraph (3), paragraph (2) applies where—

- (a) within 8 weeks of the service of the notice under regulation 30(1) the relevant person (“P”) demonstrates to the satisfaction of the regulator (or the regulator at any time becomes satisfied) that P exercised all due diligence and took all steps possible—
  - (i) to comply with the provision of these Regulations giving rise to the penalty; or
  - (ii) to rectify any failure in compliance as soon as it came to P’s notice, provided that P was acting reasonably in being unaware of the failure in compliance; and
- (b) in all the circumstances it is reasonable to exercise the powers set out in paragraph (2).

(2) The regulator may—

- (a) waive a civil penalty;
- (b) impose or substitute a lower civil penalty;
- (c) allow P a period of no more than 31 days to rectify any failure in compliance before it imposes a civil penalty, subject to such conditions (if any) as it considers appropriate;
- (d) extend the time for payment.

(3) Paragraph (2) does not apply where P is liable to a civil penalty under regulation 38 or where a civil penalty under that regulation has been imposed.

(4) In this regulation—

- (a) “the relevant person” means the person who is liable to a civil penalty under regulations 33 to 41, or on whom a civil penalty has been imposed;
- (b) “impose” means impose by virtue of a notice under regulation 30(1) or (2).

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

**33.**—(1) The civil penalties in paragraph (2) apply where an aircraft operator—

- (a) fails to submit (or to submit on time) an application for an emissions plan, contrary to regulation 18;
- (b) fails to resubmit (or to resubmit on time) an application for an emissions plan under regulation 19(4).

(2) The civil penalties are—

- (a) for a failure before 1st January 2012—
  - (i) £500; and
  - (ii) £50 for each day that the application or resubmission of an application is not provided, following the service of a notice under regulation 30(1), up to a maximum of £4,500;
- (b) for a failure on or after 1st January 2012—
  - (i) £1,500; and
  - (ii) £150 for each day that the application or resubmission of an application is not provided, following the service of a notice under regulation 30(1), up to a maximum of £13,500.

### **Failure to monitor aviation emissions**

**34.**—(1) The civil penalties in paragraph (2) apply where an aircraft operator fails to monitor aviation emissions, contrary to regulation 20.

(2) The civil penalties are—

- (a) for a failure before 1st January 2012—
  - (i) £500; and
  - (ii) £50 for each day that the aircraft operator fails to monitor aviation emissions following the service of a notice under regulation 30(1), up to a maximum of £4,500;
- (b) for a failure on or after 1st January 2012—
  - (i) £1,500; and
  - (ii) £150 for each day that the aircraft operator fails to monitor aviation emissions following the service of a notice under regulation 30(1), up to a maximum of £13,500.

#### **Failure to report aviation emissions**

**35.**—(1) The civil penalties in paragraph (2) apply where an aircraft operator fails to report (or to report on time) aviation emissions, contrary to regulation 21.

(2) The civil penalties are—

- (a) for a failure before 1st January 2012—
  - (i) £1,250; and
  - (ii) £125 for each day that the report is not submitted, following the service of a notice under regulation 30(1), up to a maximum of £11,250;
- (b) for a failure on or after 1st January 2012—
  - (i) £3,750; and
  - (ii) £375 for each day that the report is not submitted, following the service of a notice under regulation 30(1), up to a maximum of £33,750.

#### **Making false or misleading statements**

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

(2) The civil penalty is £1,000 where a person makes a statement which is false or misleading in a material particular in an application under regulation 16.

(3) The civil penalty is £1,000 where an aircraft operator makes a statement which is false or misleading in a material particular in a report submitted under regulation 21.

#### **Failure to comply with emissions plan conditions**

**37.**—(1) The civil penalties in paragraph (2) apply where an aircraft operator fails to comply (or to comply on time) with a condition in its emissions plan, contrary to regulation 24.

(2) The civil penalties are—

- (a) for a failure before 1st January 2012—
  - (i) £500; and
  - (ii) £50 for each day that the aircraft operator fails to comply with regulation 24 following the service of a notice under regulation 30(1), up to a maximum of £4,500;
- (b) for a failure on or after 1st January 2012—
  - (i) £1,500; and
  - (ii) £150 for each day that the aircraft operator fails to comply with regulation 24 following the service of a notice under regulation 30(1), up to a maximum of £13,500.



### **Failure to surrender sufficient allowances**

**38.**—(1) The civil penalty in paragraph (2) applies where an aircraft operator—

- (a) fails to surrender sufficient allowances or project credits, contrary to regulation 26(1); or
- (b) fails to surrender allowances or project credits equal to a deficit, contrary to regulation 26(2).

(2) The civil penalty is the sterling equivalent of 100 Euros for each allowance or project credit that the aircraft operator failed to surrender.

(3) In this regulation, “sterling equivalent” means—

- (a) in relation to a penalty relating to aviation emissions in 2012, the sterling equivalent converted by reference to the first rate of conversion to be published in September of the calendar year in which the aircraft operator is liable to the penalty in the C series of the Official Journal of the European Union; or
- (b) in relation to a penalty relating to aviation emissions on or after 1st January 2013, the sterling equivalent as defined in sub-paragraph (a) adjusted in accordance with paragraph (4).

(4) 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 the aircraft operator failed to surrender the allowances or project credits 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.

### **Failure to comply with information notices**

**39.**—(1) The civil penalties in paragraph (2) apply where a UK operator fails to comply (or to comply on time) with a notice to provide information, contrary to regulation 29.

(2) The civil penalties are—

- (a) for a failure before 1st January 2012—
  - (i) £500; and
  - (ii) £50 for each day that the UK operator fails to comply following the service of a notice under regulation 30(1), up to a maximum of £4,500;
- (b) for a failure on or after 1st January 2012—
  - (i) £1,500; and
  - (ii) £150 for each day that the UK operator fails to comply, following the service of a notice under regulation 30(1), up to a maximum of £13,500.

### **Failure to provide assistance and advice**

**40.** The civil penalty is £50,000 where an aerodrome operator fails to provide reasonable assistance and advice, contrary to regulation 47.

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

**41.** The civil penalty is £50,000 where a person fails to comply with a direction, contrary to regulation 51(4).

## PART 9

### Detention and sale of aircraft

#### General

42.—(1) Subject to paragraph (3), where—

- (a) an aircraft operator has not paid a civil penalty within 6 months of the date by which it is due under regulation 30(3) or (4); or
- (b) an operator has had an operating ban imposed on it under Article 16(10) of the EU ETS Directive,

the regulator may detain any aircraft of which the regulator has reason to believe the defaulting operator is the operator.

(2) Where an aircraft has been detained—

- (a) under paragraph (1)(a) and the aircraft operator has not paid the civil penalty and regulator expenses within—
  - (i) 56 days of the date when the detention begins; or
  - (ii) if later, 21 days of the date of service of a notice under paragraph 2(1) of Schedule 2; or
- (b) under paragraph (1)(b) and—
  - (i) the operating ban has not been lifted within 56 days of the date when the detention begins; and
  - (ii) the operator has not paid the regulator expenses,

the regulator may, subject to the following regulations of this Part, sell that aircraft.

(3) Paragraphs (1) and (2), in relation to a detention under paragraph (1)(a), do not apply in relation to a civil penalty imposed in respect of a failure to comply with these Regulations before 1st January 2012.

#### Release of aircraft

43.—(1) The regulator must not detain, or continue to detain, or sell an aircraft under regulation 42 if—

- (a) following detention, the regulator no longer has reason to believe the defaulting operator is the operator of the aircraft;
- (b) in relation to a detention under regulation 42(1)(a), the aircraft operator—
  - (i) has made an appeal under regulation 52 in respect of the civil penalty for which the aircraft has been detained;
  - (ii) gives to the regulator, pending the determination of the appeal, sufficient security for the payment of that civil penalty and any other civil penalty that the aircraft operator has not paid; and
  - (iii) pays the regulator any regulator expenses;
- (c) the defaulting operator or any other person claiming an interest in the aircraft demonstrates to the satisfaction of the regulator that the defaulting operator is no longer entitled to possession of the detained aircraft, or no longer entitled to possession of a part of it, in particular by virtue of the termination of any lease of the aircraft or of any part;
- (d) in relation to a detention under regulation 42(1)(a), the aircraft operator pays to the regulator—
  - (i) the civil penalty for which the aircraft has been detained;
  - (ii) any other civil penalty that the aircraft operator has not paid; and
  - (iii) any regulator expenses;

- (e) in relation to a detention under regulation 42(1)(b)—
  - (i) the operating ban imposed on the operator is lifted; and
  - (ii) the operator pays to the regulator—
    - (aa) any regulator expenses; and
    - (bb) any civil penalty that the aircraft operator has not paid; or
- (f) in relation to a detention under regulation 42(1)(b)—
  - (i) the regulator is satisfied that the aircraft will not be flown from the aerodrome in contravention of the operating ban; and
  - (ii) the operator pays to the regulator any regulator expenses.

(2) Where an aircraft has been detained, but subsequently released under paragraph (1)(c), any unpaid regulator expenses incurred in relation to that detention are deemed to be added to any regulator expenses that may subsequently be incurred in relation to an aircraft of which the defaulting operator is the operator.

(3) In this regulation, “civil penalty” means a civil penalty which is due under regulation 30(3) or (4), or under regulation 21(3) or (4) of the 2009 Regulations.

### **Court procedures**

**44.**—(1) The regulator must not sell an aircraft under regulation 42(2) without the leave of the court; and for that purpose Schedule 2 has effect.

(2) The court must not give leave under paragraph (1) in relation to a detention under regulation 42(1)(a) except where it is satisfied that—

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

(3) The court must not give leave under paragraph (1) in relation to a detention under regulation 42(1)(b) except where it is satisfied that—

- (a) an operating ban has been imposed on the operator;
- (b) the operating ban has not been lifted before the expiry of the period in regulation 42(2)(b); and
- (c) the regulator is entitled to apply to the court for leave to sell the aircraft.

(4) Before applying to the court for leave under paragraph (1) the regulator must, in accordance with Schedule 2—

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

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

(6) Failure to comply with paragraph (4) or (5) does not make a sale under this Part void or voidable.

### **Proceeds of sale**

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

- (a) in payment of any customs duty which is due in consequence of the aircraft having been brought into the United Kingdom;
- (b) in payment of any regulator expenses;

- (c) in payment of any charges in respect of any aircraft operated by the aircraft operator which the court has found to be due by virtue of section 73(1) of the Transport Act 2000(a);
- (d) in payment of any airport charges incurred in respect of the aircraft which are due from the aircraft operator or operator to the person entitled to levy charges in respect of the aerodrome at which the aircraft was detained under regulation 42(1);
- (e) in relation to a detention under regulation 42(1)(a), in payment of the civil penalty in respect of which the aircraft was detained and sold;
- (f) in payment of any other civil penalty that the aircraft operator has not paid which is due under regulation 30(3) or (4) or under regulation 21(3) or (4) of the 2009 Regulations, even where the failure giving rise to that civil penalty arose before 1st January 2012.

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

### **Equipment and documents**

**46.**—(1) The power to detain and sell an aircraft under regulation 42 includes the power to detain and sell equipment and stores carried in the aircraft provided it is the property of the aircraft operator, and references to the aircraft in regulations 42 to 45 include references to any such equipment and stores.

(2) The power of detention under regulation 42(1) extends to any aircraft documents carried in the aircraft, and any such documents may, if the aircraft is sold under these Regulations, be transferred by the regulator to the purchaser.

### **Assistance of aerodrome operator**

**47.**—(1) An aerodrome operator must provide such reasonable assistance and advice as the regulator may require in connection with any of the regulator’s functions under this Part.

(2) An aerodrome operator 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).

### **Interpretation**

**48.** In this Part—

- (a) “aerodrome” has the meaning given to it in section 105 of the Civil Aviation Act 1982(b);
- (b) “aerodrome operator” means the person for the time being having the management or control of an aerodrome or, in relation to a particular aerodrome, the management or control of that aerodrome;
- (c) “aircraft documents” has the meaning given by section 88(10) of the Civil Aviation Act 1982;
- (d) “airport charges” means charges payable to the owner or manager of an aerodrome for the use of, or for services provided at, an aerodrome but does not include charges payable by virtue of section 73 of the Transport Act 2000;
- (e) “the court” means—
  - (i) in relation to England, Wales and Northern Ireland, the High Court; and
  - (ii) in relation to Scotland, the Court of Session;
- (f) “defaulting operator” means a person that falls under regulation 42(1)(a) or (b);

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(a) 2000 c. 38.

(b) 1982 c. 16.

- (g) “regulator expenses” means any expenses incurred by the regulator in detaining, keeping or selling the aircraft, including—
  - (i) any sums recovered from the regulator under regulation 47(2) or 59(2), or any sums under regulation 51(5) that have not been recovered under regulation 51(6);
  - (ii) any expenses in connection with the application to the court under regulation 44; and
  - (iii) any regulator expenses that are deemed to be added by virtue of regulation 43(2).

## PART 10

### Other sanctions

#### **Naming of operators**

**49.** The regulator must, by 30th June in each year, publish a list of aircraft operators that were liable to a civil penalty under regulation 38 in the preceding 12 months.

#### **Application for an operating ban**

**50.—(1)** Where the Secretary of State intends to make a request to the European Commission under Article 16(5) of the EU ETS Directive to impose an operating ban on an aircraft operator, the Secretary of State must first—

- (a) receive consent from—
  - (i) the Scottish Ministers, where the Scottish Environment Protection Agency is the regulator;
  - (ii) the Welsh Ministers, where the registered office of the aircraft operator is in Wales;
  - (iii) the Department of the Environment in Northern Ireland, where the chief inspector is the regulator; and
- (b) give notice to the regulator.

(2) A notice under paragraph (1)(b) may require relevant information to be provided by the regulator including—

- (a) evidence that the aircraft operator has not complied with obligations under these Regulations; and
- (b) any enforcement action that has been taken by the regulator;

in a timescale specified in the notice.

(3) Following the giving of notice under paragraph (1)(b) and, where applicable, the provision of information under paragraph (2), the Secretary of State must give notice to the aircraft operator.

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

- (a) include a copy of any information provided under paragraph (2);
- (b) include a copy of the request that the Secretary of State intends to send to the European Commission;
- (c) give the aircraft operator an opportunity to make representations before the Secretary of State makes the request; and
- (d) set out the timescale in which those representations must be made.

#### **Enforcement of an operating ban**

**51.—(1)** Where the European Commission has adopted a decision to impose an operating ban on an operator under Article 16(10) of the EU ETS Directive, the regulator must take all reasonable steps to ensure that the banned operator does not operate a flight that departs from or arrives in the United Kingdom.

- (2) The steps a regulator may take under paragraph (1) include—
- (a) subject to paragraph (3), issuing to aerodrome operators (or to any other person) any direction that the regulator deems necessary to enforce the ban;
  - (b) detaining and selling an aircraft of the operator in accordance with Part 9.
- (3) Before issuing a direction under paragraph (2)(a) the regulator must receive approval from the authority and (where different) the relevant authority.
- (4) A person must comply with any direction issued to that person under paragraph (2)(a).
- (5) A person is entitled to recover from the regulator a sum equal to any expense reasonably incurred by that person in complying with a direction issued under paragraph (2)(a).
- (6) The regulator is entitled to recover as a civil debt from the operator concerned all sums incurred under paragraph (5).
- (7) In paragraph (3)—
- “authority” means in respect of an operating ban on—
- (a) a UK operator, the authority as defined by regulation 7;
  - (b) any other operator, the Secretary of State;
- “relevant authority” means, where the principal place of business of the person to be directed is—
- (a) in Wales, the Welsh Ministers;
  - (b) in Scotland, the Scottish Ministers;
  - (c) in Northern Ireland, the Department of the Environment in Northern Ireland;
  - (d) not in Wales, Scotland or Northern Ireland, the Secretary of State.

## PART 11

### Appeals

#### General

- 52.**—(1) A UK operator may appeal to the appeal body where the regulator has—
- (a) refused the UK operator’s application for a benchmarking plan by—
    - (i) notice under regulation 10(1); or
    - (ii) deemed refusal under regulation 10(4);
  - (b) refused to submit the UK operator’s report to the Secretary of State by—
    - (i) notice under regulation 13(1)(b); or
    - (ii) deemed refusal under regulation 13(4);
  - (c) served on the UK operator a notice under regulation 30 in relation to a civil penalty under regulation 39(1);
  - (d) served on the UK operator a notice under regulation 29(1).
- (2) An eligible UK operator may appeal to the appeal body where the regulator has refused to submit the eligible UK operator’s application for an allocation of allowances from the special reserve to the Secretary of State by—
- (a) notice under regulation 17(1)(b); or
  - (b) deemed refusal under regulation 17(3).
- (3) An aircraft operator may appeal to the appeal body where the regulator has—
- (a) refused the aircraft operator’s application for an emissions plan by—
    - (i) notice under regulation 19(1) or (5); or

- (ii) deemed refusal under regulation 19(6);
  - (b) served on the aircraft operator a notice under regulation 22(2)(c), 25 or 30.
- (4) A person may appeal to the appeal body where the regulator has served on the person a notice under regulation 30(1) in relation to a civil penalty under regulation 36(1) or (2) or 41.
- (5) An aerodrome operator may appeal to the appeal body where the regulator has served on the aerodrome operator a notice under regulation 30(1) in relation to a civil penalty under regulation 40.
- (6) In determining an appeal under this regulation the appeal body may—
- (a) affirm the notice or deemed refusal;
  - (b) quash all or part of the notice or deemed refusal;
  - (c) vary the notice;
  - (d) give directions to the regulator in relation to the subject matter of the appeal;
  - (e) substitute a deemed refusal by the regulator with a decision of the appeal body.
- (7) An appeal brought under paragraph (1)(a) or (b), (2) or (3)(a) does not suspend the operation of the notice or deemed refusal.
- (8) An appeal brought under paragraph (1)(c) or (d), (3)(b), (4) or (5) suspends the operation of the notice pending the final determination or the withdrawal of the appeal.
- (9) The “appeal body” means—
- (a) in respect of an appeal against a notice or deemed refusal of the Environment Agency—
    - (i) the Welsh Ministers, where the UK operator making the appeal has its registered office in Wales;
    - (ii) otherwise, the Secretary of State;
  - (b) in respect of an appeal against a notice or deemed refusal of the Scottish Environment Protection Agency, the Scottish Ministers;
  - (c) in respect of an appeal against a notice or deemed refusal of the chief inspector, the Planning Appeals Commission.

### **Procedure and appointment**

**53.**—(1) Except where paragraph (4) applies, Schedule 3 has effect in relation to the making and determination of appeals under regulation 52.

- (2) Except where paragraph (4) applies, the appeal body may—
- (a) appoint any person to exercise on its behalf, with or without payment, the function of determining an appeal under regulation 52 or any matter or question involved in such an appeal; or
  - (b) refer any matter or question involved in an appeal under regulation 52 to such person as it may appoint for the purpose, with or without payment.
- (3) Schedule 4 has effect with respect to appointments under paragraph (2)(a).
- (4) Where an appeal under regulation 52 is made to the Planning Appeals Commission, Schedule 5 has effect in relation to the making and determination of the appeal.

## **PART 12**

### **Guidance to regulators**

#### **Guidance to regulators**

**54.**—(1) The authority may issue guidance to the regulator with respect to the carrying out of any of its functions under these Regulations or under the 2009 Regulations.

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

## PART 13

### Miscellaneous

#### **Confidentiality**

**55.** The regulator or authority must not disclose or publish any information provided to it under these Regulations except where—

- (a) disclosure or publication is—
  - (i) required in these Regulations or otherwise by law;
  - (ii) necessary for the regulator to perform its functions under these Regulations; or
  - (iii) made with the consent of the person by or on behalf of whom the information was provided; or
- (b) disclosure is between the regulator and the authority.

#### **Notices**

**56.** Schedule 6 (service of notices) has effect.

#### **Submission of reports and applications for plans**

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

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

#### **Functions of the regulator: Northern Ireland**

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

#### **Assistance and advice to be provided by the Civil Aviation Authority**

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

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

## PART 14

### Revocation and savings etc.

#### **Revocation, savings, transitional and transitory provisions**

**60.—(1)** Subject to the following paragraphs of this regulation, the 2009 Regulations are revoked.



(2) Part 2 of the 2009 Regulations continues to have effect in relation to an application for the issue of allowances under Article 3e of the EU ETS Directive in the trading periods—

- (a) 2012; or
- (b) 2013 to 2020.

(3) Regulations 14 and 15 of the 2009 Regulations continue to have effect in relation to a person who becomes an aircraft operator before the commencement date.

(4) Regulations 18 and 28 of the 2009 Regulations continue to have effect until such time as the aircraft operator's emissions plan includes the conditions referred to in regulation 23(1) of these Regulations.

(5) For the purposes of the provisions that continue to have effect in accordance with paragraphs (2) to (4), and for the purposes of regulation 16 of the 2009 Regulations, the following provisions of those Regulations also continue to have effect—

- (a) regulations 2 to 7;
- (b) regulation 21 (but with the reference to regulation 30 omitted);
- (c) regulation 22;
- (d) regulation 23, as modified by paragraph (6);
- (e) regulation 24, as modified by paragraph (7);
- (f) regulation 27(1);
- (g) Parts 7 and 9;
- (h) Schedules 2 to 4; and
- (i) Schedule 5, as modified by paragraph (8).

(6) In regulation 23(1)(a), for “the person liable” to “that the person”, substitute “within 8 weeks of the service of the notice under regulation 21(1) the person liable to a civil penalty or on whom the civil penalty has been imposed demonstrates to the satisfaction of the regulator (or the regulator at any time becomes satisfied) that the person”.

(7) In regulation 24—

- (a) for paragraph (1) substitute—

“(1) The civil penalties in paragraph (2) apply where an aircraft operator—

- (a) fails to submit (or to submit on time) an application for an emissions plan, contrary to regulation 14;
- (b) fails to resubmit (or to resubmit on time) an application for an emissions plan under regulation 15(4).”; and

- (b) in paragraph (2)(a)(ii) and (b)(ii), for “provided late” substitute “not provided”.

(8) In Schedule 5—

- (a) in paragraph 7(b), after “email address” insert “(or, in the case of a partnership established outside the United Kingdom, the last known address)”; and
- (b) for paragraph 8, substitute—

“8. For the purposes of paragraph 7, where a body corporate registered outside the United Kingdom or a partnership established outside the United Kingdom has an office in the United Kingdom, the principal office of that body corporate or partnership is its principal office in the United Kingdom.” and

- (c) after paragraph 8, insert—

“8A.—(1) Where for the purposes of paragraph 7 the person giving or serving notice is not able to ascertain a proper address in relation to a UK operator, a relevant address may instead be treated as the proper address.

(2) For that purpose “relevant address” means an address derived from information supplied to the regulator by Eurocontrol (or any other organisation) at the request of the European Commission.”.

(9) Regulation 20 of these Regulations does not apply in respect of any period before the commencement date; but paragraph (10) below applies where—

- (a) a notice has been served before that date under regulation 21(1) of the 2009 Regulations in relation to a civil penalty under regulation 25(2) of those Regulations; and
- (b) the aircraft operator continues to fail to monitor aviation emissions after the commencement date.

(10) Where this paragraph applies, the aircraft operator is liable to the additional daily penalty under regulation 34(2) of these Regulations; and a notice under regulation 30(2) may be given in respect of both the amount of additional daily penalty under regulation 25(2) of the 2009 Regulations accruing before the commencement date, and the amount of additional daily penalty under regulation 34(2) of these Regulations accruing after the commencement date, up to a maximum of £4,500.

(11) Part 9 of these Regulations applies to a civil penalty which is due under regulation 21(3) or (4) of the 2009 Regulations as it applies to a civil penalty which is due under regulation 30(3) or (4) of these Regulations; and for that purpose—

- (a) the reference in regulation 42(3) to a civil penalty imposed in respect of a failure to comply with these Regulations is to be read as a reference to a civil penalty imposed in respect of a failure to comply with the 2009 Regulations; and
- (b) the reference in regulation 43(1)(b)(i) to regulation 52 is to be read as a reference to regulation 36 of the 2009 Regulations.

(12) In this regulation, “commencement date” means the date on which these Regulations come into force.

3rd August 2010

*Greg Barker*  
Minister of State  
Department of Energy and Climate Change

## SCHEDULE 1

Regulation 28

### Charging

**1.**—(1) Subject to sub-paragraphs (2) and (3), the regulator may charge a person the following amounts for the following activities—

- (a) determining an application for a benchmarking plan under regulation 9, £830;
- (b) determining an application for a free allocation from the special reserve under regulation 16, £1,120;
- (c) determining an application for an emissions plan under regulation 18, £750;
- (d) determining emissions under regulation 22, £115 per hour;
- (e) varying an emissions plan under regulation 25, £430;
- (f) maintaining a person as an aircraft operator for each year—

- (i) where the estimated aviation emissions are less than 50 kilotonnes—
  - (aa) £1,920; plus
  - (bb) £630;
- (ii) where the estimated aviation emissions are between 50 and 500 kilotonnes—
  - (aa) £2,490; plus
  - (bb) £830; and
- (iii) where the estimated aviation emissions are over 500 kilotonnes—
  - (aa) £3,060; plus
  - (bb) £1,020.

(2) In the year that an aircraft operator is issued with an emissions plan under regulation 19 or under regulation 15 of the 2009 Regulations (“the relevant year”), the regulator may only charge that person  $N/365$  of any of the sums specified in sub-paragraph (1)(f)(i)(bb), (f)(ii)(bb) or (f)(iii)(bb), where  $N$  is the number of days remaining in the relevant year after the day on which the emissions plan was issued.

(3) In 2010, the regulator may only charge an aircraft operator the following proportions of any of the sums referred to in sub-paragraph (2)—

- (a)  $M/365$ , where  $M$  is the number of days remaining in that year following the date on which these Regulations come into force; or
- (b) if 2010 is the relevant year for the purposes of sub-paragraph (2), the lesser of—
  - (i)  $M/365$ ; and
  - (ii)  $N/365$  (as defined in sub-paragraph (2)).

(4) A charge under sub-paragraph (1) is not deemed to be received by the regulator until the regulator has cleared funds for the full amount due.

(5) A charge under sub-paragraph (1) must be paid—

- (a) by such time and in such manner as the regulator reasonably requires; and
- (b) where no time is set by the regulator, within 31 days of the charge being levied.

## 2. The regulator—

- (a) must require a charge for an application for a benchmarking plan, emissions plan and an application to the special reserve to be paid before it determines the application;
- (b) may require any other charge to be paid before it carries out the relevant chargeable activity; and
- (c) is not required to reimburse any charge paid where—
  - (i) the chargeable activity does not occur; or
  - (ii) the person liable to pay it does not remain an aircraft operator for all of the period in respect of which the charge is payable or has been determined.

## 3.—(1) Any charge unpaid may be recovered by the regulator—

- (a) as a civil debt;
- (b) by the seizure and sale of a number of allowances held by the aircraft operator in accordance with sub-paragraph (2).

(2) Where the regulator proposes to recover an unpaid charge by the seizure and sale of allowances held by the aircraft operator it must—

- (a) notify the registry administrator and the aircraft operator;
- (b) instruct the registry administrator to transfer a number of allowances sufficient to cover the unpaid charge and any expenses incurred in recovering the unpaid charge from the aircraft operator to a person holding account of the regulator;

- (c) sell the allowances transferred under 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;
  - (d) apply the proceeds of sale in the following order—
    - (i) in payment of the unpaid charge 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 the regulator must pay any residue from the proceeds of sale to the aircraft operator.
- (3) The regulator is not required to carry out a chargeable activity in relation to a person who has not paid a charge which that person is liable to pay.

**4. In this Schedule—**

“estimated aviation emissions” means a reasonable estimate by the regulator of the aviation emissions of the aircraft operator for the relevant year;

“registry administrator” means the Environment Agency acting in that capacity pursuant to regulation 26(2) of the Greenhouse Gas Emissions Trading Scheme Regulations 2005(a).

## SCHEDULE 2

Regulation 44(1)

### Steps to be taken before applying for leave to sell an aircraft

**1.** The steps in this Schedule apply where the regulator proposes to apply to the court for leave to sell an aircraft under regulation 44.

**2.—(1)** At least 21 days before applying to the court the regulator must, unless it is impracticable to do so, serve a notice in accordance with paragraph 4 on—

- (a) the person in whose name the aircraft is registered;
- (b) the person, if any, who appears to the regulator to be the owner of the aircraft;
- (c) any person who appears to the regulator to be a charterer of the aircraft whether or not by demise;
- (d) any person who appears to the regulator to be the operator of the aircraft;
- (e) any person who is registered as a mortgagee of the aircraft under an Order in Council made under section 86 of the Civil Aviation Act 1982(b) or who appears to the regulator to be a mortgagee of the aircraft under the law of any country other than the United Kingdom;
- (f) any other person who appears to the regulator to have a proprietary interest in the aircraft or any part of it.

(2) Where a person who has been served with a notice in accordance with sub-paragraph (1) informs the regulator within 14 days of the service of the notice of the person’s desire to become a party to the proceedings the regulator must make that person a party to the application.

**3.** At the same time as serving any notice under paragraph 2(1), the regulator must publish a copy of that notice—

- (a) in the London Gazette and also, if the aircraft is detained in Scotland, the Edinburgh Gazette, or, if it is detained in Northern Ireland, in the Belfast Gazette; and
- (b) in one or more local newspapers circulating in the locality in which the aircraft is detained.

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(a) S.I. 2005/952; there are amendments that are not relevant to these Regulations.

(b) 1982 c. 16.

4. A notice under paragraph 2(1) must—
- (a) state the nationality and registration marks of the aircraft;
  - (b) state the type of aircraft;
  - (c) state that by reason of default in the payment of a civil penalty under these Regulations, the regulator, on a date which is specified in the notice, detained the aircraft under these Regulations;
  - (d) state that, unless payment of the sum so due is made within—
    - (i) a period of 56 days from the date when the detention began, or
    - (ii) if later, 21 days of the date of service of the notice,
 the regulator will apply to the court for leave to sell the aircraft;
  - (e) invite the person to whom the notice is given to inform the regulator within 14 days of the service of the notice if the person wishes to become a party to the proceedings on the application.
- 5.—(1) A notice under paragraph 2(1) must be served by the regulator—
- (a) by delivering it to the person to whom it is to be sent;
  - (b) by leaving it at that person’s usual or last known place of business or abode;
  - (c) by sending it, addressed to that person at that person’s usual or last known place of business or abode, by a registered post service or by a postal service which provided for the delivery of the notice by post to be recorded; or
  - (d) if the person to whom it is to be sent is an incorporated company or body, by delivering it to the secretary, clerk or other appropriate officer of the company or body at its registered or principal office or sending it, addressed to the secretary, clerk or other officer of the company or body at that office, by a registered post service or by a postal service which provides for the delivery of the notice by post to be recorded.
- (2) Any notice which is sent by a postal service in accordance with the preceding paragraph to a place outside the United Kingdom must be sent by air mail or by some other equally expeditious means.
- (3) In this Schedule “registered post service” and “postal service” have the meaning given in section 125(1) of the Postal Services Act 2000<sup>(a)</sup>.

## SCHEDULE 3

Regulation 53(1)

### Appeals (other than appeals to which Schedule 5 applies)

- 1.—(1) Any person that wishes to appeal to the appeal body under regulation 52 must give to the appeal body written notice of the appeal together with the documents specified in sub-paragraph (2) and must at the same time send to the regulator a copy of that notice together with copies of the documents specified in sub-paragraph (2)(a) and (e).
- (2) The documents mentioned in sub-paragraph (1) are—
- (a) a statement of the grounds of appeal;
  - (b) a copy of any relevant application for a benchmarking plan or emissions plan;
  - (c) a copy of any relevant benchmarking plan or emissions plan;
  - (d) a copy of any relevant correspondence between the appellant and the regulator;
  - (e) a copy of any decision or notice which is the subject matter of the appeal; and

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<sup>(a)</sup> 2000 c. 26.

(f) a statement indicating whether the appellant wishes the appeal to be in the form of a hearing or to be disposed of on the basis of written representations.

(3) An appellant may withdraw an appeal by notifying the appeal body in writing and must send a copy of that notification to the regulator.

**2.—**(1) Subject to sub-paragraph (2), notice of appeal in accordance with paragraph 1 is to be given before the expiry of the period of 24 days beginning with the date of the decision, deemed decision or the notice takes effect.

(2) The appeal body may in a particular case allow notice of appeal to be given after the expiry of the period in sub-paragraph (1) where it is satisfied that there was good reason for the applicant's failure to bring the appeal in time.

**3.—**(1) The regulator must, within 16 days of receipt of the copy of the notice of appeal sent in accordance with paragraph 1, give notice of it to any person who appears to the regulator to have a particular interest in the subject matter of the appeal.

(2) A notice under sub-paragraph (1) must—

- (a) state that notice of appeal has been given;
- (b) state the name of the appellant;
- (c) describe the decision or notice to which the appeal relates;
- (d) state that if a hearing is to be held wholly or partly in public, an interested party will be notified of the date of the hearing; and
- (e) state that an affected party may request to be heard at a hearing.

(3) An interested party may request the regulator to provide a copy of the documents set out in paragraph 1(2) for the purposes of the appeal only and where such a request is made the regulator must provide the documents as soon as is reasonably practicable.

(4) An interested party—

- (a) may make representations with respect to the appeal to the appeal body in writing within 16 days from the date of the notice;
- (b) must, when making those representations, state whether or not its civil rights will be determined in the appeal, and, if so, which civil rights will be determined.

(5) The appeal body must provide a copy of any representations made under sub-paragraph (4) to the appellant and the regulator.

(6) The regulator must, within 8 days of sending a notice under sub-paragraph (1), notify the appeal body of the persons to whom and the date on which the notice was sent.

(7) The appeal body must, as soon as possible after receiving representations under sub-paragraph (4), determine whether an interested party is an affected party.

(8) In the event of an appeal being withdrawn, the regulator must give notice of the withdrawal to all interested parties.

**4.—**(1) Before determining an appeal, the appeal body may afford the appellant, the regulator and any affected party an opportunity of appearing before and being heard by a person appointed by it (the "person holding the hearing") and it must do so in any case where a request is made by the appellant, the regulator or any affected party.

(2) A hearing held under sub-paragraph (1) may, if the person holding the hearing so decides, be held wholly or partly, in private.

(3) Where the appeal body causes a hearing to be held under sub-paragraph (1) it must give the appellant, the regulator and any affected party at least 24 days notice (or such shorter period of notice as they may agree) of the date, time and place fixed for the holding of the hearing.

(4) In the case of a hearing which is to be held wholly or partly in public, the appeal body must, at least 24 days before the date fixed for the holding of the hearing—

- (a) publish a copy of the notice referred to in sub-paragraph (3) in an appropriate international aviation publication; and

(b) serve a copy of that notice on every interested party who has made representations in writing to the appeal body.

(5) The appeal body may vary the date fixed for the holding of any hearing and sub-paragraphs (3) and (4) apply to the variation of a date as they applied to the date originally fixed.

(6) The appeal body may vary the time or place for the holding of a hearing and must give such notice of any such variation as appears to the appeal body to be reasonable.

(7) The persons entitled to be heard at a hearing are the appellant, the regulator and any affected party.

(8) Nothing in sub-paragraph (7) prevents the person holding the hearing from permitting any other persons to be heard at the hearing and such permission must not be unreasonably withheld.

(9) After the conclusion of a hearing, the person holding the hearing must make a report in writing to the appeal body which must include that person's conclusions and recommendations, or decision not to make any recommendation and in all cases the reasons supporting the report.

(10) Paragraph 4(5) and (6) of Schedule 4 applies to hearings held under this paragraph as if references to the appointed person in those paragraphs were references to the person holding the hearing under this paragraph.

**5.—**(1) Where an appeal under regulation 52 is to be disposed of on the basis of written representations, the regulator must submit any written representations to the appeal body not later than 24 days after receiving a copy of the documents mentioned in paragraph 1(2)(a) and (e).

(2) The appellant must make any further representations by way of reply to any representations from the regulator not later than 16 days after the date of submission of those representations by the regulator.

(3) Any representations made by the appellant or the regulator must bear the date on which they are submitted to the appeal body.

(4) When the regulator or the appellant submits any representations to the appeal body they must at the same time send a copy of them to the other party.

(5) The appeal body must send to the appellant and the regulator a copy of any representations made to it by any interested party and must allow the appellant and the regulator a period of not fewer than 16 days in which to make representations on them.

(6) The appeal body may in a particular case—

(a) set earlier or later time limits than those mentioned in this Schedule;

(b) require or permit exchanges of representations between the parties in addition to those mentioned in sub-paragraphs (1) and (2).

**6.—**(1) The appeal body must give notice to the appellant of its determination of the appeal and must provide the appellant with a copy of any report mentioned in paragraph 4(9).

(2) The appeal body must at the same time send—

(a) a copy of the documents mentioned in sub-paragraph (1) to the regulator; and

(b) a copy of its determination of the appeal to any interested party who made representations to the appeal body and, if a hearing was held, to any other person who made representations at the hearing.

**7.** Where an appeal is made under regulation 52(1)(a) or (b) or regulation 52(2), the appeal body must, where practicable, determine the appeal before the deadline in regulation 13(5) or 17(4), as appropriate.

**8.** Where a determination of the appeal body on an appeal is quashed in proceedings before any court, the appeal body—

(a) must send to the persons notified of its determination under paragraph 6 a statement of the matters with respect to which further representations are invited for the purposes of its further consideration of the appeal;

- (b) must afford to those persons the opportunity of making, within 31 days of the date of the statement, written representations in respect of those matters; and
- (c) may, as it thinks fit, cause a hearing to be held or reopened and, if it does so, paragraphs 4(2) to (10) apply to the hearing or the reopened hearing as they apply to a hearing held under paragraph 4(1),

and paragraph 6 applies to the re-determination of the appeal as it applies to the determination of an appeal.

**9. In this Schedule—**

- (a) “affected party” means an interested party—
  - (i) that has stated in representations under paragraph 3(4) that its civil rights will be determined in an appeal; and
  - (ii) whom the appeal body is satisfied that its civil rights will be so determined;
- (b) “interested party” means a person notified under paragraph 3(1).

## SCHEDULE 4

Regulation 53(3)

### Delegation of Appellate Functions

**1. In this Schedule—**

“appointed person” means a person appointed under regulation 53(2)(a);  
 “appointment”, in the case of any appointed person, means appointment under regulation 53(2)(a).

**2. An appointment must be in writing and—**

- (a) may relate to any particular appeal, matters or questions specified in the appointment or to appeals, matters or questions of a description so specified;
- (b) may provide for any function to which it relates to be exercisable by the appointed person either unconditionally or subject to the fulfilment of such conditions as may be specified in the appointment; and
- (c) may, by notice in writing to the appointed person, be revoked at any time by the appeal body in respect of any appeal, matter or question which has not been determined by the appointed person before that time.

**3. Subject to the provisions of this Schedule, an appointed person, in relation to any appeal, matter or question to which the appointed person’s appointment relates, has the same powers and duties as the appeal body, other than any function of appointing a person for the purpose—**

- (a) of enabling persons to appear before and be heard by the person so appointed; or
- (b) of referring any question or matter to that person.

**4.—(1) If the appellant, the regulator or any person whose civil rights are to be determined in the appeal expresses a wish to appear before and be heard by the appointed person, the appointed person must give them an opportunity of appearing and being heard.**

**(2) Whether or not a person under sub-paragraph (1) has asked for an opportunity to appear and be heard, the appointed person—**

- (a) may hold a local inquiry or other hearing in connection with the appeal, matter or question; and
- (b) must if the appeal body so directs, hold a local inquiry in connection with an appeal, matter or question.

**(3) Where an appointed person holds a local inquiry or other hearing by virtue of this Schedule, an assessor may be appointed by the appeal body to sit with the appointed person at the inquiry or**



hearing and advise the appeal body on any matters arising, notwithstanding that the appointed person is to determine the appeal, matter or question.

(4) Subject to sub-paragraphs (5) and (6), the costs of a local inquiry held under this Schedule must be defrayed by the appeal body.

(5) Subject to sub-paragraph (6), subsections (2) to (5) of section 250 of the Local Government Act 1972(a) (local inquiries: evidence and costs) apply to hearings held under this Schedule by an appointed person as they apply to inquiries caused to be held under that section by a Minister, but with the following modifications, that is to say—

- (a) with the substitution in subsection (2) (evidence) for the reference to the person appointed to hold the inquiry of a reference to the appointed person;
- (b) with the substitution in subsection (4) (recovery of costs of holding the inquiry) for the references to the Minister causing the inquiry to be held of references to the appeal body;
- (c) with the substitution for the reference in that subsection to a local authority of a reference to the regulator;
- (d) with the substitution in subsection (5) (orders as to the costs of the parties) for the reference to the Minister causing the inquiry to be held of a reference to the appeal body.

(6) In the case of an appeal to the Scottish Ministers, subsections (3) to (8) of section 210 of the Local Government (Scotland) Act 1973(b) (which relates to the costs of and holding of local inquiries) apply to hearings held under this Schedule by an appointed person as they apply to inquiries held under that section, but with the following modifications, that is to say—

- (a) with the substitution in subsection (3) (notice of inquiry) for the reference to the person appointed to hold the inquiry of a reference to the appointed person;
- (b) with the substitution in subsection (4) (evidence) for the reference to the person appointed to hold the inquiry and, in paragraph (b), the reference to the person holding the inquiry of references to the appointed person;
- (c) with the substitution in subsection (6) (expenses of witnesses etc) for the references to the Minister causing the inquiry to be held of a reference to the appointed person or the Scottish Ministers;
- (d) with the substitution in subsection (7) (expenses)—
  - (i) for the first reference to the Minister of a reference to the Scottish Ministers; and
  - (ii) for the second reference to the Minister of a reference to the appointed person or the Scottish Ministers;
- (e) with the substitution in subsection (7A) (recovery of entire administrative expense)—
  - (i) for the first reference to the Minister of a reference to the appointed person or the Scottish Ministers;
  - (ii) in paragraph (a), for the reference to the Minister of a reference to the Scottish Ministers; and
  - (iii) in paragraph (b), for the reference to the Minister holding the inquiry of a reference to the Scottish Ministers;
- (f) with the substitution in subsection (7B) (power to prescribe daily amount)—
  - (i) for the first reference to the Minister of a reference to the Scottish Ministers;
  - (ii) in paragraphs (a) and (c), for the references to the person appointed to hold the inquiry of references to the appointed person; and

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(a) 1972 c. 70; section 250 has been amended by the Statute Law (Repeals) Act 1989 (c. 43), Schedule 1, Part IV, the Criminal Justice Act 1982 (c. 48), sections 37, 38 and 46 and the Housing and Planning Act 1986 (c. 63), Schedule 12, Part III.

(b) 1973 c. 65, section 210 was amended by the Criminal Procedure (Scotland) Act 1975 (c. 21), sections 289F and 289G (which were inserted into that Act by the Criminal Justice Act 1982 (c. 48), section 54) and the Housing and Planning Act 1986, Schedule 11, paragraph 39.

- (iii) in paragraph (d), for the reference to the Minister of a reference to the appointed person or the Scottish Ministers; and
- (g) with the substitution in subsection (8) (certification of expenses)—
  - (i) for the words “the Minister has”, of the words “the Scottish Ministers have”;
  - (ii) for the reference to him and the reference to the Crown of references to the appointed person or the Scottish Ministers.

**5.—(1)** Where under paragraph 2(c) the appointment of the appointed person is revoked in respect of any appeal, matter or question, the appeal body must, unless it proposes to determine the appeal, matter or question itself, appoint another person under regulation 53(2)(a) to determine the appeal, matter or question instead.

(2) Where such a new appointment is made, the consideration of the appeal, matter or question, or any hearing in connection with it, must be begun afresh.

**6.—(1)** Anything done or omitted to be done by an appointed person in, or in connection with, the exercise of any function to which the appointment relates is for all purposes as done or omitted to be done by the appeal body in its capacity as such.

(2) Sub-paragraph (1) does not apply—

- (a) for the purposes of so much of any contract made between the appeal body and the appointed person as relates to the exercise of the function; or
- (b) for the purposes of any criminal proceedings brought in respect of anything done or omitted to be done by an appointed person in, or in connection with, the exercise or purported exercise of any function to which the appointment relates.

## SCHEDULE 5

Regulation 53(4)

### Appeals (Northern Ireland)

**1.—(1)** A person that wishes to appeal to the Planning Appeals Commission (“the appeals commission”) under regulation 52 must give to the appeals commission written notice of the appeal together with a statement of the grounds of appeal and the appeals commission must as soon as is reasonably practicable send to the regulator a copy of that notice together with the statement of the grounds of appeal.

(2) An appellant may withdraw an appeal by notifying the appeals commission and the appeals commission must as soon as is reasonably practicable notify the regulator.

**2.** Notice of appeal in accordance with paragraph 1 is to be given before the expiry of the period of 47 days beginning with the date of the decision, deemed decision or the notice takes effect.

**3.—(1)** The appeals commission must determine the appeal and paragraphs (1), (3), (4) and (5) of Article 111 of the Planning (Northern Ireland) Order 1991<sup>(a)</sup> apply in relation to the determination of the appeal as they apply in relation to the determination of an appeal under that Order.

(2) The appeals commission must determine the process for determining appeals taking into account any requests of either party to the appeal.

**4.** An appeal under this Schedule must be accompanied by a fee of £126.

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<sup>(a)</sup> S.I. 1991/1220 (N.I.11); relevant amending instruments are S.I. 1999/660 (N.I.4), 2003/430 (N.I.8).

## SCHEDULE 6

Regulation 56

### Service of notices

**1.** The provisions of this Schedule apply to the giving or service of a notice under these Regulations, except where a contrary provision applies under Schedule 2.

**2.** A notice must be in writing.

**3.** A notice may be served on or given to a person by—

- (a) delivering it to that person in person;
- (b) sending it to a postal address or address for service using electronic communication provided in an application—
  - (i) for a benchmarking plan under regulation 9; or
  - (ii) for an emissions plan under regulation 18;
- (c) leaving it at that person's proper address, or
- (d) sending it by post or electronic means to that person's proper address.

**4.** In the case of a body corporate, a notice may be served on or given to the secretary or clerk of that body.

**5.** In the case of a partnership, a notice may be served on or given to a partner or a person having control or management of the partnership business.

**6.** If a person to be served with or given a notice has specified an address in the United Kingdom (other than that person's proper address) at which that person or someone on that person's behalf will accept notices of that description, that address must instead be treated as that person's proper address.

**7.** For the purposes of this Schedule, "proper address" means—

- (a) in the case of a body corporate or its secretary or clerk—
  - (i) the registered or principal office of that body, or
  - (ii) the email address of the secretary or clerk;
- (b) in the case of a partnership or a partner or person having control or management of the partnership business—
  - (i) the principal office of the partnership, or
  - (ii) the email address (or, in the case of a partnership established outside the United Kingdom, the last known address) of a partner or a person having that control or management;
- (c) in any other case, a person's last known address, which includes an email address.

**8.** For the purposes of paragraph 7, where a body corporate registered outside the United Kingdom or a partnership established outside the United Kingdom has an office in the United Kingdom, the principal office of that body corporate or partnership is its principal office in the United Kingdom.

**9.—(1)** Where for the purposes of paragraph 7 the person giving or serving notice is not able to ascertain a proper address in relation to a UK operator, a relevant address may instead be treated as the proper address.

(2) For that purpose, “relevant address” means an address derived from information supplied to the regulator by Eurocontrol (or any other organisation) at the request of the European Commission(a).

**10.** Where an electronic address for submission of a notice is provided under these Regulations, it may be submitted electronically to that address.

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

Directive 2003/87/EC of the European Parliament and of the Council(b) (“the EU ETS Directive”) established a scheme for greenhouse gas emission trading within the European Union, and was transposed in the United Kingdom by the Greenhouse Gas Emissions Trading Scheme Regulations 2005(c). The EU ETS Directive was amended so as to include aviation activities in the scheme, by Directive 2008/101/EC of the European Parliament and of the Council(d) (“the Aviation ETS Directive”). Commission Decision 2007/589/EC(e) (“the Monitoring and Reporting Decision”) established guidelines for the monitoring and reporting of greenhouse gas emissions pursuant to the EU ETS Directive, and was amended to include guidelines in relation to aviation activities. These Regulations transpose the Aviation ETS Directive, and the Monitoring and Reporting Decision so far as it relates to aviation. They extend to the United Kingdom.

The Aviation Greenhouse Gas Emissions Trading Scheme Regulations 2009(f) (“the 2009 Regulations”) transposed parts of the Aviation ETS Directive, to establish a procedure enabling UK operators to apply for a free allocation of allowances for their participation in the emissions trading scheme. (A “UK operator” is a person identified in a list drawn up by the European Commission as an operator to be administered by the United Kingdom.) The 2009 Regulations also imposed obligations on an aircraft operator to apply for an emissions plan; monitor emissions in each year from 2010; and verify and report those emissions by 31st March in the following year. These Regulations revoke the 2009 Regulations, but with certain savings, in particular in respect of the provisions allowing UK operators to apply for a free allocation for their participation in the scheme before the end of 2020.

*Regulations 3 to 7* define “aircraft operator”, “regulator” and “authority” for the purposes of these Regulations. An aircraft operator is a UK operator that performs, or is deemed to perform, an aviation activity. The regulator is either the Environment Agency, the Scottish Environment Protection Agency, or the chief inspector in Northern Ireland; and the corresponding authority is either the Secretary of State or Welsh Ministers, the Scottish Ministers, or the Department of the Environment in Northern Ireland.

*Regulations 8 to 13* apply where a UK operator wishes to apply for a free allocation of allowances after 2020. Provision is made for the regulator to issue a benchmarking plan to a UK operator; the UK operator must then monitor its tonne-kilometre data in accordance with that plan in the relevant benchmarking year, and submit a verified report of that data to the regulator.

*Regulations 14 to 17* apply where an eligible UK operator wishes to apply for a free allocation of allowances from the special reserve provided by Article 3f of the EU ETS Directive. An operator that is new to the scheme, or increases its tonne-kilometre data by a specified amount over a certain time period, is eligible to apply for such an allocation.

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(a) Article 18b of the EU ETS Directive enables the Commission to request the assistance of Eurocontrol (or another relevant organisation) in preparing its list of operators; Eurocontrol (the European Organisation for the Safety of Air Navigation) is an intergovernmental organisation of 38 States and the European Union.

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

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

(d) OJ No. L 8, 13.1.2009, p. 3; other amendments to the EU ETS Directive are noted in a footnote to p. 5 above.

(e) OJ No. L 229, 31.8.2007, p. 1; amended by Commission Decision 2009/339/EC (OJ No L 103, 23.4.2009, p. 10).

(f) S.I. 2009/2301.

*Regulations 18 to 21* require aircraft operators to submit an application to the regulator for an emissions plan; to monitor emissions in accordance with a plan approved by the regulator in each calendar year from 1st January 2010; and to submit a verified report to the regulator of the monitored emissions by 31st March in the following year.

*Regulation 22* requires the regulator to determine the emissions of an aircraft operator where the aircraft operator has failed to comply with its obligations to submit a report containing its verified emissions to the regulator.

*Regulation 23* requires a regulator to ensure that emissions plans include conditions obliging aircraft operators to comply with requirements of the Monitoring and Reporting Decision (so far as not already covered by other provisions of these Regulations). For that purpose, the regulator must draw up a list of the conditions that it will include. A regulator must consult on its proposed list, and regulators may do so jointly. The list may be amended from time to time, and emissions plans may be amended to bring them into conformity with the list (including the list as amended). Under *regulation 24*, operators must comply with those conditions included in their emission plans. *Regulation 25* gives the regulator further powers to vary the emissions plan of an aircraft operator and to charge a fee for doing so.

*Regulation 26* requires aircraft operators to surrender allowances or project credits equal to their emissions (and *regulation 27* defines what is meant by “project credits”).

*Regulation 28* gives effect to Schedule 1, which provides for charges for functions carried out by the regulator.

*Regulation 29* gives the regulator the power to serve a notice on UK operators requiring the operator to provide information to the regulator.

*Regulations 30 to 41* make provision for the imposition of a civil penalty where a person does not comply with their obligations under *regulations 18 to 21, 24, 26, 29, 47 or 51(4)*, or makes a false or misleading statement in a report under *regulation 12 or 21* or in an application under *regulation 16*.

*Regulations 42 to 48* make provision for the detention and sale of aircraft by the regulator where a UK operator has not paid a civil penalty imposed on it, or where the European Commission has imposed an operating ban on an operator (including operators that are not UK operators). *Schedule 2* sets out the steps that the regulator must take before applying to the court for leave to sell an aircraft.

*Regulation 49* makes provision for the regulator to publish the names of aircraft operators that do not comply with the obligation to surrender allowances.

*Regulation 50* makes provision for the Secretary of State to request the European Commission to impose an operating ban on an aircraft operator; and *regulation 51* gives the regulator powers to enforce an operating ban imposed by the European Commission on any operator.

*Regulations 52 and 53* make provision for appeals against various notices, decisions or deemed refusals of the regulator. *Schedules 3, 4 and 5* contain provisions relating to the procedure for appeals and for delegating appellate functions under these Regulations.

*Regulation 54* gives the authority the power to issue guidance to the regulator relating to the discharge of the regulator’s functions under these Regulations or under the 2009 Regulations.

*Regulation 55* makes provision for keeping information under these Regulations confidential.

*Regulation 56* gives effect to *Schedule 6*, which contains provisions on the giving or service of notices.

*Regulation 57* makes provision relating to the submission of reports and plan applications.

*Regulation 58* makes provision for the functions of the regulator in Northern Ireland, the chief inspector, to be delegated.

*Regulation 59* requires the Civil Aviation Authority to provide assistance and advice to the regulator where requested.

*Regulation 60* revokes the 2009 Regulations, with savings, in particular for provisions that apply in relation to applications for a free allocation of allowances in the trading periods 2012, and 2013 to 2020. It also contains transitional and transitory provisions.

A full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the Department of Energy and Climate Change's Climate and Energy: Europe Division (telephone 0300 060 4000), and is published alongside the instrument and its Explanatory Memorandum on the legislation website of The National Archive (<http://www.legislation.gov.uk>). A transposition note setting out how these Regulations, and the 2009 Regulations, implement the relevant provisions of the Aviation ETS Directive and the Monitoring and Reporting Decision is annexed to that Explanatory Memorandum.

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