

2012 No. 0000

CLIMATE CHANGE

**The Greenhouse Gas Emissions Trading Scheme Regulations
2012**

Made - - - - - *** 2012
Laid before Parliament *** 2012
Coming into force - - - - - 1st January 2013

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The Secretary of State is a Minister designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to the environment.

In accordance with section 2(4) of the Pollution Prevention and Control Act 1999 (“the 1999 Act”)(c), 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.

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972, 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.

Accordingly the Secretary of State, in exercise of the powers conferred by sections 2 and 7(9) of and Schedule 1 to the 1999 Act(d) and by section 2(2) of the European Communities Act 1972, as read with paragraph 1A of Schedule 2 to the European Communities Act 1972(e), makes the following Regulations(f):

PART 1

General

Citation and commencement

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

Duty to review these Regulations

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

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

(a) SI 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.

(d) There are amendments to Schedule 1 which are not relevant to these Regulations.

(e) 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.

(f) Under section 57 of the Scotland Act 1998 (c. 46), despite the transfer to the Scottish Ministers of functions in relation to observing and implementing obligations under Community law in respect of devolved matters, any function of the Secretary of State in relation to any matter continues to be exercisable as regards Scotland for the purposes specified in section 2(2) of the European Communities Act 1972. 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 such purposes.

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

(3) The report must in particular—

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

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

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

Interpretation

3.—(1) In these Regulations—

“the 2005 Regulations” means the Greenhouse Gas Emissions Trading Scheme Regulations 2005(a);

“the 2010 Regulations” means the Aviation Greenhouse Gas Emissions Trading Scheme Regulations 2010(b);

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

“aviation emissions plan” means an emissions plan as defined by regulation 21;

“allocation”, in relation to an allowance, means allocation free of charge in accordance with Article 3e or 11 of the Directive;

“allowance”—

- (a) in this regulation, has the meaning given in Article 3(a) of the Directive, but
- (b) elsewhere (and subject to regulations 42(1), 58(6) and 84(1)) means an allowance other than an aviation allowance;

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

“authority” means—

- (a) in relation to an installation which is (or will be) situated in England and an offshore installation, the Secretary of State;
- (b) in relation to an installation (other than an offshore installation) which is (or will be) situated in—
 - (i) Scotland, the Scottish Ministers;
 - (ii) Wales, the Welsh Ministers;
 - (iii) Northern Ireland, the Department of the Environment; and
- (c) in relation to a UK administered operator, the authority defined in regulation 21;

“aviation activity” means an aviation activity listed in Annex I to the Directive;

“aviation allowance” means (subject to regulation 42(1)) any allowance issued in accordance with Article 3e(5) of the Directive or auctioned in accordance with Article 3d of the Directive;

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

(a) S.I. 2005/925; amended by S.I. 2005/2903, 2006/737, 2007/465, 2007/1096, 2007/3433, 2010/1513, 2011/1506 and 2011/2911.

(b) S.I. 2010/1996, amended by S.I. 2011/76 and 2011/2911.

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

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

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

“conditions”, in relation to a permit, means the provisions included under paragraph 2(1) of Schedule 4, paragraph 3 of Schedule 5 or regulation 10 of the 2005 Regulations;

“current operator” has the meaning given by regulation 13(1);

“the Directive” means Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emissions allowance trading within the Community and amending Council Directive 96/61/EC(a), as amended from time to time and as adapted by Annex 20 to the EEA agreement(b);

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

“electronic communication” has the same meaning as in the Electronic Communications Act 2000(c);

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

“enforcement notice” has the meaning given by regulation 46(1);

“excluded installation” means an installation the exclusion of which is deemed to be approved by the European Commission under the first sub-paragraph of Article 27(2) of the Directive;

“excluded installation emissions permit” means a permit granted under regulation 11(2) or which results from a variation under paragraph 2 of Schedule 5;

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

- (a) regulation 19;
- (b) section 41, read with section 41A, of the Environment Act 1995(d);
- (c) regulation 4 of the Greenhouse Gas Emissions Trading Scheme Charging Scheme Regulations (Northern Ireland) 2010(e); or
- (d) Article 127 of the Planning (Northern Ireland) Order 1991(f);

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

“greenhouse gas emissions permit” means a permit granted under—

- (a) regulation 10(2); or
- (b) regulation 9 of the 2005 Regulations;

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

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

“the Monitoring and Reporting Regulation” means Commission Regulation (EU) No. **/2012 of *** 2012 on the monitoring and reporting of greenhouse gas emissions pursuant to

(a) OJ No L 275, 25.10.03, p 32. The Directive was amended by European Parliament and Council Directives 2004/101/EC (OJ No. L 338, 13.11.2004, p 18), 2008/101/EC (OJ No L 8, 13.1.2009, p 3) and 2009/29/EC (OJ No L 140, 5.6.2009, p 63), and by Regulation (EC) No 219/2009 of the European Parliament and of the Council (OJ No L 87, 31.3.2009, p 109).

(b) See Point 21a1 of that Annex, amended by Decision of the EEA Joint Committee No 6/2011 (OJ L 93, 7.4.2011, p 35); and see the Introduction and Sectoral Adaptation included at the beginning of the Annex.

(c) 2000 c. 7; see section 15.

(d) 1995 c. 25; sections 41 and 41A were amended by S.I. 2011/2911.

(e) S.R. (N.I.) 2010 No. 151; amended by S.I. 2011/2911.

(f) Article 127 was substituted by S.I. 2006/1252 (N.I. 7).

(g) OJ L130, 17.5.2011, p.1

Directive 2003/87/EC of the European Parliament and of the Council(a), as amended from time to time;

“new operator” has the meaning given by regulation 13(1);

“Northern Ireland Regulations” means the Pollution Prevention and Control Regulations (Northern Ireland) 2003(b);

“notice of surrender” has the meaning given in regulation 14(4);

“offshore installation” means—

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

“offshore petroleum installation” means an installation which is—

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

“the Offshore Regulations” means the Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001(f);

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

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

“operator”, except in Part 3 and Schedules 7 to 10, has the meaning given in paragraph (2) (and “operate” has the corresponding meaning);

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

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

(a) OJ No L ***, ***.12, p *.

(b) S.R. (NI) 2003 No 46, amended by S.R. (NI) 2003 No 496 and S.I. 2003/3311; there are other amending instruments which are not relevant.

(c) 1998 c. 17.

(d) 1974 c. 40; section 30A was substituted (in relation to Scotland) by section 169 of, and paragraph 4 of Schedule 23 to, the Water Act 1989 (c. 15), and was amended by section 120 of, and paragraph 29 of Schedule 22 to, the Environment Act 1995.

(e) 1964 c. 29; section 1(7) was amended by section 37 of, and paragraph 1 of Schedule 3 to, the Oil and Gas (Enterprise) Act 1982 (c. 23).

(f) S.I. 2001/1091.

(g) 2008 c. 32; section 17 was amended by S.I. 2011/224 and 2011/2453.

(h) Section 1 is amended (from a date yet to be appointed) by section 41 of, and paragraph 5 of Schedule 4 to, the Marine and Coastal Access Act 2009 (c. 23)

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

“project credits” has the meaning given by regulation 42(2);

“the Registries Regulation 2010” means Commission Regulation (EU) No 920/2010 of 7 October 2010 for a standardised and secured system of registries pursuant to Directive 2003/87/EC of the European Parliament and of the Council and Decision No 280/2004/EC of the European Parliament and of the Council(b), as amended from time to time;

“the Registries Regulation 2011 means Commission Regulation (EU) No 1193/2011 of 18 November 2011 establishing a Union Registry for the trading period commencing on 1 January 2013, and subsequent trading periods, of the Union emissions trading scheme pursuant to Directive 2003/87/EC of the European Parliament and of the Council and Decision No 280/2004/EC of the European Parliament and of the Council and amending Commission Regulations (EC) No 2216/2004 and (EU) No 920/2010(c), as amended from time to time;

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

“registry account” means an operator holding account or an aircraft operator holding account in the Union Registry (and “blocked”, “excluded” and “open” status, in relation to such an account, have the meanings given by Article 9 of the Registries Regulation 2011);

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

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

“regulator” means, in relation to—

- (a) an installation (other than an offshore installation) which is (or will be) situated in—
 - (i) England and Wales, the Environment Agency;
 - (ii) Scotland, SEPA;
 - (iii) Northern Ireland, the chief inspector;
- (b) an offshore installation, the Secretary of State;
- (c) a UK administered operator, the regulator specified in regulations 28 to 30; and
- (d) a banned non-UK operator, the Environment Agency;

“reportable emissions” means—

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

“revocation notice” has the meaning given by regulation 15(1);

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

“SEPA” means the Scottish Environment Protection Agency;

“specified emissions”, in relation to an activity listed in Annex 1 to the Directive, means the emissions specified in that Annex in relation to the activity;

“surrender requirements” has the meaning given by paragraph 2(4) of Schedule 4;

“tonne of carbon dioxide equivalent” has the meaning given in Article 3(j) of the Directive;

“trading period” means one of the following eight-year periods—

- (a) 2013 to 2020; and

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

(b) O.J. No. L270, 14.10.2010, p.1; the Regulation has been amended by the Registries Regulation 2011.

(c) OJ No L 315, 29.11.11, p 1.

(b) subsequent consecutive periods of eight calendar years;
“UK administered operator” has the meaning given in regulation 21;
“UK aircraft operator” has the meaning given by regulation 27;
“Union Registry” means the registry established by Article 4 of the Registries Regulation 2011;
“variation”, in relation to a permit or a plan, means an amendment of its provisions (and “vary” has the corresponding meaning);
“the Verification Regulation” means Commission Regulation (EU) No **/2012 of *** 2012 on the verification of greenhouse gas emission reports and tonne-kilometre reports and the accreditation of verifiers pursuant to Directive 2003/87/EC of the European Parliament and of the Council(a), as amended from time to time;
“working day” means any day other than—
(a) a Saturday, Sunday, Good Friday, or Christmas Day; or
(b) a day which is a bank holiday under the Banking and Financial Dealings Act 1971(b);
“written procedures” means the written procedures referred to in the Monitoring and Reporting Regulation.

(2) The “operator”, in relation to an installation, means the person who has control over its operation; but where—

- (a) an installation has not been put into operation, the operator is the person who will have control over the operation of the installation when it is put into operation;
- (b) an installation has ceased operation, the operator is the person who holds the permit relating to the installation; and
- (c) the holder of a permit has ceased to have control of the installation to which it relates, the operator is that permit holder.

(3) An installation ceases operation where paragraph 7(1)(b), (c) or (d) of Schedule 6 applies in relation to that installation.

(4) References in these Regulations to a notice taking effect (or a provision ceasing to have effect) on a particular date are to be read as references to the notice or provision taking effect (or ceasing to have effect) at the beginning of that date.

Application to the Crown etc.

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

Notices etc.

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

Applications etc.

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

Functions of the regulator: Northern Ireland

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

(a) OJ No L ***, ***.12, p *.

(b) 1971 c. 80; see section 1 and Schedule 1 (which was amended by section 1 of the St Andrew’s Day Bank Holiday (Scotland) Act 2007 (2007 asp 2)).

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

Commission Regulations: designations

8.—(1) The Environment Agency is the national administrator designated by the United Kingdom for the purposes of both the Registries Regulation 2010 and the Registries Regulation 2011, and in these Regulations is referred to in that capacity as the “registry administrator”.

(2) Subject to paragraph (3), the regulator is the competent authority so designated for the purposes of the Registries Regulation 2010.

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

- (a) Article 26(2); and
- (b) Article 47.

(4) Subject to paragraph (5), the regulator is the competent authority so designated for the purposes of the Registries Regulation 2011 (other than Articles 23(3) and 31(6)).

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

- (a) Article 17;
- (b) Article 29(2);
- (c) Article 30(1);
- (d) Article 31(7); and
- (e) Article 71(1).

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

(7) The Secretary of State is the competent authority so designated for the purposes of Article 68(3) and (4).

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

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

PART 2

Stationary installations

CHAPTER 1

Permits

Requirement for permit to carry out regulated activities

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

Applications for and grant of permits

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

(2) The permit must be granted if the regulator is satisfied that—

- (a) the application is duly made, and

- (b) at the time that the permit is granted (or, if later, has effect) the applicant will be capable of monitoring and reporting emissions from the installation in accordance with the monitoring and reporting requirements,

but must otherwise be refused.

(3) A permit may be granted under this regulation (or under regulation 11) in respect of more than one installation on the same site, provided that they are operated by the same operator.

(4) Paragraph 1 of Schedule 4 makes further provision about applications for permits, and paragraph 2 of Schedule 4 makes provision about the contents of greenhouse gas emissions permits.

Excluded installation emissions permits

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

(2) The regulator may, in accordance with Schedule 5, grant an excluded installation emissions permit following an application under paragraph (1).

(3) Paragraph 2 of Schedule 5 makes provision about the conversion of a greenhouse gas emissions permit into an excluded installation emissions permit.

Review, variation and consolidation of permits

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

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

- (a) a review made under paragraph (1); or
- (b) any notification or report made by the operator under—
 - (i) Article 47 or 69 of the Monitoring and Reporting Regulation; or
 - (ii) a condition of the permit included pursuant to paragraph 2(7)(b) of Schedule 4 or paragraph 3(6)(b) of Schedule 5 (notification of planned changes in operation).

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

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

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

- (a) regulation 89(3); or
- (b) paragraph 2(1), 3(3), 5(3), 6(2)(b) or 7(4) of Schedule 5.

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

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

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

Transfer of permits

13.—(1) Subject to paragraph (4), the holder of a permit (“the current operator”) and another person may jointly apply to the regulator for the permit to be transferred to that other person (“the new operator”).

(2) The application must be granted if the regulator is satisfied that—

- (a) the application is duly made, and
- (b) the new operator will (from the relevant date) be the operator of the installation and be capable of monitoring and reporting emissions from the installation in accordance with the monitoring and reporting requirements,

but must otherwise be refused.

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

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

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

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

(6) For the purposes of paragraph (2), the relevant date is the date mentioned in paragraph 3(5), (7) or (9) of that Schedule.

Surrender of permits

14.—(1) Subject to paragraph (3), if an installation has ceased operation the operator must apply to the regulator to surrender the permit authorising regulated activities at the installation.

(2) Such an application must be made by the end of a period of one month beginning with the date that operation ceased (or such longer period as may be agreed with the regulator).

(3) The application need not be made where—

- (a) the permit authorises regulated activities at more than one installation, some of which have not ceased operation, and
- (b) the operator has applied to vary that permit so that it no longer applies to any that have ceased operation.

(4) If the application under paragraph (1) is granted, the notice of determination given to the operator (“notice of surrender”) takes effect on the date specified in the notice.

(5) Paragraph 4 of Schedule 4 makes further provision about the surrender of permits.

Revocation of permits

15.—(1) The regulator—

- (a) may at any time revoke a permit by serving on the operator a notice to that effect (a “revocation notice”), and in particular may do so if the operator has failed to pay a fee for the subsistence of the permit; and
- (b) must do so where the operator fails to comply with an obligation to surrender the permit under regulation 14(1).

(2) A revocation notice takes effect—

- (a) 28 days after the date on which is served, or
- (b) if a later date is specified in the notice, on that date.

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

CHAPTER 2

Excluded installations: further provision

Excluded installations

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

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

(3) The following provisions do not so apply—

- (a) regulation 13(3);
- (b) Chapter 3 of this Part;
- (c) Part 4;
- (d) regulation 47(3);
- (e) paragraph 2 of Schedule 4.

(4) The following provisions so apply—

- (a) regulation 13(2)(b), but as if the reference to monitoring and reporting emissions from the installation in accordance with the monitoring and reporting requirements were a reference to complying with the monitoring and reporting conditions of the excluded installations emissions permit;
- (b) paragraph 4 of Schedule 4, but as if—
 - (i) the reference in sub-paragraph (1)(b) to the monitoring and reporting requirements of the greenhouse gas emissions permit were a reference to those requirements of the Monitoring and Reporting Regulation that are applicable to excluded installations; and
 - (ii) sub-paragraph (1)(c) and sub-paragraphs (2)(b)(ii), (3), (4) and (6) to (8) were omitted; and
- (c) Paragraph 5 of Schedule 4, but as if—
 - (i) the reference in sub-paragraph (1)(b) to the monitoring and reporting requirements of the greenhouse gas emissions permit were a reference to those requirements of the Monitoring and Reporting Regulation that are applicable to excluded installations; and
 - (ii) sub-paragraph (1)(c) and sub-paragraphs (3)(b)(ii), (4), (5) and (7) to (9) were omitted.

CHAPTER 3

Free allocation of allowances

Free allocation of allowances for 2013 to 2020

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

(2) Subject to paragraph (3), the allocated amount is the amount specified in the list that was notified to the Commission on 12th December 2011 in accordance with Article 15(5) of the Free Allocation Decision and published by the Secretary of State^(a).

(a) See *The UK's National Implementation Measures for Phase III of the EU Emissions Trading System*
http://www.decc.gov.uk/en/content/cms/emissions/eu_ets/phase_iii/phase_iii.aspx

(3) The Secretary of State must make any necessary revisions to that list in consequence of the procedures set out in Schedule 6; and following such a revision the allocated amount is the amount specified in the list as so revised.

(4) A list as so revised must be published by the Secretary of State before 30th April in each scheme year.

(5) Paragraph (4) is subject to regulation 50 (national security).

CHAPTER 4

Offshore installations

Powers of entry

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

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

(2) The powers exercisable under paragraph (1) are the powers in sub-paragraphs (a) to (k) of regulation 13(2) of the Offshore Regulations (but subject to paragraphs (3) to (4) of that regulation)(a).

(3) Regulation 18(1)(f) of the Offshore Regulations applies to a failure to comply with an obligation imposed pursuant to a power exercisable under paragraph (1) as it applies to a failure to comply with an obligation imposed pursuant to regulation 13(2) of the Offshore Regulations.

Charging schemes

19.—(1) The Secretary of State may make, and from time to time revise, a scheme prescribing charges in relation to offshore installations in respect of the matters to which paragraphs (2) or (3) apply.

(2) This paragraph applies to (and to applications for)—

- (a) the grant of a permit;
- (b) the variation, transfer or surrender of a permit;
- (c) the allocation of allowances to the operator; and
- (d) the retention of allowances by an operator ceasing to carry on an activity to which they relate.

(3) This paragraph applies to—

- (a) the subsistence of a permit;
- (b) the revocation of a permit; and
- (c) the subsistence of an account required to be held in the trading scheme registry by the operator.

(4) In paragraph (3)(c), “trading scheme registry” has the meaning given by section 41(10) of the Environment Act 1995(b).

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

(a) Regulation 13 was amended by S.I. 2005/2055.

(b) The definition was inserted by paragraph 28(b) of the Schedule to S.I. 2011/2911.

Charging schemes: supplementary

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

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

(2) A scheme may, in particular—

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

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

(4) In this regulation—

- (a) “prescribed” means specified in, or determined under, a scheme; and
- (b) “scheme” means a scheme made under regulation 19(1).

PART 3

Aviation

CHAPTER 1

General

Interpretation

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

“the 2009 Regulations” means the Aviation Greenhouse Gas Emissions Trading Scheme Regulations 2009^(a)

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

- (a) in respect of the Environment Agency, England and Wales;
- (b) in respect of the Scottish Environment Protection Agency, Scotland;
- (c) in respect of the chief inspector, Northern Ireland;

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

- (a) the Welsh Ministers, where—
 - (i) P is regulated by the Environment Agency; and
 - (ii) P’s registered office is in Wales;
- (b) the Scottish Ministers, where P’s regulator is the Scottish Environment Protection Agency;

^(a) S.I. 2009/2301; revoked with savings etc. by S.I. 2010/1996.

(c) the Department of the Environment in Northern Ireland, where P’s regulator is the chief inspector;

(d) otherwise, the Secretary of State;

“aviation emissions” means emissions from an aviation activity of gases specified in respect of that activity by Annex 1 to the Directive;

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

“Commission list” means the list of operators set out in Commission Regulation (EC) No 748/2009 on the list of aircraft operators which performed an aviation activity listed in Annex I to Directive 2003/87/EC on or after 1 January 2006 specifying the administering Member State for each aircraft operator^(a), as amended from time to time;

“emissions plan” means a plan issued under—

(a) regulation 35(1)(a);

(b) regulation 19(1)(a) of the 2010 Regulations; or

(c) regulation 15(1)(a) of the 2009 Regulations;

“member State” includes an EEA state;

“monitoring and reporting condition” means a condition included in an emission plan;

“registered office” (except in Schedule 2) means the registered office in the United Kingdom that is required under section 86 of the Companies Act 2006^(b);

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

“UK administered operator” means (subject to regulations 23 to 26) 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;

“unlisted operator” means a person who is—

(a) not identified in the Commission list, and

(b) the operator or owner of an aircraft used to perform an aviation activity.

Civil Aviation Authority

22.—(1) The Civil Aviation Authority must provide such assistance and advice as the regulator may require in connection with any of the regulator’s functions under this Part (including Schedules 7 to 10).

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

CHAPTER 2

UK administered operators, UK aircraft operators and regulators

UK administered operators: power to designate

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

(a) OJ No L 219, 22.8.2009, p 1; amended by Commission Regulations (EU) No 82/2010 (OJ No L 25, 29.1.2010, p 12), No 115/2011 (OJ No L 39, 12.2.2011, p 1) and No 394/2011 (OJ No L 107, 27.4.2011, p. 1).

(b) 2006 c. 46.

- (2) Where paragraph (1) applies Secretary of State must—
- (a) designate P as an operator to whom these Regulations apply; and
 - (b) give notice to P of that designation.
- (3) From the date of service of the notice under paragraph (2), P is to be treated as a UK administered operator for the purposes of these Regulations.
- (4) Before making a designation under paragraph (2), the Secretary of State must consult—
- (a) P;
 - (b) the relevant regulator;
 - (c) the relevant authority; and
 - (d) such other persons as the Secretary of State considers appropriate.
- (5) For the purposes of paragraph (4)—
- (a) the relevant regulator is the person who will be the regulator of P if the designation is made; and
 - (b) the relevant authority is a person (other than the Secretary of State) who will then be the authority in relation to P.
- (6) A designation under paragraph (2)—
- (a) must (subject to paragraph (7)) be revoked by the Secretary of State if paragraph (1) no longer applies in relation to P, and
 - (b) ceases to have effect once that P is identified in the Commission list,

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

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

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

Application to be designated as a UK administered operator

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

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

- (a) designate Q in accordance with regulation 23(1) and (2); or
- (b) refuse the application and give notice to Q of that refusal.

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

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

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

Transfers of operators between member States

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

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

- (b) was a UK administered operator at the beginning of a scheme year but, in the course of that year, ceased to be a UK administered operator and became a non-UK operator.
- (2) For those purposes, “non-UK operator” means a person who is—
 - (a) identified in the Commission list, and
 - (b) specified in that list as an operator to be administered by a member State other than the United Kingdom.
- (3) Subject to paragraphs (4) and (5), a regulator (“R”) in performing any of R’s functions under these Regulations may (if it appears to R appropriate to do so) decide to treat the transferred operator—
 - (a) as a person who, for the whole of that scheme year, is not a UK administered operator, or
 - (b) as a person who is a UK administered operator for the whole of that year.
- (4) R may not so treat a transferred operator unless R—
 - (a) has consulted the other State and the operator, and
 - (b) given both of them notice of that decision.
- (5) R may not treat the transferred operator as a UK administered operator under paragraph (3)(b) for the purposes of imposing a civil penalty in respect of any failure to comply with these Regulations that occurred—
 - (a) while the operator was still a non-UK operator, or
 - (b) after the operator became a non-UK operator.

Gibraltar operators

- 26.**—(1) This paragraph applies where—
- (a) a person (“P”) is specified in the Commission list as an operator to be administered by the United Kingdom;
 - (b) the State of that operator is identified in the Commission list as “Gibraltar (UK)”; and
 - (c) the Secretary of State is satisfied that P is regulated for the purposes of the Directive under legislation implementing the Directive that is applicable in Gibraltar.
- (2) Where paragraph (1) applies, the Secretary of State—
- (a) may designate P as a Gibraltar operator, and
 - (b) must in that case give notice to P of the designation.
- (3) From the date of service of the notice under paragraph (2), P is to be treated for the purposes of these Regulations as a person who is not a UK administered operator.
- (4) Where regulation (1)(b) or (c) no longer applies in relation to P, the Secretary of State may revoke P’s designation; and in that case—
- (a) the Secretary of State must give notice to P of the revocation, and
 - (b) from the date of service of that notice (and for as long as paragraph (1)(a) continues to apply in relation to P) P is to be treated as a UK administered operator for the purposes of these Regulations.
- (5) Before making a designation under paragraph (2), the Secretary of State must consult—
- (a) P;
 - (b) the regulator of P;
 - (c) a person (other than the Secretary of State) who is the authority in relation to P; and
 - (d) the Government of Gibraltar.
- (6) Before revoking a designation under paragraph (4), the Secretary of State must consult—
- (a) P;
 - (b) the person who will be the regulator of P if the revocation is made;

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

UK aircraft operators

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

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

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

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

- (a) where this information is available to the regulator, specify the dates, times and locations of the activity;
- (b) be accompanied by such evidence relevant to the activity as the regulator considers appropriate; and
- (c) require the owner to inform the regulator of the identity of the person who performed the activity, by the deadline specified in the notice.

(4) The 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, on the expiry of that deadline, deemed to be the person that performed the aviation activity.

Regulators: general

28. Subject to regulations 29 and 30, the regulator of a UK administered operator (“P”) is—

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

Regulators: assessment of emissions

29.—(1) Where—

- (a) a UK aircraft operator (“A”) does not have a registered office, and
- (b) the regulator (“B”) is in possession of the relevant data,

B must by 1st September in the final year of each trading period make an assessment in accordance with paragraph (2).

(2) The assessment must—

- (a) determine whether the highest percentage of A’s aviation emissions is attributable to the area of a different regulator (“C”); and
- (b) in doing so take into account data from the two scheme years preceding the year in which the assessment is made (if received by B before the date that it is made).

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

(4) Where—

- (a) B has given notice under paragraph (3); and
- (b) the regulator for the trading period following that notice is not determined under regulation 30,

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

Regulators: change in registered office

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

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

(3) Where—

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

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

CHAPTER 3

Free Allocation of aviation allowances

Free allocation of aviation allowances

31. The following Schedules have effect—

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

CHAPTER 4

Monitoring and reporting aviation emissions

Interpretation

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

Application for an emissions plan by a UK administered operator

33.—(1) Subject to paragraphs (3) and (4), a UK administered operator (“A”) must apply to the regulator for a monitoring plan in accordance with Article 51(1).

(2) That application must contain a plan to monitor A’s aviation emissions submitted under Article 12, or a standardised or simplified plan submitted in accordance with Article 13(1).

(3) If a simplified monitoring plan is submitted, the application must also contain the risk assessment under Article 13(2).

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

- (a) an application under paragraph (1) may not be made without the agreement of the regulator; and

(b) any plan issued under regulation 35(1)(a) replaces the plan that has previously been issued.

(5) Where an application is made by virtue of the second or third sub-paragraphs of Article 51(1), the application must explain, to the satisfaction of the regulator, why it could not have been made earlier.

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

(7) If A is a transferred operator (within the meaning of regulation 25(1)(a)), and has previously applied to another member State for a monitoring plan in accordance with Article 51(1)—

(a) this regulation applies to A as it applies to a UK administered operator who is not a transferred operator; but

(b) the application to the regulator may be made within 8 weeks of A becoming a UK administered operator.

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

34.—(1) Without prejudice to regulation 33(1) or (7), a person (“B”) who becomes a UK administered operator after 31st December 2012 must by the relevant date—

(a) apply to the regulator in accordance with regulation 33(2) and (3), or

(b) notify the regulator in accordance with paragraph (2).

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

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

Issue of an emissions plan

35.—(1) Where a UK administered operator (“A”) has made an application under regulation 33 or 34 the regulator must, by notice given to A—

(a) issue to A a plan setting out how A’s aviation emissions must be monitored; or

(b) refuse to do so where the regulator is not satisfied that the proposed plan complies with the Monitoring and Reporting Regulation.

(2) Where the regulator gives to A notice under paragraph (1)(b), the regulator must state in that notice what changes must be made to the application.

(3) Where an application is refused under paragraph (1) A must (or, in the case of an application under regulation 33(6), may) resubmit the amended application within a period of 31 days beginning with date of the notice of refusal.

(4) Following the resubmission of an application under paragraph (3), the regulator must comply with paragraph (1); but for that purpose the reference to the period of two months in paragraph 2(1)(a) of Schedule 3 is to be read as a reference to a period of 24 days.

Monitoring and reporting emissions

36.—(1) Once a UK administered operator (“A”) has been issued with an emissions plan, A must monitor aviation emissions for each scheme year in which A is a UK aircraft operator.

(2) Monitoring under paragraph (1) must be carried out in accordance with—

(a) the Monitoring and Reporting Regulation; and

(b) A’s emissions plan (including the written procedures supplementing that plan).

(3) For each such scheme year, A must prepare a verified report of aviation emissions in accordance with the Monitoring and Reporting Regulation and the Verification Regulation.

(4) The report prepared under paragraph (3) must be submitted to the regulator by 31st March in the year following that scheme year.

Emissions plan conditions

37.—(1) Each regulator must ensure that the emissions plans of the UK administered operators that it regulates include any conditions that the regulator considers necessary to give proper effect to the Monitoring and Reporting Regulation and the Verification Regulation.

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

(3) Before drawing up 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 the regulator 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 procedure 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).

(7) Consultation undertaken before the commencement of these Regulations constitutes as effective compliance with paragraph (3) as if undertaken after that commencement.

Duty to comply with the conditions in an emissions plan

38. A UK aircraft operator must comply with any condition included in that operator's emissions plan.

Variations of the emissions plan

39.—(1) The regulator may, by giving notice to a UK administered operator ("A"), make any variation of A's emissions plan that the regulator considers necessary in consequence of a report made by A under Article 69 of the Monitoring and Reporting Regulation.

(2) The regulator may, by giving notice to A, vary A's emissions plan where—

(a) A applies to the regulator for an amendment to the emissions plan pursuant to a condition included in the plan under regulation 37; or

(b) A has failed to comply with a requirement in the emissions plan to apply for such an amendment.

(3) The regulator may, by giving notice to a UK administered operator, vary an emissions plan in order to comply with the regulator's duty under regulation 89(6).

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

CHAPTER 5

Sanctions (other than civil penalties)

Detention and sale of aircraft

40.—(1) Where a person (“P”) is—

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

the regulator may detain a relevant aircraft.

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

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

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

Aircraft operating bans

41. Schedule 10 has effect in relation to—

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

PART 4

Surrender of allowances

Interpretation

42.—(1) In this Part—

“allowances” includes project credits;

“CER” (certified emission reduction), “ERU” (emission reduction unit) and “project activity” have the meanings given in Article 3 of the Directive (see Article 3(l) to (n));

“incumbent installation” has the meaning given in Article 3 of the Free Allocation Decision;

“new entrant” means—

- (a) a new entrant within the meaning of Article 3 of the Directive; or
- (b) a new entrant within the meaning of the original Article 3, provided that neither a free allocation of allowances was made, nor an entitlement to use CERs or ERUs granted, to the installation;

“new sector” means a category of activity listed in Annex 1 to the Directive that was not listed in Schedule 1 to the 2005 Regulations;

“the original Article 3” means Article 3 of Directive 2003/87/EC of the European Parliament and of the Council as originally adopted;

“project credits” means (subject to paragraph (2))—

- (c) CERs from project activities; and
- (d) ERUs from project activities.

(2) For the purposes of this regulation, “project credits” do not include CERs or ERUs generated from—

- (a) nuclear facilities;
- (b) land use, land use change and forestry activities; or
- (c) the projects referred to in Article 1 of Commission Regulation (EU) No 550/20(a).

Surrender of allowances: operators of installations

43.—(1) For each scheme year, the operator of an installation must surrender allowances in accordance with the surrender requirements of the permit for the installation.

(2) This regulation is subject to the limitations on the use of project credits contained in regulation 45(1).

Surrender of allowances: UK aircraft operators

44.—(1) For each scheme year a UK aircraft operator (“P”) must, by 30th April in the following year, surrender allowances or aviation allowances equal to P’s annual reportable emissions in that scheme year.

(2) For the purposes of the requirement in paragraph (1) the amount of the annual reportable emissions in a recovery year is deemed to be increased by an amount equal to the amount of annual reportable emissions, arising in the non-compliance year, in respect of which P failed to comply with that requirement .

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

- (a) a “non-compliance year” is any scheme year in respect of which P fails to comply with the requirement in paragraph (1); and
- (b) the “recovery year” is—
 - (i) the scheme year following that non-compliance year; or
 - (ii) where the non-compliance results from an error in the verified emissions report submitted by P, the scheme year in which the error is discovered.

(4) This regulation is subject to the limitations on the use of project credits contained in regulation 45(2).

Limitations on the use of project credits

45.—(1) In surrendering allowances in respect of annual reportable emissions of an installation in a scheme year, the operator of the installation may not surrender more than the following quantities of project credits—

- (a) in respect of the emissions of an incumbent installation, 11% of the total quantity of allowances allocated to the installation during the period 2008 to 2012; or
- (b) in respect of the emissions of a new entrant or which arise from activities in a new sector, 4.5% of the annual reportable emissions.

(2) In surrendering allowances in respect of annual reportable emissions in a scheme year, a UK aircraft operator may not surrender project credits equal to more than 1.5% of those emissions.

(a) Commission Regulation (EU) No 550/20 of 7 June 2011 on determining, pursuant to Directive 2003/87/EC of the European Parliament and of the Council, certain restrictions applicable to the use of international credits from projects involving industrial gases (OJ No L 149, 8.6.2, p. 1).

(3) The percentage amounts in paragraphs (1) and (2) apply until such time as different amounts are set by the European Commission under Article 11a(8) of the Directive.

PART 5

Enforcement etc.

Enforcement notices

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

(2) For the purpose of paragraph (1), a “relevant provision” is any provision of—

- (a) these Regulations;
- (b) the Monitoring and Reporting Regulation;
- (c) a permit; or
- (d) an aviation emissions plan.

(3) An enforcement notice must—

- (a) state the regulator’s view under paragraph (1);
- (b) specify the matters constituting the contravention or making a contravention likely;
- (c) specify the steps that must be taken to remedy the contravention or to ensure that the likely contravention does not occur; and
- (d) specify the period within which those steps must be taken.

(4) P must comply with the requirements of the notice within the period so specified.

(5) The regulator may withdraw an enforcement notice at any time by further notice served on P.

Power to determine reportable emissions

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

- (a) an operator fails to comply with the requirement to submit—
 - (i) a surrender report under paragraph 4(1)(a) of Schedule 4; or
 - (ii) a revocation report under paragraph 5(1)(a) of Schedule 4; or
- (b) the regulator considers that such a determination is necessary for the purpose of imposing a penalty under regulations 56, 58 or 59.

(2) In the case of an excluded installation, the regulator may also make a determination of emissions where—

- (a) the operator fails to comply with a condition of the permit imposed pursuant to paragraph 3(1)(g) of Schedule 5; or
- (b) the regulator has reason to believe that a report submitted pursuant to such a condition is incorrect.

(3) A determination of emissions—

- (a) must be notified to the operator or UK aircraft operator concerned; and
- (b) is to be treated as determining all of the reportable emissions from the installation (or arising from the aviation activities of the UK aircraft operator) for the period to which the determination relates.

(4) A notice under paragraph (3)—

- (a) except where it relates to an excluded installation, must be served on the registry administrator, and
- (b) is in that case to be regarded as an instruction to the registry administrator for the purposes of Article 32(6) of the Registries Regulation 2011.

(5) A regulator who makes a determination of emissions under the Monitoring and Reporting Regulation, or by virtue of this regulation, may recover the cost of doing so from the operator or UK aircraft operator concerned.

PART 6

Information

Provision of information

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

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

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

(4) The purposes are—

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

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

- (a) in relation to England and Wales, the regulator, and
- (b) in relation to Scotland and Northern Ireland, the regulator or the Environment Agency,

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

(6) In this regulation, “functions” means functions under—

- (a) these Regulations;
- (b) the Monitoring and Reporting Regulation;
- (c) the Verification Regulation; or
- (d) the Registries Regulation 2010 or the Registries Regulation 2011.

Disclosure of information

49.—(1) Subject to paragraph (2) an authority, the Secretary of State or the regulator (a “relevant body”) must not disclose or publish any information provided to the relevant body under these Regulations except where—

(a) disclosure or publication is—

- (i) required in these Regulations or otherwise by law;
- (ii) necessary for the performance of the relevant body’s functions (as defined by regulation 48(6)); or

(iii) made with the consent of the person by or on behalf of whom the information was provided; or

(b) disclosure is between one relevant body and another.

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

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

National security

50.—(1) No information may be published—

(a) by the Secretary of State under regulation 17(4), paragraph 8 of Schedule 7 or paragraph 7 of Schedule 8, or

(b) by the regulator under regulation 73,

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

(2) For the purposes of paragraph (1)(b), the Secretary of State may give to the regulator directions specifying information which may not be published under regulation 73.

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

PART 7

Civil Penalties

Interpretation

51. In this Part—

“carbon price”, in relation to a tonne of carbon dioxide equivalent, has the meaning given by regulation 52;

“penalty notice” means a notice served under regulation 53(1);

“additional penalty notice” means a notice served under regulation 53(3);

“sterling equivalent” has the meaning given by regulation 58(6).

Carbon Price

52.—(1) In respect of the scheme year beginning with 1st January 2013, the carbon price is £[x].

(2) For each subsequent scheme year, the Secretary of State must determine a price as the carbon price for that year, based on the sterling equivalent of the average end of day settlement price (in Euro per tonne of carbon dioxide equivalent) of the December futures contract in respect of the previous 12 months.

(3) For that purpose, “futures contract” means the contract as traded on the single largest carbon market exchange (as determined by volume of sales in that previous 12 months).

(a) Cm 2833.

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

Penalty notices

53.—(1) Where the regulator is satisfied that a person (“P”) is liable to a civil penalty under this Part the regulator must (subject to regulation 54) serve a notice on P.

(2) The penalty notice must specify—

- (a) the regulation under which that liability arises;
- (b) the amount of the civil penalty;
- (c) where appropriate, how the amount of the civil penalty is calculated;
- (d) whether or not P is liable to a civil penalty in accordance with regulation 57(2)(b), 60(2)(b), 62(2)(b), 63(2)(b), 64(2)(b), 65(2)(b), 68(2)(b), 69(2)(b), or 70(2)(b) (an “additional daily penalty”); and
- (e) if P is not liable to an additional daily penalty, the date by which the penalty must be paid.

(3) Subject to regulation 54 and to paragraph (4), where the regulator is satisfied that P is liable to an additional daily penalty the regulator must, when the amount of that additional daily penalty can be determined, serve a notice on P specifying—

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

(4) In the case of an additional daily penalty under regulation 68(2)(b), a notice under paragraph (3) stating the amount of additional daily penalty that has accrued by the date of the notice may be served at such intervals as the regulator thinks fit.

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

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

- (a) as a civil debt; and
- (b) where appropriate, in accordance with regulation 40 and Schedule 9.

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

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

Discretion in imposing civil penalties

54.—(1) Where the regulator considers it appropriate, the regulator may (subject to paragraph (2))—

- (a) refrain from imposing a civil penalty;
- (b) reduce the amount of a penalty (including the amount of an additional daily penalty);
- (c) extend the time for payment;
- (d) withdraw a penalty notice or an additional penalty notice;
- (e) modify the notice by substituting a lower penalty.

(2) The powers under paragraph (1) do not apply in relation to any penalty arising under regulation 58(2).

Penalties guidance

55. A regulator must publish guidance describing how the regulator intends to exercise the powers under regulation 54(1).

Carrying out a regulated activity without a permit

56.—(1) Where in any scheme year a regulated activity is carried out without a permit, contrary to regulation 9, the operator of the installation (“P”) is at the end of that year liable to the civil penalty in paragraph (2).

(2) The civil penalty is $A+(B\times C)$, where—

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

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

C is the carbon price for that year.

(3) In exercising powers under regulation 54 in relation to the penalty in paragraph (2), the regulator must ensure that the penalty imposed exceeds the amount of any economic benefit that P has obtained as a result of carrying out a regulated activity without a permit.

(4) The authority must exercise powers under section 40 of the Environment Act 1995 or regulation 37 of the Northern Ireland Regulations to give the regulator directions as to—

- (a) the estimation by the regulator of A and B in paragraph (2); and
- (b) the exercise of the regulator’s powers in accordance with paragraph (3).

Failure to comply with a condition of a permit

57.—(1) An operator is liable to the civil penalties in paragraph (2) where the operator fails to comply (or comply on time) with a condition of a permit (other than a condition included in the surrender requirements).

(2) The civil penalties are—

- (a) £3,750; and
- (b) £375 for each day that the operator fails to comply with the condition following service of a penalty notice, up to a maximum of £33,750.

Failure to surrender allowances

58.—(1) Subject to paragraphs (3) and (5), a person (“P”) is liable to the civil penalty in paragraph (2) where P fails to surrender—

- (a) sufficient allowances, contrary to regulation 43; or
- (b) sufficient allowances or aviation allowances, contrary to regulation 44.

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

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

- (a) were not reported in the verified emissions report submitted for that year, but
- (b) have subsequently been reported by P in an amended verified emissions report (“the amended report”).

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

- (a) submits the amended report to the regulator, and
- (b) surrenders allowances equal to the relevant emissions.

(5) Where paragraph (4) applies, P is liable to a penalty of 20 Euros for each allowance that P failed to surrender in respect of the relevant emissions.

(6) In this regulation—

- (a) “allowances” includes project credits; and
- (b) “sterling equivalent” means the sterling equivalent converted by reference to the first rate of conversion to be published in September of the year preceding the scheme year in which P is liable to the penalty in the C series of the Official Journal of the European Union, adjusted in accordance with paragraph (7).

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

Exceeding an emissions target for an excluded installation

59.—(1) An operator of an excluded installation is liable to the civil penalty in paragraph (2) where the operator fails to comply with paragraph 4 of Schedule 5.

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

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

(3) Where the amount of reportable emissions stated in the emissions report mentioned in paragraph 3(7)(a)(i) of Schedule 5 is increased following the verification or correction of that report, the regulator may serve a further penalty notice in respect of the amount not covered by the previous penalty notice.

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

60.—(1) An operator of an excluded installation is liable to the civil penalties in paragraph (2) where the operator fails to pay a penalty imposed under regulation 59 by the date specified in the penalty notice.

(2) The civil penalties are—

- (a) 10% of the penalty imposed under regulation 59; and
- (b) £150 for each day that the operator fails to pay that penalty following service of a penalty notice in respect of the penalty under sub-paragraph (a), up to a maximum of £13,500.

(3) Where the operator fails to pay the penalty to the regulator within one month after the date specified in that penalty notice, the regulator may serve a termination notice on the operator under paragraph 7 of Schedule 5.

(4) Service of a termination notice under paragraph 7 of Schedule 5 does not affect the liability of the operator to pay any penalties due to the regulator under this regulation.

Failure to surrender a permit

61. Where an operator fails to make an application to surrender a permit, contrary to regulation 14, the operator is liable to a civil penalty of £5000.

Failure to submit or resubmit an application for an emissions plan

62.—(1) A UK administered operator (“A”) is liable to the civil penalties in paragraph (2) where A fails to—

- (a) submit (or to submit on time) an application for an emissions plan, contrary to regulation 33(1);
- (b) satisfy the regulator, contrary to regulation 33(5); or

- (c) resubmit (or to resubmit on time) an application for an emissions plan, contrary to regulation 35(3).
- (2) The civil penalties are—
 - (a) £1,500; and
 - (b) £150 for each day that the application or resubmission of an application is not provided, following the service of a penalty notice, up to a maximum of £13,500.

Failure to comply with a condition of an emissions plan

63.—(1) A UK aircraft operator (“A”) is liable to the civil penalties in paragraph (2) where A fails to comply (or to comply on time) with a condition in an emissions plan, contrary to regulation 38.

- (2) The civil penalties are—
 - (a) £1,500; and
 - (b) £150 for each day that A fails to comply with a condition of an emissions plan following the service of a penalty notice, up to a maximum of £13,500.

Failure to monitor aviation emissions

64.—(1) A UK aircraft operator (“A”) is liable to the civil penalties in paragraph (2) where A fails to monitor aviation emissions, contrary to regulation 36(1).

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

Failure to report aviation emissions

65.—(1) A UK aircraft operator (“A”) is liable to the civil penalties in paragraph (2) where A fails to report (or to report on time) aviation emissions, contrary to regulation 36(4).

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

Failure to provide assistance and advice

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

Failure to comply with a direction relating to an operating ban

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

Failure to return allowances

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

- (a) receives allowances or aviation allowances to which P is not entitled; and
- (b) fails to return such allowances or aviation allowances, contrary to—
 - (i) paragraph 12(3) of Schedule 6; or

(ii) paragraph 7(3) of Schedule 7.

(2) The civil penalties are—

- (a) £20,000; and
- (b) £1000 for each day that P fails to return the allowances following the service of a penalty notice.

Failure to comply with an enforcement notice

69.—(1) A person (“P”) is liable to the civil penalties in paragraph (2) where P fails to comply with the requirements of an enforcement notice, contrary to regulation 46(4).

(2) The civil penalties are—

- (a) £20,000; and
- (b) £1000 for each day that P fails to comply with the requirements of the enforcement notice, following service of a penalty notice, up to a maximum of £30,000.

Failure to comply with an information notice

70.—(1) A person (“P”) is liable to the civil penalties in paragraph (2) where P fails to comply with the requirements of an information notice served under regulation 48(2).

(2) The civil penalties are—

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

Failure to notify the regulator etc.

71.—(1) A person (“P”) is liable to the civil penalty in paragraph (3) where P fails to comply with a provision mentioned in paragraph (2).

(2) Those provisions are—

- (a) regulation 34(1);
- (b) paragraphs 6(2), 8(2)(a) or 11 of Schedule 6.

(3) The civil penalty is £5000.

Providing false or misleading information

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

- (a) in any application made under these Regulations;
- (b) in a notice served under regulation 34(1)(b);
- (c) in response to a notice served under regulation 48(2);
- (d) pursuant to regulation 83(2) or (4);
- (e) in purported compliance with the conditions of a permit or an aviation emissions plan; or
- (f) pursuant to paragraph 6(2), 7(9) or 11 of Schedule 6.

(2) The civil penalty is £1000.

Publication of names of persons subject to penalties under regulation 58(2)

73.—(1) As soon as possible after—

- (a) the expiry of the period for appealing the imposition of a penalty by the regulator under regulation 58(2), or
 - (b) if such an appeal is made, the determination of the appeal,
- the regulator must (subject to paragraph (2)) publish the name of the person on whom that penalty was imposed.
- (2) The name must not be published if, following such an appeal, the person is found not to be liable to any of the penalty imposed under regulation 58(2).
- (3) Paragraph (1) is subject to regulation 50 (national security).

PART 8
Appeals
CHAPTER 1
General

Interpretation

74. In this Part—

- (a) “appeal body” has the meaning given by regulation 78;
- (b) “decision” means—
 - (i) a notice;
 - (ii) a deemed refusal; or
 - (iii) a decision of the registry administrator;
- (c) “notice”, in the case of a notice determining an application for a permit or the transfer of the permit, includes the provisions of any permit attached to the notice.

Persons who may appeal

75.—(1) Subject to paragraph (5), the following persons may appeal to the appeal body—

- (a) a person who is aggrieved by a notice determining any application made by them under these Regulations;
- (b) a person who is aggrieved by the deemed refusal of such an application;
- (c) a person who is aggrieved by a notice served on them under any provision mentioned in paragraph (2).

(2) Those provisions are—

- (a) regulation 12(2), (3)(b) or (4);
- (b) regulation 15(1);
- (c) regulation 39(1) or (2)(b);
- (d) regulation 46(1);
- (e) regulation 47(2);
- (f) regulation 48(2);
- (g) regulation 53(1) or (3);
- (h) paragraph 7(1) of Schedule 5;
- (i) paragraph 12 of Schedule 6.

(3) An appeal under paragraph (1) may not be made to the extent that the decision implements—

- (a) a direction given by the authority under section 40 of the Environment Act 1995 or regulation 37 of the Northern Ireland Regulations^(a), or
- (b) a direction given by an appeal body under these Regulations.

Right to object under the Registries Regulation 2011

76.—(1) A person who is aggrieved by an action or decision of the registry administrator referred to in a provision of the Registries Regulation 2011 mentioned in paragraph (2) may exercise the right to object given by that provision by appealing to the appeal body.

(2) Those provisions are—

- (a) Article 20(3);
- (b) Article 22(6);
- (c) Article 23(3);
- (d) Article 30(5);
- (e) Article 31(6).

Grounds of appeal

77. The grounds on which a decision may be appealed under this Part are—

- (a) that it was based on an error of fact;
- (b) that it was wrong in law;
- (c) that it was unreasonable;
- (d) any other reason.

Appeal body

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

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

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

Effect of an appeal

79.—(1) Subject to paragraphs (2) to (4), the bringing of an appeal under regulation 75(1) suspends the effect of the decision pending the final determination or withdrawal of the appeal.

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

- (a) a decision refusing an application;
- (b) a deemed refusal;
- (c) a notice under—
 - (i) regulation 46;
 - (ii) regulation 12(2), (3)(b) or (4); or
 - (iii) regulation 39(1) or (2)(b).

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

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

(4) The bringing of an appeal against a determination of emissions under regulation 47(3) suspends the effect of the decision only for the purpose of assessing whether there has been compliance with regulation 43 or 44.

Determination of an appeal

80.—(1) In determining an appeal under regulation 75(1) the appeal body may, subject to paragraph (2)—

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

(2) In determining an appeal under regulation 76(1) the appeal body may give directions to the registry administrator as to the exercise of its functions under the Registries Regulation 2011.

(3) The appeal body may not make a determination that would result in a decision which could not otherwise have been made under these Regulations.

CHAPTER 2

Appeals: Scotland and Northern Ireland

Procedure for appeals

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

(2) The Scottish Ministers may—

- (a) appoint any person to exercise on their behalf, with or without payment, the function of determining an appeal under this Part or any matter or question involved in such an appeal; or
- (b) refer any matter or question involved in such an appeal to such person as they may appoint for the purpose, with or without payment.

(3) Schedule 11, Part 2, has effect with respect to appointments under paragraph (2)(a).

(4) Schedule 12 has effect in relation to the making and determination of an appeal to the Planning Appeals Commission.

PART 9

The Union Registry

Interpretation

82.—(1) In this Part a reference to a numbered Article or Annex is to that Article of, or Annex to, the Registries Regulation 2011.

(2) In regulation 83—

“the allocation table” means the national allocation table notified to the European Commission by the United Kingdom under Article 49;

“the aviation allocation table” means the national aviation allocation table notified by the United Kingdom to the European Commission under Article 53(1).

The Union Registry

83.—(1) The registry administrator may require users of the Union Registry to comply with reasonable terms and conditions in relation to that registry.

(2) It is the duty of the operator or UK aircraft operator to comply with the requirement to enter emissions data in accordance with Article 32(2).

(3) The verifier is responsible under Articles 32(4) and (5) for—

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

(4) The operator or the UK administered operator is responsible for complying with the requirement under Article 14(1) or 15(1) to submit information to the registry administrator and request the opening of a registry account.

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

(6) Where—

- (a) an operator fails to comply with regulation 43, or
- (b) a UK aircraft operator fails to comply with regulation 44,

the registry administrator must set the relevant registry account to blocked status until the compliance status figure for the installation or UK aircraft operator, calculated in accordance with Article 34, is greater than or equal to zero.

(7) This paragraph applies where—

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

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

- (a) the report has been prepared and verified in accordance with the requirements of paragraph 4(1)(b) or 5(1)(b) of Schedule 4 and has been submitted to the regulator; or
- (b) the regulator has notified, in accordance with regulation 47(3)(a), a determination of the reportable emissions referred to in paragraph 4(1)(a) or 5(1)(a) of that Schedule.

(9) Where an operator is in breach of the requirement to comply with a notice given under paragraph 12(1) of Schedule 6 or paragraph 7(2) of Schedule 7, the registry administrator must set the operator holding account to blocked status until that notice has been complied with.

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

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

- (a) by virtue of Article 50(1) or 54(1), or
- (b) for any other reason (and in particular in consequence of paragraph 5 of Schedule 6).

(12) The registry administrator must, as soon as is reasonably practicable, notify the European Commission in accordance with Article 50(2) or 54(2) of any changes to the allocation table or aviation allocation table (other than those falling within sub-paragraph (11)(a)).

(13) This paragraph applies where—

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

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

(15) The registry administrator may refuse to—

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

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

(16) The registry administrator may extend the suspension of the running of delays under Article 36(3) to all days in a scheme year that are not working days, provided that decision to do so is published by the registry administrator by 1st December in the previous year.

PART 10

Supplementary

Recovery of fees

84.—(1) In this regulation “allowances” includes aviation allowances.

(2) Any fee payable by virtue of these Regulations may be recovered by the regulator—

- (a) as a civil debt; or
- (b) by the seizure and sale of a number of allowances held by the operator or UK administered operator liable to the fee (“the debtor”) in accordance with paragraph (3).

(3) Where the regulator proposes to recover an unpaid fee by the seizure and sale of allowances held by the debtor, the regulator must—

- (a) notify the registry administrator and the debtor;
- (b) instruct the registry administrator to transfer a number of allowances sufficient to cover the unpaid fee, and any expenses incurred in recovering it from the debtor, to the regulator’s person holding account in the Union Registry;
- (c) sell the allowances transferred under sub-paragraph (b) for the best price that can reasonably be obtained, though a failure to do so does not make a sale under this paragraph void or voidable; and
- (d) apply the proceeds of sale in the following order—
 - (i) in payment of the unpaid fee in respect of which the allowances were seized and sold;
 - (ii) in payment of any expenses incurred by the regulator in seizing and selling the allowances,

and pay any residue from the proceeds of sale to the debtor.

(4) The regulator is not required to carry out an activity for which a fee is payable in relation to a person who has not paid a fee which that person is liable to pay.

Guidance

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

(2) The Secretary of State may issue guidance to the registry administrator with respect to the carrying out of any of its functions under these Regulations, the Registries Regulation 2010 or the Registries Regulation 2011.

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

PART 11

Revocations, savings and transitional provisions.

Revocations

86. Subject to regulations 87 and 88, the following enactments are revoked—

- (a) the 2005 Regulations;
- (b) S.I. 2005/2903, 2006/737, 2007/465, 2007/1096, 2007/3433 and 2010/1513;
- (c) regulations 3 and 4 of 2011/1506;
- (d) paragraphs 1 to 20, 37 and 38 of the Schedule to S.I. 2011/2911;
- (e) the 2010 Regulations;
- (f) the Aviation Greenhouse Gas Emissions Trading Scheme (Amendment) Regulations 2011(a).

Savings and transitional provisions: the 2005 Regulations

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

(2) Part 1 and Schedule 1 have effect in so far as they relate to the relevant provisions.

(3) Regulation 26(2) continues to have effect, as do paragraphs (5) and (6) in so far as they relate to regulation 26(2).

(4) The following provisions have effect in so far as they relate to any activities carried out, or emissions arising, prior to 1st January 2013—

- (a) regulation 27A;
- (b) Part 4.

(5) Part 5 and Schedules 2 to 4 have effect in relation to any appeal brought against any decision made or notice served under the 2005 Regulations.

(6) In Parts 6 and 7—

- (a) regulation 35 has effect in so far as it relates to functions carried out before 1st January 2013 or under the relevant provisions;
- (b) regulation 36 has effect in so far as it relates to a civil penalty in respect of emissions arising before 1st January 2013; and
- (c) regulation 37 continues to have effect.
- (d) regulation 38 continues to have effect in relation to offences committed under the 2005 Regulations; and

(a) S.I. 2011/765.

(e) regulations 39 to 41 continue in effect in relation to a failure to surrender allowances in respect of emissions arising before 1st January 2013.

(7) Parts 8 to 10 have effect in so far as they relate to functions carried out, or powers exercised, under the relevant provisions.

Savings and transitional provisions: the 2010 Regulations

88.—(1) Notwithstanding the revocations made by regulation 86, the following provisions of the 2010 Regulations (“the relevant provisions”) continue to have effect to the extent specified below.

(2) Part 1 has effect in so far as it applies for the purposes of the relevant provisions.

(3) Regulation 18 has effect in relation to a person who became an aircraft operator under the 2010 Regulations before 1st January 2013.

(4) Regulation 19 has effect, but as if the reference to the Monitoring and Reporting Decision and Annex 4 to the Directive were a reference to the Monitoring and Reporting Regulation.

(5) Regulations 21, 22, 26 and 27 have effect in relation to aviation emissions arising before 1st January 2013.

(6) Regulation 29 continues to have effect.

(7) The following have effect in relation to civil penalties arising under the 2010 Regulations—

(a) Part 8;

(b) regulation 49.

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

(a) Part 6 and Schedule 1;

(b) Part 11 and Schedules 3 to 5;

(c) Part 12;

(d) regulations 58 and 59.

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

(10) Paragraph (3), and paragraphs (5) to (8), of regulation 60 continue to have effect.

Transitional provisions: permits and aviation emissions plans

89.—(1) An application for a permit that is made to the regulator before 1st January 2013, and not determined before that date, may be treated by the regulator as an application made under—

(a) regulation 10(1); or

(b) if the installation to which the application relates is an excluded installation, regulation 11(1).

(2) Subject to paragraph (4), a permit granted under regulation 9 of the 2005 Regulations that is in force immediately before 1st January 2013 continues to have effect until it is revoked or surrendered under these Regulations.

(3) Subject to paragraph 2 of Schedule 5, the regulator must vary the permit as necessary to bring it into a form in which it could have been granted under regulation 10 of these Regulations.

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

(a) any reference to Commission Decision 2007/589/EC of 18 July 2007 were a reference to the Monitoring and Reporting Regulation, and any reference to Section 5.2, 5.3 or Section 9 of Annex 1 to that Decision were a reference to the corresponding provision of that Regulation;

(b) any reference to Annex 5 to the Directive were a reference to the Verification Regulation;

- (c) any reference to the Emission Trading Registry for the UK were a reference to the Union Registry; and
- (d) any requirement to submit a report to the regulator by 30th June each year, setting out proposed improvements in monitoring at the installation, applied only in relation to the report required to be submitted by 30th June 2013.

(5) An application for an aviation emissions plan that is made to the regulator before 1st January 2013, and not determined before that date, may be treated by the regulator as an application made under regulation 33.

(6) The regulator must vary an aviation emissions plan issued before 1st January 2013 as necessary to bring it into a form in which it could have been issued under regulation 35 of these Regulations.

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

- (a) any reference to Commission Decision 2007/589/EC of 18 July 2007 were a reference to the Monitoring and Reporting Regulation, and any reference to Section 9 of Annex 1 and Sections 2, 3 and 4 of Annex 14 to that Decision were a reference to the corresponding provision of that Regulation; and
- (b) any requirement to submit a report to the regulator by 30th June each year, setting out proposed improvements in monitoring of aviation activities, applied only in relation to the report required to be submitted by 30th June 2013.

Date

Name
[Minister of State]
Department of Energy and Climate Change

SCHEDULE 1

Regulation 4

Application to the Crown etc.

Crown application

1. Subject to paragraphs 2 and 3, these Regulations bind the Crown.

Entry to Crown premises

2.—(1) If the Secretary of State considers that in the interests of national security particular powers of entry must not be used in relation to particular Crown premises, the Secretary of State may certify that those powers must not be used in relation to those premises.

(2) In this paragraph—

“Crown premises” means premises held or used by or on behalf of the Crown;

“power of entry” means a power of entry exercisable under section 108 of the Environment Act 1995(a) or regulation 27 of the Northern Ireland Regulations, in relation to a function under these Regulations.

Service on certain Crown operators

3.—(1) This paragraph applies in relation to an installation operated by a person acting on behalf of—

- (a) the Royal Household;
- (b) the Duchy of Lancaster; or
- (c) the Duke of Cornwall or other possessor of the Duchy of Cornwall.

(2) In relation to the serving or giving of notices or other documents under these Regulations, the following person must be treated as the operator—

- (a) in relation to sub-paragraph (1)(a), the Keeper of the Privy Purse;
- (b) in relation to sub-paragraph (1)(b), the person appointed by the Chancellor of the Duchy of Lancaster;
- (c) in relation to sub-paragraph (1)(c), the person appointed by the Duke of Cornwall or other possessor of the Duchy of Cornwall.

SCHEDULE 2

Regulation 5

Notices etc.

1. In this Schedule, “instrument” means any notice or direction served or given under these Regulations (other than a notice required to be given to the regulator).

2. An instrument must be in writing.

3. An instrument may be served on or given to a person by—

- (a) delivering it to that person in person;

(a) 1995 c. 25; relevant amendments to section 108 were made by S.I. 2000/1973 and S.S.I. 2000/323.

- (b) sending it to a postal address or address for service using electronic communication provided by that person;
- (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, an instrument may be served on or given to the secretary or clerk of that body.

5. In the case of a partnership, an instrument 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 an instrument 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 instruments 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 (subject to paragraph 6)—

- (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 Part 2 of these Regulations the person giving or serving an instrument is not able to ascertain a proper address in relation to a UK administered 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. The provisions of this Schedule do not apply where a contrary provision applies under Schedule 9.

(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.

SCHEDULE 3

Applications etc.

Regulation 6

Applications etc.: general

- 1.—(1) The requirements of this paragraph—
 - (a) apply to any application, report or notice submitted to the regulator under any provision of—
 - (i) these Regulations,
 - (ii) a permit, or
 - (iii) an aviation emissions plan;
 - (b) apply to applications for accounts, and the provision of information about those accounts, under the Registries Regulation 2011; and
 - (c) apply notwithstanding any further requirements imposed by or under these Regulations.
- (2) For the purposes of this paragraph, an application includes a proposed plan required to be submitted as part of the application.
- (3) An application, report or notice—
 - (a) must be in writing, and
 - (b) unless agreed otherwise in writing with the regulator, must be submitted on a form made available by the regulator for that purpose.
- (4) Such a form must specify, as the case may be—
 - (a) the information required by the regulator to determine the application; or
 - (b) the matters required to be included in the report.
- (5) Unless agreed otherwise in writing with the regulator, the form must be sent to the regulator electronically.
- (6) A form provided by the regulator which specifies an electronic address for submission must, if submitted electronically, be sent to that address.
- (7) A form provided by the regulator for submission through a website must, unless the regulator agrees otherwise in writing, be submitted through that site and in accordance with the instructions given there for completion and submission.
- (8) An application must contain the name, postal address (including postcode) and telephone number of the applicant, together with—
 - (a) an address for service using electronic communications, or
 - (b) a postal address for service (including postcode) in the United Kingdom,and in the case of an application under regulation 13 (transfer of permits) those requirements apply to each of the joint applicants.
- (9) An application must be accompanied by the fee prescribed, but—
 - (a) where the application is sent electronically, the fee may be sent to the regulator separately from the application (and in that case the application is deemed not to have been received by the regulator until the fee has also been received); and
 - (b) where the application relates to an offshore installation, the fee need not be paid until the end of the period of 28 days beginning with the date on which the regulator serves a notice on the operator requesting payment of the fee.
- (10) An application may be withdrawn at any time before it is determined.
- (11) The regulator may, by notice to the applicant, require the applicant to provide such further information specified in the notice, within the period so specified, as the regulator may require for the purpose of determining the application.

- (12) The application is deemed to have been withdrawn where—
- (a) the applicant has failed to provide that information by the end of that period (or by such later date as may be agreed by the regulator); and
 - (b) the regulator gives notice to the applicant that the application is treated as having been withdrawn.

Determination of applications

2.—(1) Subject to sub-paragraph (2), where an application to the regulator under these Regulations is duly made it must be determined by the regulator within—

- (a) the period of two months beginning with the date on which the application was received, or
- (b) such longer period as may be agreed in writing with the applicant.

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

- (a) an application is determined when notice of the determination is given to the applicant by the regulator; and
- (b) in calculating the period of two months, no account is to be taken of any period beginning with date on which a notice under paragraph 1(11) is served on the applicant and ending with the date on which the applicant provides the information specified in the notice.

(3) If the regulator fails to determine the application within the period allowed by sub-paragraphs (1) and (2)—

- (a) the applicant may give to the regulator notice that the applicant treats the application as having been refused, and
- (b) the application is then deemed to have been refused at the end of that period.

(4) Where the application is an application for a permit or the transfer of a permit, any permit that is granted as a result of the application must be attached to the notice given under sub-paragraph (2)(a).

SCHEDULE 4 Regulations 10, 13, 14 and 15

Permits

Applications for permits

1.—(1) An application for a permit must contain—

- (a) as well as the address for service required under Schedule 3, any address to which correspondence relating to the application should be sent; and (if the applicant is a body corporate)—
 - (i) its registered number and the postal address of its registered or principal office, and
 - (ii) if that body corporate is a subsidiary undertaking (within the meaning of section 1162 of the Companies Act 2006^(a)) the name of the parent undertaking (other than a parent undertaking which is itself a subsidiary undertaking) and the postal address of its principal office;
- (b) in relation to the site of the installation—
 - (i) the postal address and national grid reference of the site (or for offshore installations equivalent information identifying the installation and its location);

(a) 2006 c. 46.

- (ii) a description of the site and the location of the installation on it; and
 - (iii) for installations other than offshore installations, the name of any local authority in whose area the site is situated;
 - (c) a description of the installation, including—
 - (i) the regulated activities to be carried out at the installation and the specified emissions from those activities; and
 - (ii) a description of the directly associated activities (within Article 3(e) of the Directive) that are also to be carried out;
 - (d) a description of the raw and auxiliary materials used in carrying out regulated activities in the installation, the use of which is likely to lead to specified emissions;
 - (e) a description of the sources of specified emissions from the regulated activities carried out in the installation;
 - (f) a monitoring plan submitted under Article 12 of the Monitoring and Reporting Regulation, or a standardised or simplified plan submitted in accordance with Articles 13(1) and 47, together with—
 - (i) any uncertainty assessment carried out under Article 28(1)(a) of that Regulation; and
 - (ii) if a simplified monitoring plan is submitted, the risk assessment under Article 13(2);
 - (g) a description, including the reference number, of any environmental licence issued in relation to the installation;
 - (h) any additional information which the applicant wishes the regulator to take into account in considering the application; and
 - (i) a non-technical summary of the information referred to in sub-paragraphs (c) to (h).
- (2) For the purposes of sub-paragraph (1)(g), “environmental licence” means—
- (a) an authorisation under Part 1 of the Environmental Protection Act 1990(a) or the Industrial Pollution Control (Northern Ireland) Order 1997(b); or
 - (b) a permit under—
 - (i) the Environmental Permitting (England and Wales) Regulations 2010(c);
 - (ii) the Pollution Prevention and Control (Scotland) Regulations 2000(d);
 - (iii) the Offshore Regulations; or
 - (iv) the Northern Ireland Regulations.
- (3) Where an application is for a permit to operate more than one installation, the application must contain the information required by sub-paragraph (1) in respect of each installation.

Content of greenhouse gas emissions permits

- 2.—(1) A permit granted under regulation 10(2) must contain—
- (a) the name and postal address in the United Kingdom (including postcode) of the operator;
 - (b) the postal address and national grid reference of the installation (or, for offshore installations, equivalent information identifying the installation and its location);
 - (c) a description of the installation, including—
 - (i) the regulated activities to be carried out at the installation and the specified emissions from those activities; and
 - (ii) the directly associated activities (within Article 3(e) of the Directive) that are also to be carried out;

(a) 1990 c. 43.
 (b) 1997 No. 2777 (N.I. 18).
 (c) S.I. 2010/675; amended by S.I. 2011/988 and 2011/2043.
 (d) S.S.I. 2000/323.

- (d) a description of the site and the location of the installation on that site;
 - (e) the monitoring plan;
 - (f) the monitoring and reporting requirements;
 - (g) the surrender requirements; and
 - (h) the supplementary requirements.
- (2) The monitoring plan is the plan approved in accordance with Articles 11 to 13 of the Monitoring and Reporting Regulation.
- (3) The monitoring and reporting requirements are—
- (a) a requirement to monitor the annual reportable emissions of the installation in accordance with—
 - (i) the Monitoring and Reporting Regulation; and
 - (ii) the monitoring plan (including the written procedures supplementing that plan);
 - (b) a requirement to prepare, for each scheme year, a verified report of those emissions in accordance with the Monitoring and Reporting Regulation and the Verification Regulation, and to submit that report to the regulator by 31st March in the following year; and
 - (c) any further conditions that the regulator considers necessary to give effect to the Monitoring and Reporting Regulation or the Verification Regulation.
- (4) The surrender requirements are conditions obliging the operator to surrender, within four months of the end of a scheme year, allowances equal to the annual reportable emissions of the installation for that year.
- (5) For the purposes of the surrender requirements the amount of the annual reportable emissions of the installation in a recovery year is deemed to be increased by an amount equal to the amount of annual reportable emissions, arising in the non-compliance year, in respect of which the operator failed to comply with the surrender requirements.
- (6) For the purposes of sub-paragraph (5)—
- (a) a “non-compliance year” is a scheme year in respect of which an operator fails to comply with the surrender requirements; and
 - (b) the “recovery year” is—
 - (i) the scheme year following that non-compliance year; or
 - (ii) where the non-compliance results from an error in the verified emissions report submitted by the operator, the scheme year in which the error is discovered.
- (7) The supplementary requirements are—
- (a) the requirement for the operator (“P”) to notify the regulator as soon as P becomes aware of any factor which might prevent P from complying with any of the requirements of the permit;
 - (b) conditions requiring the operator to notify the regulator of any planned changes to the nature or functioning of the installation, or any extension or significant reduction of its capacity (and in particular such conditions as the regulator considers necessary to meet the requirements mentioned in Article 12(3) of the Monitoring and Reporting Regulation); and
 - (c) any other conditions that the regulator considers appropriate to include in the permit.

Transfer of permits

- 3.—**(1) An application under regulation 13 must—
- (a) contain the information mentioned in sub-paragraph (2);

- (b) identify the installations, or parts of an installation, to which the application relates (“the transferred units”) and the regulated activities authorised to be carried out at them (“the transferred activities”); and
 - (c) in the case of a partial transfer, identify the arrangements made between the applicants for the transfer to the transferred units of allowances allocated in respect of the installations to which the permit relates.
- (2) The information is—
- (a) in relation to each applicant, as well as the address for service required under Schedule 3 any address to which correspondence relating to the application should be sent;
 - (b) in relation to the new operator, the information mentioned in paragraph 1(1)(a)(i) and (ii); and
 - (c) a monitoring plan (and uncertainty or risk assessment) in accordance with paragraph 1(1)(f) submitted by the new operator, or a specification by that operator of the parts of the existing monitoring plan that it is proposed should be varied and the corresponding revised assessment.
- (3) Where the application relates to a partial transfer, a transfer of the permit is effected by the regulator giving notice—
- (a) granting a permit to the new operator (“the new permit”) which—
 - (i) authorises the carrying out of the transferred activities;
 - (ii) identifies the transferred units at which they may be carried out; and
 - (iii) includes such other provisions as the regulator (subject to sub-paragraph (4)) considers appropriate; and
 - (b) making such corresponding variations to the provisions of the permit held by the current operator (“the original permit”) as the regulator (subject to sub-paragraph (4)) considers appropriate.
- (4) In exercising the powers given by sub-paragraph (3)(a)(iii) and (b), the regulator must ensure that the conditions of the new permit, or the original permit as varied, are (so far as relevant) the same as the conditions that were included in the original permit, subject to such modifications as in the opinion of the regulator are necessary to take account of the transfer.
- (5) The new permit, and the variations of the original permit, have effect from a date agreed with the applicants and specified in the new permit and in the original permit as so varied.
- (6) Where the application does not relate to a partial transfer, the transfer of the permit is effected by the regulator giving notice varying the permit so that it includes—
- (a) the name and other particulars of the new operator,
 - (b) the date referred to in sub-paragraph (7), and
 - (c) such variations to the monitoring plan as the regulator considers appropriate.
- (7) From a date agreed with the applicants, the new operator is to be treated as the holder of the permit as varied under sub-paragraph (6).
- (8) If the new operator already holds a permit (an “existing permit”) for an installation that is on the same site as the transferred unit the regulator may effect a transfer within sub-paragraph (6) by—
- (a) giving notice of such variations to the existing permit as in the opinion of the regulator are necessary to take account of the transfer; and
 - (b) cancelling the permit held by the current operator.
- (9) For the purposes of sub-paragraph (8)—
- (a) the variations of the existing permit, have effect from a date agreed with the applicants and specified in the existing permit as so varied; and
 - (b) the cancelled permit ceases to have effect on that date.

(10) A regulator who effects the transfer of a permit in accordance with this paragraph must notify the registry administrator of the transfer.

(11) Upon receipt of a notice under sub-paragraph (10) the registry administrator must carry out any necessary changes to the national allocation table pursuant to Article 50(1)(d) or (e) of the Registries Regulation 2011.

Surrender of permits

4.—(1) The notice of surrender must require the operator, in relation to the scheme year in which it takes effect (“the relevant year”), to—

- (a) submit to the regulator by a date specified in the notice a report (“the surrender report”) specifying the reportable emissions from the beginning of the relevant year until the date on which the notice takes effect;
- (b) ensure that the surrender report is prepared and verified in accordance with the monitoring and reporting requirements of the greenhouse gas emissions permit to which the application to surrender relates (“the permit”); and
- (c) by a date specified in the notice surrender allowances equal to—
 - (i) the reportable emissions specified in the surrender report;
 - (ii) where an operator has failed to comply with the surrender requirements of the permit imposed in respect of the last scheme year for which the date for surrendering allowances in accordance with those requirements has passed, the annual reportable emissions in respect of which the operator failed so to comply;
 - (iii) where the notice of surrender is served in a scheme year in which an error in the report submitted by an operator under the monitoring and reporting requirements in relation to any earlier scheme year has been discovered, the annual reportable emissions in respect of which, as a result of that error, the operator failed to comply with the surrender requirements of the permit in respect of the scheme year to which the error relates; and
 - (iv) where an operator has failed to comply with regulation 14(2), the total number of allowances which by the date on which the notice of surrender is served have been issued in respect of the installation which would not have been issued if the operator had so complied.

(2) From the date on which the notice of surrender takes effect—

- (a) the permit ceases to have effect to authorise the carrying out of a regulated activity or to require the monitoring of emissions; but
- (b) any conditions of the permit continue to have effect so far as they are not superseded by the requirements of that notice until the regulator certifies—
 - (i) that those requirements and any surrender requirements of the permit have been complied with, or
 - (ii) that there is no reasonable prospect of further allowances being surrendered by the operator in respect of the installation to which the notice relates.

(3) From the scheme year following the relevant year, for the purposes of assessing compliance with any surrender requirements of the permit the reportable emissions of the installation (before any increase in accordance with paragraph 2(5)) is deemed to be zero.

(4) Where the regulator certifies in accordance with sub-paragraph (2)(b)(ii) that there is no reasonable prospect of further allowances being surrendered by the operator the regulator must notify the registry administrator.

(5) The requirements specified in a notice of surrender pursuant to sub-paragraph (1)(a) and (b) are to be treated as if they were monitoring and reporting requirements of the permit.

(6) Subject to paragraph (7), the requirements specified in a notice of surrender pursuant to sub-paragraph (1)(c) are to be treated as if—

- (a) they were surrender requirements of the permit, and
- (b) the number of allowances required to be surrendered by the notice of surrender were the annual reportable emissions of the installation in respect of the scheme year to which the notice relates.

(7) Where the surrender report understates any reportable emissions, the requirement to surrender allowances equal to the amount of the understatement is not superseded by the requirements specified in the notice of surrender.

(8) Where the operator fails to comply with the requirements of a notice of surrender included pursuant to sub-paragraph (1), the regulator must notify the registry administrator.

Revocation of permits

5.—(1) The revocation notice must require the operator, in relation to the scheme year in which it takes effect (“the relevant year”), to—

- (a) submit to the regulator by a date specified in the notice a report (“the revocation report”) specifying the reportable emissions from the beginning of the relevant year until the date on which it takes effect;
- (b) ensure that the revocation report is prepared and verified in accordance with the monitoring and reporting requirements of the greenhouse gas emissions permit to which the revocation notice relates (“the permit”); and
- (c) by a date specified in the notice surrender allowances equal to—
 - (i) the reportable emissions specified in the revocation report;
 - (ii) where an operator has failed to comply with the surrender requirements of the permit imposed in respect of the last scheme year for which the date for surrendering allowances in accordance with those requirements has passed, the annual reportable emissions in respect of which the operator failed so to comply;
 - (iii) where the revocation notice is served in a scheme year in which an error in the report submitted by an operator under the monitoring and reporting requirements in relation to any earlier scheme year has been discovered, the annual reportable emissions in respect of which, as a result of that error, the operator failed to comply with the surrender requirements of the permit in respect of the scheme year to which the error relates; and
 - (iv) where notice has been served under regulation 15(1)(b), the total number of allowances which by the date on which the revocation notice is served have been issued in respect of the installation which would not have been issued if the operator had so complied.

(2) A revocation notice must specify a period within which the fee for the revocation of the permit must be paid.

(3) From the date on which the revocation notice takes effect—

- (a) the permit ceases to have effect to authorise the carrying out of a regulated activity or to require the monitoring of emissions; but
- (b) any conditions of the permit continue to have effect so far as they are not superseded by the requirements of that notice until the regulator certifies—
 - (i) that those requirements and any surrender requirements of the permit imposed have been complied with, or
 - (ii) that there is no reasonable prospect of further allowances being surrendered by the operator in respect of the installation to which the notice relates.

(4) From the scheme year following the relevant year, for the purposes of assessing compliance with the surrender requirements of the permit the amount of reportable emissions of the installation (before any increase in accordance with paragraph 2(5)) is deemed to be zero.

(5) Where the regulator certifies in accordance with sub-paragraph (3)(b)(ii) that there is no reasonable prospect of further allowances being surrendered by the operator the regulator must notify the registry administrator.

(6) The requirements specified in a revocation notice pursuant to sub-paragraph (1)(a) and (b) are to be treated as if they were monitoring and reporting requirements of the permit.

(7) Subject to paragraph (8), the requirements specified in a revocation notice pursuant to sub-paragraph (1)(c) are to be treated as if—

- (a) they were surrender requirements of the permit, and
- (b) the number of allowances required to be surrendered by the revocation notice were the annual reportable emissions of the installation in respect of the scheme year to which the notice relates

(8) Where the revocation report understates any reportable emissions, the requirement to surrender allowances equal to the amount of the understatement is not superseded by the requirements specified in the revocation notice.

(9) Where the operator fails to comply with the requirements of a revocation notice included pursuant to sub-paragraph (1), the regulator must notify the registry administrator.

(10) A regulator who has served a revocation notice may, at any time before the date on which it takes effect, withdraw the notice.

SCHEDULE 5

Regulations 11 and 16

Excluded installations

Interpretation

1.—(1) For the purposes of this Schedule—

- (a) “hospital” means—
 - (i) any institution for the reception and treatment of persons suffering from illness,
 - (ii) any maternity home, or
 - (iii) any institution for the reception and treatment of persons during convalescence or persons requiring medical rehabilitation,and includes clinics, dispensaries and out-patient departments maintained in connection with any such home or institution;
- (b) “illness” includes any disorder or disability of the mind and any injury or disability requiring medical or dental treatment or nursing;
- (c) an installation primarily provides services to a hospital in a scheme year—
 - (i) where no more than 15% of heat produced by the installation is exported to an establishment other than a hospital in that year; or
 - (ii) if the installation is not owned by a hospital, not less than 85% of heat produced by the installation is supplied to one or more hospitals in that year.

(2) In this Schedule—

“emissions report” has the meaning given by paragraph 3(7)(a)(i);

“emissions target”, in relation to a scheme year, means an amount of reportable emissions specified in an excluded installations emission permit as the target for the excluded installation in that year;

“maximum amount” means reportable emissions of 24,999 tonnes of carbon dioxide equivalent in any scheme year.

Conversion of a greenhouse gas emissions permit

2.—(1) Where a greenhouse gas emissions permit has been granted in respect of an installation that is an excluded installation, the regulator must vary the greenhouse gas emissions permit (with effect from a date to be included in the permit) so that the conditions of the permit are replaced by provisions that satisfy the requirements of paragraph 3.

(2) In varying a permit under sub-paragraph (1), the regulator may make only such variations as appear to the regulator to be necessary as a consequence of the installation being an excluded installation.

(3) A variation of a permit under this paragraph does not affect any obligations of the operator under the permit in respect of emissions arising from activities prior to 1st January 2013.

Excluded installation emissions permit conditions

3.—(1) An excluded installation emissions permit granted in respect of an excluded installation must contain—

- (a) the name and postal address in the United Kingdom (including postcode) of the operator and any other address for correspondence specified by the operator;
- (b) the postal address and national grid reference of the installation (or for offshore installations equivalent information identifying the installation and its location);
- (c) a description of the installation, including—
 - (i) the regulated activities to be carried out at the installation and the specified emissions from those activities; and
 - (ii) the directly associated activities (within Article 3(e) of the Directive) that are also to be carried out;
- (d) a description of the site and the location of the installation on that site;
- (e) an emissions target for each scheme year prior to 2021;
- (f) a monitoring plan (as defined in sub-paragraph (6));
- (g) the monitoring and reporting conditions (as defined in sub-paragraph (7));
- (h) the record keeping requirements (as defined in sub-paragraph (8)); and
- (i) the supplementary conditions (as defined in sub-paragraph (9)).

(2) The authority must exercise powers under section 40 of the Environment Act 1995, or regulation 37 of the Northern Ireland Regulations^(a), to give the regulator directions as to the calculation of emissions targets.

(3) If the regulator has been so directed under an enactment mentioned in sub-paragraph (2) before 30th September in any scheme year, the regulator must amend the emissions targets of the permit for each of the following scheme years in order to take into account (to the extent and in the manner specified in the direction)—

- (a) any amendments to the Directive;
- (b) any amendments to the list adopted by the European Commission under Article 10a(13) of the Directive;
- (c) any amendments to Decision No. 406/2009/EC of the European Parliament and the Council of 23 April 2009 on the effort of Member States to reduce their greenhouse gas emissions to meet the Community's greenhouse gas emission reduction commitments up to 2020^(b);
- (d) any measures under the Climate Change Act 2008 (Carbon Budgets Order) 2009^(c); or
- (e) any other matters mentioned in the direction.

^(a) Regulation 37 is modified by regulation 7(2) of these Regulations.

^(b) OJ L140, 5.6.2009, p. 136.

^(c) S.I. 2009/1259.

(4) Where an excluded installation emissions permit is granted in respect of an excluded installation which does not primarily provide services to a hospital, it must contain a condition requiring the operator to give notice to the regulator if the operator believes that the annual reportable emissions from the installation will in any scheme year exceed the maximum amount.

(5) Where an excluded installation emissions permit is granted in respect of an excluded installation which primarily provides services to a hospital, it must contain a condition requiring the operator to give notice to the regulator if the operator believes that for any scheme year the installation will cease to do so.

(6) The monitoring plan is the plan approved in accordance with Articles 11 to 13 of the Monitoring and Reporting Regulation.

(7) The monitoring and reporting conditions are—

(a) conditions requiring the operator to submit to the regulator, for each scheme year, by 31st March in the following year—

(i) a report of the annual reportable emissions from the installation (“the emissions report”);

(ii) a notice declaring that—

(aa) in preparing the emissions report the operator has complied with those requirements of the Monitoring and Reporting Regulation that are applicable to excluded installations;

(bb) the operator has complied with the monitoring plan for the installation; and

(cc) the report is free from material misstatements; and

(b) any further conditions that the regulator considers necessary to give effect to the provisions of the Monitoring and Reporting Regulation that are applicable to excluded installations.

(8) The record keeping requirements are any conditions requiring the operator to—

(a) maintain such records as may be specified; and

(b) comply with requests from the regulator to inspect those records for the purpose of verifying the accuracy of the records and of the emissions report.

(9) The supplementary requirements are—

(a) the requirement for the operator (“P”) to notify the regulator as soon as P becomes aware of any factor which might prevent P from complying with any of the requirements of the permit;

(b) conditions requiring the operator to notify the regulator of any planned changes to the nature or functioning of the installation, or any extension or reduction of its capacity; and

(c) any other conditions that the regulator considers appropriate to include in the permit.

Emissions target: duty not to exceed

4. An operator must ensure that reportable emissions from an excluded installation in a scheme year do not exceed the emissions target for that year.

Emissions target: increase in the capacity of an excluded installation

5.—(1) Where the capacity of an excluded installation is increased at any time during a scheme year, the operator may apply to the regulator for an increase in the emissions targets for the installation.

(2) Where the regulator receives an application under sub-paragraph (1), the regulator may calculate new emissions targets for that and subsequent scheme years.

(3) Where the regulator calculates new emissions targets pursuant to sub-paragraph (2), the regulator must amend the permit by substituting the new emissions targets for the existing targets.

Banking an overachieved emissions target

6.—(1) In this paragraph, “bankable amount”, in relation to a scheme year, means the difference between—

- (a) the emissions target for that year; and
- (b) the amount of reportable emissions stated in the emissions report for that year.

(2) Subject to sub-paragraph (3), where for any scheme year (“Y”) the bankable amount is greater than zero the regulator—

- (a) may increase the emissions target for the installation for the following scheme year by the bankable amount; and
- (b) must in that case amend the permit by substituting that increased emissions target for the existing target.

(3) Except where the excluded installation primarily provides services to a hospital, if increasing the emissions target under sub-paragraph (2) would result in an emissions target which exceeds the maximum amount, the increased emissions target must be equal to the maximum amount.

(4) Where the amount of reportable emissions stated in the emissions report for Y is amended following verification of the report, the regulator must calculate the bankable amount using the verified data.

Termination of an excluded installation emissions permit

7.—(1) Where the regulator is satisfied that—

- (a) the reportable emissions from an excluded installation which does not primarily provide services to a hospital have exceeded the maximum amount,
- (b) an excluded installation has ceased to primarily provide services to a hospital,
- (c) the operator of an excluded installation has committed a sufficiently serious breach of the conditions of the excluded installation emissions permit, or
- (d) regulation 60(3) applies,

the regulator may give notice to the operator that the installation is no longer to be treated as an excluded installation (a “termination notice”).

(2) A termination notice must state—

- (a) that the operator must permanently cease carrying out all regulated activities at the installation; or
- (b) that the operator must comply with the conditions of a greenhouse gas emissions permit in respect of the installation from the beginning of the following scheme year.

(3) Where notice is given under sub-paragraph (2)(a), the permit for the installation ceases to have effect on the day following the date of service of the notice.

(4) Where notice is given under sub-paragraph (2)(b), the regulator must vary the excluded installation emissions permit, with effect from the 1st January in the scheme year following the year in which the termination notice was given (“the date of conversion”), so that the provisions of the permit that satisfy the requirements of paragraph 3 are replaced by provisions satisfying the requirements of paragraph 2 of Schedule 4..

(5) In varying a permit under sub-paragraph (4), the regulator may make only such variations as appear to the regulator to be necessary as a consequence of the installation ceasing to be treated as an excluded installation.

(6) A variation of a permit under sub-paragraph (4) does not affect any obligations of the operator under the permit in respect of emissions arising from activities prior to the date of conversion.

(7) Where—

- (a) notice is given under sub-paragraph (2)(b), and

(b) the operator holds a registry account with excluded status in respect of the installation, the regulator must, within 28 days after the date on which the termination notice is given, give notice to the registry administrator to change the status of the account to open from the beginning of the following scheme year.

End of excluded installation status

8.—(1) Where an operator of an excluded installation continues carrying out a regulated activity on or after 1st January 2021, the regulator must give a notice (a “2021 notice”) to the operator stating—

- (a) that the operator must permanently cease all regulated activities at the installation; or
- (b) that the operator must comply with the conditions of a greenhouse gas emissions permit in respect of the installation from the date specified in the notice.

(2) Sub-paragraphs (3) to (7) of paragraph 7 apply in respect of a 2021 notice given under sub-paragraph (1)(a) or (b) of this paragraph as they apply to a termination notice under paragraph 7(2)(a) or (b), but as if the reference to the date of conversion were a reference to 1st January 2021.

SCHEDULE 6

Regulation 17(3)

Free allocation of allowances

Interpretation

1.—(1) In this Schedule—

- (a) “the allocation table” has the meaning given by regulation 82(2);
- (b) “licence” means a permit in force in accordance with Directive 2008/1/EC(a);
- (c) “new entrant reserve” means the reserve of allowances provided for under Article 10a(7) of the Directive;
- (d) “year” means a scheme year in the trading period 2013 to 2020.

(2) In this Schedule, the following expressions have the meanings given to them in Article 3 of the Free Allocation Decision—

- “added capacity” (see Article 3(l));
- “incumbent installation” (see Article 3(a));
- “reduced capacity” (see Article 3(m));
- “significant capacity extension” (see Article 3(i));
- “significant capacity reduction” (see Article 3(j));
- “start of changed operation” (see Article 3(o));
- “start of normal operation” (see Article 3(n));
- “sub-installation” (see Article 3(b), (c), (d) and (h) and Article 6).

Application for an allocation from the new entrant reserve: new entrants

2.—(1) Subject to sub-paragraph (2), where—

- (a) the permit for an installation was granted on or after 30th June 2011, or

(a) OJ No L 24, 29.1.2008, p 8.

- (b) the permit was granted before 30th June 2011, but the start of normal operation was on or after that date,

the operator of the installation may apply to the regulator for an allocation of allowances in respect of that installation from the new entrant reserve.

- (2) Such an application may not be made where—
 - (a) the start of normal operation was before 30th June 2011; or
 - (b) the installation has already been included in the list, or revised list, referred to regulation 17(2) or (3).
- (3) Any application under sub-paragraph (1) must be made—
 - (a) before the end of the period of one year commencing with the start of normal operation of the installation; or
 - (b) if that period expired between 30th June 2011 and the coming into force of these Regulations, before 1st February 2013.
- (4) The application must contain—
 - (a) all relevant information regarding each parameter listed in Annex 5 to the Free Allocation Decision for each separate sub-installation; and
 - (b) the initial installed capacity for each sub-installation calculated by the operator in accordance with Article 17(4) of the Free Allocation Decision.
- (5) All data included in accordance with sub-paragraph (4) must have been verified as satisfactory by a verifier in accordance with Article 8 of the Free Allocation Decision.
- (6) If the regulator approves those calculations of initial installed capacity the regulator must grant the application and calculate—
 - (a) the activity levels of the installation in accordance with Article 18(1) and (2) of the Free Allocation Decision; and
 - (b) the preliminary annual number of allowances to be allocated as from the start of normal operation of the installation for each sub-installation in accordance with Article 19(1) to (3) of the Free Allocation Decision.

Application for an allocation from the new entrant reserve: significant capacity extensions

- 3.—(1) Where an installation had a significant capacity extension—
 - (a) after 30th June 2011, or
 - (b) on or before that date, but where the added capacity was capable of determination only after 30th September 2011,

the operator of the installation may (subject to sub-paragraph (2)) apply to the regulator for an allocation of allowances from the new entrant reserve.

- (2) Any application under sub-paragraph (1) must be made—
 - (a) before the end of the period of one year commencing with the start of changed operation of the installation; or
 - (b) if that period expired between 30th June 2011 and the coming into force of these Regulations, before 1st January 2014.
- (3) The application must contain—
 - (a) evidence demonstrating that the criteria for a significant capacity extension have been met to support any allocation decision;
 - (b) all relevant information regarding each parameter listed in Annex 5 to the Free Allocation Decision for each separate sub-installation; and
 - (c) the installed capacity, and a calculation of the added capacity, for each such sub-installation .

(4) All data submitted to the regulator pursuant to sub-paragraph (3) must have been verified as satisfactory by a verifier in accordance with Article 8 of the Free Allocation Decision.

(5) If the regulator approves that calculation of added capacity the regulator must grant the application and calculate—

- (a) the activity levels (for the added capacity only) of the sub-installations to which the significant capacity extension applies in accordance with Article 18(1) and (2) of the Free Allocation Decision; and
- (b) the preliminary number of free allowances to be allocated insofar as the extension is concerned on the basis of the methodology set out in Article 19(1) to (3) of the Free Allocation Decision.

Notification of preliminary annual number of allowances: new entrants and significant capacity extensions

4.—(1) The regulator must, within 28 days of calculating the preliminary number of allowances pursuant to paragraph 2(6)(b) or 3(5)(b) notify the result of that calculation (“the preliminary amount”) to—

- (a) the operator;
- (b) the authority;
- (c) the Secretary of State (where the Secretary of State is not the authority); and
- (d) the European Commission, pursuant to Article 19(4) of the Free Allocation Decision.

(2) Where the European Commission notifies the regulator that the preliminary amount is rejected the regulator must, as soon as is reasonably practicable, notify the operator giving the reasons for rejection provided by the European Commission.

Calculation of final annual amount of allowances allocated free of charge: new entrants and significant capacity extensions

5.—(1) Following the notification pursuant to paragraph 4(1), and provided that the European Commission has not rejected the preliminary amount so notified, the regulator must calculate the final annual amount of allowances allocated to the installation concerned.

(2) The calculation must—

- (a) correspond with the preliminary number of allowances notified pursuant to paragraph 4(1), and
- (b) be adjusted annually by the linear reduction factor referred to in Article 10a(7) of the Directive, using the preliminary total annual amount of allowances allocated free of charge to the installation concerned for 2013 as a reference.

(3) The regulator must without delay notify the results of the calculation pursuant to sub-paragraph (1) to—

- (a) the operator;
- (b) the authority;
- (c) the registry administrator; and
- (d) the Secretary of State (where the Secretary of State is not the authority).

Adjustment of allocation: significant capacity reductions

6.—(1) This sub-paragraph applies where a sub-installation has had a significant capacity reduction—

- (a) after 30th June 2011, or
- (b) on or before that date, but the extent of the reduction could not be determined before 30th September 2011.

(2) Where sub-paragraph (1) applies the operator of the installation must, by the relevant date, and after having had a significant capacity reduction verified in accordance with the requirements of Article 8 of the Free Allocation Decision and the Verification Regulation, submit the reduced capacity and the installed capacity of the sub-installation to the regulator.

(3) For that purpose, the relevant date is the later of—

- (a) the end of the period of 7 months following the change of capacity; or
- (b) 31st December in the year in which that change occurred.

(4) The regulator must then, in accordance with Article 21(2) of the Free Allocation Decision—

- (a) determine the activity levels for the reduced capacity of the sub-installation to which the significant capacity reduction relates in accordance with Article 18(3) of the Free Allocation Decision;
- (b) reduce the preliminary annual number of allowances allocated to each sub-installation by the preliminary annual number of allowances allocated to the sub-installation concerned calculated in accordance with Article 19(1) of the Free Allocation Decision insofar as the significant capacity reduction is concerned; and
- (c) revise the preliminary total annual amount for the installation concerned according to the methodology applied to determine the preliminary total annual amount prior to the significant capacity reduction.

(5) This sub-paragraph applies where there has been a significant capacity reduction in relation to an installation—

- (a) which has been submitted to the regulator pursuant to sub-paragraph (2), or
- (b) which has not been so submitted, if in the opinion of the regulator there may have been a significant capacity reduction in relation to that installation.

(6) Where sub-paragraph (5) applies, the regulator must request the registry administrator to withhold such proportion of the allowances allocated in respect of the installation (and to withhold for such period) as the regulator considers appropriate in the light of any of the following circumstances —

- (a) the regulator is investigating whether or not there has been a significant capacity reduction in relation to the installation;
- (b) the information required under sub-paragraph (2)—
 - (i) has not been submitted in accordance with that sub-paragraph; or
 - (ii) has been submitted but is insufficient;
- (c) the regulator is carrying out functions under sub-paragraph (4);
- (d) a notification has been given to the European Commission pursuant to paragraph 9(2)(d) and the notified amount of allowances has not yet been approved by the European Commission; or
- (e) a request has been made to the registry administrator pursuant to regulation 83(11) but the necessary changes to the national allocation table have not yet been made.

(7) The registry administrator must comply with a request made under sub-paragraph (6).

Adjustment of allocation to an installation: permanent and temporary cessations of regulated activities

7.—(1) An installation is deemed to have permanently ceased the carrying out of regulated activities where any of the following conditions are met—

- (a) a greenhouse gas emissions permit or a licence issued to the operator of the installation has been surrendered by the operator, revoked by the regulator, or otherwise ceased to have effect;
- (b) the operation of regulated activities at the installation is technically impossible;

- (c) the installation was, but is no longer, carrying out regulated activities, and it is technically impossible for it to resume doing so;
- (d) subject to sub-paragraphs (2), (3) and (11), the operator—
 - (i) has suspended the carrying out of regulated activities at the installation, and
 - (ii) is unable to establish that the carrying out of regulated activities will recommence within 6 months of the date of the suspension.

(2) In sub-paragraph (1)(d) the period of 6 months may be extended by the regulator to a period not exceeding 18 months where the regulator is satisfied that the carrying out of regulated activities cannot be recommenced within 6 months of the date of suspension due to exceptional and unforeseeable circumstances that could not have been avoided even if all due care had been exercised, and were beyond the control of the operator.

(3) Sub-paragraph (1)(d) does not apply to installations where the regulated activities are either kept in reserve or on standby or which are operated on a seasonal basis, provided that—

- (a) the operator holds a greenhouse gas emissions permit and a licence;
- (b) it is technically possible to commence the carrying out of regulated activities without making physical changes to the installation; and
- (c) regular maintenance of the installation is carried out.

(4) Subject to sub-paragraph (5), the operator of an installation to which sub-paragraph (1) applies is not entitled to an allocation of allowances for any year following the year in which the carrying out of regulated activities is deemed to have permanently ceased.

(5) In respect of an installation to which sub-paragraph (1)(d) applies—

- (a) the regulator may request the registry administrator to suspend the allocation of allowances to the operator until it is established when the carrying out of regulated activities will recommence;
- (b) where the recommencement of regulated activities occurs after the expiry of the period of 6 months from the date of suspension, or any longer period allowed pursuant to sub-paragraph (2), the operator may apply for an allocation of allowances under paragraph 2.

(6) For the purposes of sub-paragraph (7), a “relevant installation” is an installation—

- (a) to which sub-paragraph (1) applies; or
- (b) which, in the opinion of the regulator, may have permanently ceased the carrying out of regulated activities.

(7) The regulator may request the registry administrator to withhold the allocation of allowances to a relevant installation for as long as any of the following circumstances obtains—

- (a) the regulator is investigating whether or not the installation has permanently ceased the carrying out of regulated activities;
- (b) an application made pursuant to regulation 13(1) is being determined;
- (c) a notice of surrender or revocation notice has been given but has not yet taken effect;
- (d) an appeal against such a notice has been made but has not been determined; or
- (e) a request has been made to the registry administrator pursuant to regulation 83(11) but the change has not been made to the allocation table.

(8) The registry administrator must comply with a request made under sub-paragraph (7).

(9) If the operator wishes a cessation of regulated activities at an installation to be treated as temporary, the operator must notify the regulator within one month of the cessation and provide evidence that the carrying out of regulated activities will recommence—

- (a) within six months from the date of cessation, or
- (b) where the cessation is due to exceptional and unforeseeable circumstances, within a longer period of no more than 18 months from the date of cessation.

(10) Once the regulator has received sufficient information pursuant sub-paragraph (9) and (if necessary) pursuant to a notice under regulation 48(2), the regulator must without delay notify the operator—

- (a) that the cessation of regulated activities is deemed to be permanent by virtue of sub-paragraph (1)(d); or
- (b) that the cessation of regulated activities is deemed to be temporary.

(11) If a notice is served by the regulator pursuant to sub-paragraph (10)(b), the cessation is not to be treated as a permanent cessation of regulated activities.

Adjustment of allocation to an installation: partial cessation of regulated activities

8.—(1) This sub-paragraph applies where one sub-installation of an installation which contributes to—

- (a) at least 30% of the final annual amount of allowances allocated to the installation, or
- (b) the allocation of more than 50,000 allowances,

reduces its activity level in a given year by at least 50% compared to the activity level originally used for calculating the sub-installation's allocation ("initial activity level").

(2) Where sub-paragraph (1) applies—

- (a) the operator must notify the regulator that such a reduction in activity level has occurred—
 - (i) by 31st December in the year in which the reduction occurred, or
 - (ii) if later, within one month after the date on which it occurred; and
- (b) the regulator must—
 - (i) adjust the allocation of allowances in accordance with sub-paragraph (3), and
 - (ii) revise the preliminary annual amount of allowances to be allocated, commencing with the year following the year in which the reduction in activity level occurred.

(3) Where the activity level of a sub-installation is reduced by—

- (a) 50% to less than 75% compared to the initial activity level, the operator is entitled to receive a quantity of allowances representing half of the initially allocated allowances;
- (b) 75% to less than 90% compared to the initial activity level, the operator is entitled to receive a quantity of allowances representing 25% of the initially allocated allowances;
- (c) 90% or more, the operator is entitled to no allowances in respect of that sub-installation.

(4) Where the activity level of a sub-installation subsequently reaches more than—

- (a) 50% compared to the initial activity level, the operator is entitled to receive a quantity of allowances equal to the full quantity initially allocated, commencing with the year following the year during which the activity level exceeded 50%;
- (b) 25% compared to the initial activity level, the operator is entitled to receive a quantity of allowances equal to half of the allowances initially allocated, commencing with the year following the year during which the activity level exceeded 25%.

(5) In this paragraph, "activity level" means the activity level used for calculating the sub-installation's allocation in accordance with Article 9 of the Free Allocation Decision (or, where applicable, Article 18).

Notification of preliminary annual number of allowances: significant capacity reductions and partial cessation of regulated activities

9.—(1) The regulator must, within 28 days of making a calculation pursuant to—

- (a) paragraph 6(4)(c) (significant capacity reductions); or
- (b) paragraph 8(2)(c) (partial cessation of regulated activities),

notify the revised preliminary total annual amount of allowances to the persons mentioned in sub-paragraph (2).

(2) Those persons are—

- (a) the operator;
- (b) the authority;
- (c) the Secretary of State (where the Secretary of State is not the authority); and
- (d) the European Commission, pursuant to Article 24(2) of the Free Allocation Decision,.

(3) Where the European Commission notifies the regulator that the revised preliminary total annual amount of allowances is rejected the regulator must, as soon as is reasonably practicable, notify the operator giving the reasons for rejection provided by the European Commission.

Calculation of revised final annual amount of allowances: significant capacity reductions and partial cessation of regulated activities

10.—(1) Following the notification pursuant to paragraph 9(1), and provided that the European Commission has not rejected the revised preliminary total annual amount of allowances so notified, the regulator must calculate the revised final annual amount of allowances allocated to the installation concerned.

(2) The calculation must—

- (a) correspond with the revised preliminary number of allowances notified pursuant to paragraph 9(1); and
- (b) be adjusted annually by the linear reduction factor referred to in Article 10a(7) of the Directive, using the preliminary total annual amount of allowances allocated free of charge to the installation concerned for 2013 as a reference.

(3) The regulator must without delay notify the results of the calculation pursuant to sub-paragraph (1) to—

- (a) the operator;
- (b) the authority; and
- (c) the Secretary of State (where the Secretary of State is not the authority).

Notification of changes to the operation of an installation

11. The operator must, by 31st December of each year, provide the regulator with all relevant information about any planned or effective changes to the capacity, activity level and operation of an installation.

Recovery of allowances

12.—(1) Where an operator (“P”) has been allocated allowances to which P is not entitled in accordance with this Schedule as a result of—

- (a) a failure to notify the regulator of any change to an installation’s capacity, activity level or operation, or
- (b) the installation’s allocation not being adjusted in sufficient time to prevent such an over-allocation of allowances,

the regulator must give a notice to P instructing P to return a sum of allowances equal to the over-allocation.

(2) A notice given pursuant to sub-paragraph (1) must specify—

- (a) the number of allowances to which the operator is not entitled;
- (b) the reasons why the operator is not entitled to those allowances;
- (c) the process by which those allowances must be returned; and

- (d) the date by which those allowances must be returned.
- (3) An operator must comply with a notice given pursuant to sub-paragraph (2).

SCHEDULE 7

Regulation 31(a)

Free allocation of aviation allowances

Purpose of this Schedule

1. This Schedule sets out the requirements that must be satisfied by a UK administered operator (“P”) who wishes to apply for an allocation of aviation allowances issued under Article 3e of the Directive in any trading period other than 2013 to 2020.

Application for a benchmarking plan

2.—(1) P must apply to the regulator for a plan (a “benchmarking plan”) in accordance with Article 51(2) of the Monitoring and Reporting Regulation.

(2) That application must contain a proposed plan to monitor tonne-kilometre data from P’s aviation activity in accordance with the Monitoring and Reporting Regulation.

Issue of a benchmarking plan

3.—(1) Where P has made an application under paragraph 2 the regulator must, by notice given to P—

- (a) issue a benchmarking plan to P, where the regulator is satisfied that the proposed plan complies with the Monitoring and Reporting Regulation; or
- (b) refuse to issue such a plan.

(2) Where the regulator by notice refuses to issue a benchmarking plan under sub-paragraph (1)(b), the notice must state what changes must be made to the application under paragraph 2.

Monitoring tonne-kilometre data

4. P must monitor tonne-kilometre data from P’s aviation activity carried out in the benchmarking year in accordance with—

- (a) the benchmarking plan issued under paragraph 3 (including the written procedures supplementing that plan); and
- (b) the Monitoring and Reporting Regulation.

Reporting tonne-kilometre data

5. P must—

- (a) prepare a verified report of tonne-kilometre data monitored in accordance with paragraph 4;
- (b) ensure that the report complies with the Monitoring and Reporting Regulation and the Verification Regulation; and
- (c) make an application by submitting the 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

- 6.—(1) Where P has made an application under paragraph 5(c) the regulator must—
- (a) grant the application and submit the report to the Secretary of State; or
 - (b) subject to sub-paragraph (2), refuse the application where the regulator is not satisfied that P has complied with the requirements of this Schedule.
- (2) The regulator may grant the application under sub-paragraph (1)(a) where P has otherwise complied with the requirements of this Schedule but failed to comply with the deadline in Article 51(2) of the Monitoring and Reporting Regulation or in paragraph 5(c).
- (3) Where the regulator refuses the application under sub-paragraph (1)(b), the notice of determination must state the regulator’s reasons for doing so.
- (4) The Secretary of State must, by 30th June in the year after the benchmarking year, submit to the European Commission a report submitted under sub-paragraph (1)(a).

Force majeure

- 7.—(1) Paragraphs 4 to 6 are subject to the provisions of Article 68 of the Monitoring and Reporting Regulation (which apply where a person cannot monitor and report tonne-kilometre data because of serious and unforeseeable circumstances outside that person’s control).
- (2) Where a UK administered operator (“Q”) has a duty to return excess allowances under Article 68(3) of that Regulation, the Secretary of State must serve a notice on Q specifying—
- (a) the number of allowances to which Q is not entitled;
 - (b) the process by which those allowances must be returned; and
 - (c) the date by which those allowances must be returned.
- (3) Q must comply with the notice given pursuant to sub-paragraph (2).

Publication of aviation allowances

- 8.—(1) Within 3 months of the date in which the Commission adopts a decision under Article 3e(3) of the Directive in respect of a trading period, the Secretary of State must (in accordance with Article 3e(4)) calculate and publish—
- (a) the total allocation of aviation allowances to each UK administered operator whose application was submitted under paragraph 6(4); and
 - (b) the allocation of aviation allowances to each such UK administered operator for each year of the period.
- (2) Sub-paragraph (1) is subject to regulation 50 (national security).

SCHEDULE 8

Regulation 31(b)

Allocation of aviation allowances from the special reserve

Purpose of this Schedule

- 1.—(1) This Schedule sets out the requirements that must be satisfied by an eligible person (“Q”) who wishes to apply for an allocation of allowances issued from the special reserve under Article 3f of the Directive in any trading period.
- (2) For that purpose, and subject to paragraph (3), an eligible person in a trading period is—
- (a) a person who becomes a UK aircraft operator, for the first time, after the benchmarking year for that trading period; or

- (b) a UK 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.

(3) A person within sub-paragraph (2)(a), or a UK aircraft operator within sub-paragraph (2)(b), who would otherwise qualify as an eligible person 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 another person who is or has been a person falling within the definition of “aircraft operator” in Article 3(o) of the Directive.

Benchmarking plan for eligible persons

2.—(1) Q must apply to the regulator for a benchmarking plan in accordance with Article 51(2) of the Monitoring and Reporting Regulation.

(2) That application must contain a proposed plan to monitor tonne-kilometre data from Q’s aviation activity in accordance with the Monitoring and Reporting Regulation.

Issue of a benchmarking plan

3.—(1) Where Q has made an application under paragraph 2 the regulator must, by notice given to Q—

- (a) issue a benchmarking plan to Q, where the regulator is satisfied that the proposed plan complies with the Monitoring and Reporting Regulation; or
- (b) refuse to issue such a plan.

(2) Where the regulator by notice refuses to issue a benchmarking plan under sub-paragraph (1)(b), the notice must state what changes must be made to the application under paragraph 2.

Monitoring tonne-kilometre data

4. Q must monitor tonne-kilometre data from Q’s aviation activity carried out in the benchmarking year in accordance with—

- (a) the benchmarking plan issued under paragraph 3 (including the written procedures supplementing that plan); and
- (b) the Monitoring and Reporting Regulation.

Application to the regulator

5.—(1) Q must apply to the regulator by 30th June in the third year of a trading period.

(2) That application must—

- (a) contain evidence that Q is an eligible person under paragraph 1(2);
- (b) include a verified report of Q’s tonne-kilometre data monitored in accordance with paragraph 4;
- (c) ensure that the report complies with the Monitoring and Reporting Regulation and the Verification Regulation; and
- (d) where Q is eligible by virtue of paragraph 1(2)(b), include evidence of—
 - (i) the percentage increase in Q’s tonne-kilometres from the benchmarking year to the second calendar year in the trading period;
 - (ii) the increase in Q’s tonne-kilometres from the benchmarking year to the second calendar year in the trading period; and
 - (iii) the amount in tonne-kilometres by which Q exceeds the percentage in paragraph 1(2)(b) in the second calendar year in the trading period.

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

- 6.—(1) Where Q has made an application under paragraph 5 the regulator must—
- (a) grant the application and forward it to the Secretary of State; or
 - (b) subject to sub-paragraph (2), refuse the application where the regulator is not satisfied that Q has complied with the requirements of this Schedule.
- (2) The regulator may grant the application under sub-paragraph (1)(a) where Q has otherwise complied with the requirements of this Schedule but failed to comply with the deadline in Article 51(2) of the Monitoring and Reporting Regulation or paragraph 5(1).
- (3) Where the regulator refuses the application under sub-paragraph (1)(b), the notice of determination must state the regulator’s reasons for doing so.
- (4) The Secretary of State must submit an application received under sub-paragraph (1)(a) to the European Commission within 6 months of the deadline in paragraph 5(1).

Publication of aviation allowances from the special reserve

- 7.—(1) Within 3 months of the date in which the Commission adopts a decision under Article 3f(5) of the Directive in respect of a trading period, the Secretary of State must (in accordance with Article 3f(7)) calculate and publish—
- (a) the allocation of aviation allowances from the special reserve to each UK administered operator whose application was submitted under paragraph 6(4); and
 - (b) the allocation of aviation allowances to each such UK administered operator for each year of the period.
- (2) Sub-paragraph (1) is subject to regulation 50 (national security).

SCHEDULE 9

Regulation 40

Detention and sale of aircraft

Interpretation

1. In this Schedule—

“aerodrome” has the meaning given to it in section 105(1) of the Civil Aviation Act 1982(a);

“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;

“aircraft documents” has the meaning given by section 88(10) of the Civil Aviation Act 1982(b);

“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(c);

“the court” means—

- (a) in relation to England, Wales and Northern Ireland, the High Court; and
- (b) in relation to Scotland, the Court of Session;

(a) 1982 c. 16; there are amendments to section 105 that are not relevant.
(b) There are amendments to that subsection that are not relevant.
(c) 2000 c. 38.

“defaulting operator” means a person who falls under paragraph 2(a) or (b);

“regulator expenses” means any expenses incurred by the regulator in detaining, keeping or selling the aircraft, including—

- (c) any sums recovered from the regulator under paragraph 7(2) or 68(2), or any sums under regulation 60(5) that have not been recovered under regulation 60(6);
- (d) any expenses in connection with the application to the court under paragraph 4; and
- (e) any regulator expenses that are deemed to be added by virtue of paragraph 3(2).

Sale following detention of aircraft

2. Where an aircraft has been detained—

- (a) under regulation 40(1)(a) and the UK 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 **; or
- (b) under regulation 40(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 provisions of this Schedule, sell that aircraft.

Release of aircraft

3.—(1) The regulator must not detain, or continue to detain, or sell an aircraft 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 40(1)(a), the UK aircraft operator—
 - (i) has made an appeal under regulation 76 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 UK 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 40(1)(a), the UK aircraft operator pays to the regulator—
 - (i) the civil penalty for which the aircraft has been detained;
 - (ii) any other civil penalty that the UK aircraft operator has not paid; and
 - (iii) any regulator expenses;
- (e) in relation to a detention under regulation 40(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 40(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 sub-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 53(2) or (3), under regulation 21(3) or (4) of the 2009 Regulations or regulation 30(3) or (4) of the 2010 Regulations.

Court procedures

4.—(1) The regulator must not sell an aircraft under paragraph 2 without the leave of the court.

(2) The court must not give leave under sub-paragraph (1) in relation to a detention under regulation 40(1)(a) except where it is satisfied that—

- (a) a civil penalty is due to the regulator;
- (b) the UK 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 sub-paragraph (1) in relation to a detention under regulation 40(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 paragraph 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 sub-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 sub-paragraph (1) the regulator must sell the aircraft for the best price that can be reasonably obtained.

(6) Failure to comply with sub-paragraph (4) or (5) does not make a sale void or voidable.

Proceeds of sale

5.—(1) The proceeds of any sale under this Schedule 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 UK 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 UK aircraft operator or aircraft operator to the person entitled to levy charges in respect of the aerodrome at which the aircraft was detained under regulation 40(1);

(a) 2000 c. 38.

- (e) in relation to a detention under regulation 40(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 UK aircraft operator has not paid which is due under regulation 53(2) or (3), under regulation 21(3) or (4) of the 2009 Regulations or regulation 30(3) or (4) of the 2010 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

6.—(1) The power to detain and sell an aircraft under regulation 40 and this Schedule includes the power to detain and sell equipment and stores carried in the aircraft provided it is the property of the aircraft operator; and for that purpose references to the aircraft include references to any such equipment and stores.

(2) The power of detention under regulation 40(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

7.—(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 in providing the regulator with assistance or advice under sub-paragraph (1).

Procedure for applying for leave to sell an aircraft

8.—(1) The following procedure applies where the regulator proposes to apply to the court for leave to sell an aircraft under paragraph 4.

(2) 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 sub-paragraph (6) 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^(a) 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.

(3) Where a person who has been served with a notice in accordance with sub-paragraph (2) 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.

(4) At the same time as serving any notice under sub-paragraph (2), the regulator must publish a copy of that notice—

(a) 1982 c. 16.

- (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.
- (5) A notice under sub-paragraph (2) 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.
- (6) A notice under sub-paragraph (2) 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.
- (7) In sub-paragraph (6), “registered post service” and “postal service” have the meaning given in section 125(1) of the Postal Services Act 2000^(a); and any notice which is sent by a postal service in accordance with that sub-paragraph to a place outside the United Kingdom must be sent by air mail or by some other equally expeditious means.

SCHEDULE 10

Aircraft operating bans

Regulation 41

Application for an operating ban

1.—(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 a UK 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;

^(a) 2000 c. 26.

- (ii) the Welsh Ministers, where the registered office of the UK 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 sub-paragraph (1)(b) may require relevant information to be provided to the Secretary of State by a deadline specified in the notice, and may require in particular—
- (a) evidence that the UK aircraft operator has not complied with obligations under these Regulations; and
 - (b) any enforcement action that has been taken by the regulator.
- (3) Following the giving of notice under sub-paragraph (1)(b) and, where applicable, the provision of information under sub-paragraph (2), the Secretary of State must give notice to the UK aircraft operator.
- (4) A notice under sub-paragraph (3) must—
- (a) include a copy of any information provided under sub-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 deadline by which those representations must be made.

Enforcement of an operating ban

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

- (2) The steps a regulator may take under sub-paragraph (1) include—
- (a) subject to sub-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 Schedule 6.
- (3) Before issuing a direction under sub-paragraph (2)(a) the regulator must receive approval from the authority and (where different) the relevant authority.
- (4) A person to whom a direction is issued under sub-paragraph (2)(a)—
- (a) must comply with that direction, but
 - (b) is entitled to recover from the regulator a sum equal to any expense reasonably incurred by that person in complying with the direction.
- (5) The regulator is entitled to recover as a civil debt from the operator concerned all sums incurred under sub-paragraph (4).
- (6) In sub-paragraph (3)—
- “authority” means in respect of an operating ban on—
- (a) a UK administered operator, the authority as defined by regulation 8;
 - (b) any other operator, the Secretary of State;
- “relevant authority” means, where the principal place of business of the person to be directed is—
- (c) in Wales, the Welsh Ministers;
 - (d) in Scotland, the Scottish Ministers;
 - (e) in Northern Ireland, the Department of the Environment in Northern Ireland;

- (f) not in Wales, Scotland or Northern Ireland, the Secretary of State.

SCHEDULE 11 Regulation 81(1) and (3)
Appeals to the Scottish Ministers

PART 1

1.—(1) Any person who wishes to appeal to the Scottish Ministers (“the appeal body”) under regulation 76(1) 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 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;
- (c) a copy of any relevant monitoring plan, aviation emissions plan or benchmarking 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
- (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 they are 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 their 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 the appeal body (the “person holding the hearing”) and they 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 13(5) and (6) 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 the appeal body 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 Part;
- (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 the 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 the 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 the determination under paragraph 6 a statement of the matters with respect to which further representations are invited for the purposes of the 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 the appeal body thinks fit, cause a hearing to be held or reopened and, if they do 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 Part—

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

PART 2

10. In this Part—

“appointed person” means a person appointed under regulation 81(2)(a);

“appointment”, in the case of any appointed person, means appointment under regulation 81(2)(a).

11. 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.

12. Subject to the provisions of this Part, 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.

13.—(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 Part, 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 Part must be defrayed by the appeal body.

(5) Subsections (3) to (8) of section 210 of the Local Government (Scotland) Act 1973(a) (which relates to the costs of and holding of local inquiries) apply to hearings held under this Part 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;

(a) 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.

- (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
 - (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.

14.—(1) Where—

- (a) under paragraph 11(c) the appointment of the appointed person is revoked in respect of any appeal, matter or question, and
 - (b) the appeal body does not proposes to determine that appeal, matter or question,
- the appeal body must appoint another person under regulation 81(2)(a) to determine the appeal, matter or question.

(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.

15.—(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.

(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 12

Regulation 81(4)

Appeals (Northern Ireland)

1.—(1) A person who wishes to appeal to the Planning Appeals Commission (“the appeals commission”) under regulation 81(4) must give to the appeals commission notice of the appeal together with a statement of the grounds of appeal.

(2) The appeals commission must as soon as is reasonably practicable send to the regulator a copy of that notice and that statement.

(3) 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 of that withdrawal.

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 on which the relevant decision, deemed decision or 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(a) 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; and Article 127(2)(b) of the Planning (Northern Ireland) Order 1991 has effect as if the reference to an appeal under that Order included a reference to an appeal under these Regulations.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (“the Directive”). In particular, they implement the amendments to the Directive made by Directive 2009/29/EC of the European Parliament and of the Council. These Regulations also consolidate and replace previous sets of implementing regulations (S.I. 2005/925 and S.I. 2010/1996) and their amending instruments.

Under the EU emissions trading scheme for greenhouse gases (“EU ETS”) an overall cap is set for emissions of greenhouse gases from specified activities. Operators must monitor and report emissions, and surrender sufficient emissions trading allowances to cover their emissions for each year. A proportion of the total number of allowances is issued free of charge to operators, and the remainder is auctioned. Operators may also buy and sell allowances on the open market, and up to certain specified limits are also permitted to surrender project credits issued under the Kyoto Protocol to the United Nations Framework Convention on Climate Change. Following the amendments made by Directive 2008/101/EC of the European Parliament and of the Council, EU ETS has been extended to cover certain aviation activities (limited to flights arriving in or departing from the European Economic Area).

The Regulations also contain provisions implementing, where necessary, a number of instruments made under the Directive by the European Commission, in particular:

Commission Regulation (EU) No 1193/2011 of 18 November 2011 establishing a Union Registry for the trading period commencing on 1 January 2013, and subsequent trading periods, of the Union emissions trading scheme (“the Registries Regulation 2011”);

Commission Regulation (EU) No **/2012 on the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87/EC (“the Monitoring and Reporting Regulation”);

Commission Regulation (EU) No **/2012 of *** 2012 on the verification of greenhouse gas emission reports and tonne-kilometre reports and the accreditation of verifiers pursuant to Directive 2003/87/EC; and

Commission Decision 2011/278/EU of 27th April 2011 determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87/EC.

(a) S.I. 1991/1220 (N.I.11); relevant amending instruments are S.I. 1999/660 (N.I.4), 2003/430 (N.I.8) and 2006/1252 (N.I. 7).

Certain installations with low emissions (as well as hospitals) are permitted to opt out of the emissions trading system, provided that equivalent measures are put in place to limit their emissions. These Regulations accordingly provide for equivalent measures in the case of such “excluded installations”.

These Regulations extend to the whole of the United Kingdom. However, greenhouse gas emissions trading is a devolved matter in Scotland and in Wales, and a transferred matter in Northern Ireland, and the Regulations accordingly provide for distinct “regulators” or “authorities” in relation to those different parts of the United Kingdom. The “regulator” may be the Environment Agency, the Scottish Environment Protection Agency, or the chief inspector in Northern Ireland; and the corresponding “authority” will be the Secretary of State or the Welsh Ministers, the Scottish Ministers, or the Department of the Environment in Northern Ireland.

Regulation 2 requires the Secretary of State to review the operation and effect of these Regulations and publish a report within five years after they come into force and within every five years after that. Following a review it will fall to the Secretary of State to consider whether the Regulations should remain as they are, be revoked, or be amended. A further instrument would be needed to revoke the Regulations or to amend them.

Regulation 3 contains definitions of various expressions used in the Regulations. In particular, this regulation defines who are the “regulator” and the corresponding “authority” in relation to an installation.

Regulation 4 and *Schedule 1* provide that the Regulations bind the Crown, subject to the power of the Secretary of State to certify that powers of entry may not be exercised in relation to particular Crown premises, and to provisions regarding the service of documents.

Regulation 5 and *Schedule 2* provide rules for the service of notices and other documents under the Regulations (other than notices required to be given to the regulator).

Regulation 6 and *Schedule 3* lay down requirements for the making and determination of applications under the Regulations (including under permits or aviation emissions plans), or under the Registries Regulation 2011.

Regulation 7 enables the chief inspector in Northern Ireland to delegate functions under these Regulations to other inspectors appointed under the Pollution Prevention and Control Regulations (Northern Ireland) 2003, and enables the Department of the Environment in Northern Ireland to give directions with respect to the exercise of functions under these Regulations.

Regulation 8 provides for the implementation of a number of European Commission Regulations, by designating the appropriate authorities to perform functions under those instruments (which are otherwise directly applicable in United Kingdom law). See also *regulation 76(3)*.

Part 2, together with *Schedules 4* to *6*, contains provisions that relate solely to stationary installations (as opposed to aircraft operators).

Regulation 9 requires a permit to be held by the operator of an installation before a regulated activity is carried out at the installation. “Permit”, “regulated activity” and “installation” are defined in *regulation 3(1)*, and “operator” is defined by *regulation 3(2)*. A permit may be either a greenhouse gas emissions permit or an excluded installation emissions permit, and may be granted in respect of part only of an installation.

Regulation 10 and *paragraphs 1* and *2* of *Schedule 4* make provision for the application for, and the grant of, a greenhouse gas emissions permit. The provisions of *paragraph 1* of *Schedule 4* also apply to applications for an excluded installation emissions permit.

Regulation 11 and *Schedule 5* make provision for the application for, and the grant of, an excluded installation emissions permit (in certain circumstances a greenhouse gas emissions permit may also be converted into an excluded installation emissions permit).

Regulation 12 provides for the review, variation and consolidation of permits.

Regulation 13 and paragraph 3 of Schedule 4 make provision for the transfer of permits. A transfer may relate to all the installations covered by the permit, or may be a “partial transfer” that relates to some only of the installations covered (or to parts only of an installation).

Regulation 14 requires a permit to be surrendered if regulated activities cease to be carried out at the installation, and *paragraph 4 of Schedule 4* imposes further requirements in respect of such a surrender.

Regulation 15 allows the regulator to revoke a permit, and requires the regulator to do so where the permit has not been surrendered as required by *regulation 14(1)*. *Paragraph 5 of Schedule 4* imposes further requirements in respect of such revocations.

Regulation 16 and Schedule 5 make further provision for excluded installations. Certain requirements of these Regulations do not apply to such installations, and others apply in a modified form. Although the requirement to surrender allowances under *Part 4* does not apply, *Schedule 5* contains equivalent measures limiting the emission of greenhouse gases. Thus an excluded installation emissions permit sets a target for emission reduction in each year, and the operator is liable to a penalty for exceeding such a target.

Regulation 17 and Schedule 6 make provision for the free allocation of allowances to those installations that are required to surrender allowances.

Regulations 18 to 20 make provision for the exercise of powers of entry, and the charging of fees, in relation to an offshore installation (as defined in *regulation 3(1)*).

Part 3, together with *Schedules 7 to 9*, contains provisions that relate solely to aircraft operators. These replace provisions previously contained in the Aviation Greenhouse Gas Emissions Trading Scheme Regulations 2010. This Part imposes obligations on operators defined as “UK administered operators” (previously known as “UK operators”), and on a subset of those operators defined as “UK aircraft operators” (previously known as “aircraft operators”). Subject to the qualifications noted below, a “UK administered operator” is a person who is specified as an operator to be administered by the United Kingdom in the list published by the European Commission under Article 18a(3) of the Directive; and a “UK aircraft operator” is a UK administered operator who has carried out aviation activities in the relevant calendar year. All UK administered operators are assigned to a “regulator” for the purposes of these Regulations (see *regulations 28 to 30*). For the purposes of this Part, a reference to a “member State” of the EU includes a reference to an EEA state (and therefore includes Norway, Iceland and Liechtenstein).

Regulation 22 requires the Civil Aviation Authority to provide any assistance or advice that may be requested by the regulator (but in doing so it may recover its reasonable expenses).

Regulation 23 requires the Secretary of State in certain circumstances to designate a person as a person to whom these Regulations apply, where that person has been omitted from the Commission’s list under Article 18a(3). *Regulation 24* allows such a person to apply to the Secretary of State to be so designated. Once designated, the person concerned will then be treated as a “UK administered operator” for the purposes of these Regulations.

Regulation 25 allows the regulator to deem a person to be a UK administered operator for the whole of a calendar year, even though that person was administered for a part of that year by another member State. However, this does not allow a civil penalty to be imposed in respect of a failure to comply with these Regulations that occurred while the person was not administered by the United Kingdom.

Regulation 26 allows the Secretary of State to designate a UK administered operator as a “Gibraltar operator”, where the Secretary of State is satisfied that the operator is regulated for the purposes of the Directive under Gibraltar legislation. The consequence is that the operator will no longer be a “UK administered operator” for the purposes of these Regulations.

Regulation 27 define who, in a given calendar year, is to be regarded as a “UK aircraft operator” for the purposes of these Regulations. The person concerned must be a UK administered operator

who has performed an aviation activity (within the meaning of Annex 1 to the Directive) in that year, or (in certain circumstances) who is the owner of the aircraft used to perform that activity.

Regulations 28 to 30 define who, for purposes of these Regulation, is the “regulator” of a UK administered operator. Where the operator is a UK company, the regulator is either the Environment Agency, the Scottish Environment Protection Agency, or the chief inspector in Northern Ireland, depending upon the location of the company’s registered office. Otherwise the operator will in the first instance be regulated by the Environment Agency, with provision for a transfer to different regulator for the subsequent eight-year trading period, following an assessment of the proportion of emissions that are attributable to the relevant part of the United Kingdom.

Regulation 31 and *Schedules 7* and *8* deal with the free allocation of aviation allowances. For each trading period, an existing UK aircraft operator is able to apply for such an allocation after monitoring and reporting their activity in the relevant benchmarking year. New operators, or those who have increased their activity by a specified percentage since the benchmarking year, may apply for an allocation to the special reserve set aside for that purpose. Applications are submitted to, and eventually decided by, the European Commission under the rules laid down by the Directive.

Chapter 4 of this Part deals with the monitoring and reporting of emissions from aviation activities.

Regulations 33 to *35* provide for applications to be made for a plan (“emissions plan”) setting out how emissions are to be monitored in accordance with the Monitoring and Reporting Regulation. *Regulation 33(1)* requires a UK administered operator to apply for a such a plan in accordance with the Article 51(1) that Regulation. This requires an application to be made 4 months before beginning aviation activity, although that deadline can be relaxed in certain circumstances. Where the less stringent deadline is relied upon, the operator must satisfy the regulator of the reasons for doing so (*regulation 33(5)*). The operator may at any time take the precaution of applying for an emissions plan (*regulation 33(6)*), and on first becoming a UK administered operator must either so apply or notify the regulator under *regulation 34*.

Regulation 36 requires emissions to be monitored each year, and a verified emissions report to be submitted to the regulator by 31st March in the following year. As in the case of stationary installations, the rules for monitoring, reporting and verification are laid down by the Monitoring and Reporting Regulation and the Verification Regulation.

Regulation 37 provides a procedure for ensuring that the emission plans issued by the various regulators contain the appropriate conditions, following consultation (or joint consultation) of interested persons.

Regulation 38 imposes a duty on a UK aircraft operator to comply with the conditions the emissions plan, and *regulation 39* provides for the variation of an emissions plan, either on application by the operator or otherwise.

Chapter 5, together with *Schedules 9* and *10*, provides for sanctions to be imposed on aircraft operators, in addition to the civil penalties imposed under *Part 7*. These non-pecuniary sanctions are of two kinds: detention (and possibly sale) of an aircraft under *regulation 40* and *Schedule 9*; and the imposition or enforcement of an operating ban under *regulation 41* and *Schedule 10*.

Under *regulation 40* any aircraft may be detained that is operated by a UK aircraft operator who has not paid a civil penalty within 6 months of the date that the penalty is due. Where the aircraft is not required to be released under *paragraph 3* of *Schedule 9*, it may then be sold following an order of the court. The proceeds of sale may be used to discharge unpaid civil penalties, certain duties and charges, and the expenses of detention.

Where all other enforcement measures have failed, a member State may apply for an EU-wide operating ban to be imposed by the Commission under Article 16(10) of the Directive. *Schedule 10, paragraph 1*, provides for such application to be made by the Secretary of State, and

paragraph 2 provides for the enforcement of a ban imposed as a result of such a request (or as a result of a request made by another member State).

Part 4 sets out the requirements regarding the surrender of allowances. The operator of an installation (*regulation 43*) or a UK aircraft operator (*regulation 44*) must surrender sufficient allowances to cover annual reportable emissions for each year. The allowances must be surrendered by 30th April in the year following the year in which emissions arise. Where an insufficient number of allowance is surrendered, the deficit is deemed to be added to the total that is required to be surrendered in the following year (*regulation 43* read with *paragraph 2(5) of Schedule 4*, and *regulation 44(2)*). Unlike a UK aircraft operator, the operator of an installation may not surrender for that purpose “aviation allowances” issued or auctioned under Chapter 2 of the Directive. Either kind of operator may use certain project credits created under the Kyoto Protocol, although the use of such credits is subject to the limits specified in *regulation 45*.

Regulation 46 enables the regulator to serve an enforcement notice in respect of an existing or future breach of these Regulations, of the Monitoring and Reporting Regulation, or of a permit or aviation emissions plan. The notice must specify what is required to be done to ensure compliance.

Regulation 47 supplements the power to determine the emissions of an installation (or of a UK aircraft operator) given to the regulator by Article 70 of the Monitoring and Reporting Regulation. Thus such a determination may also be made where the operator of an installation has failed to submit a surrender or revocation report, and may be made for the purpose of imposing certain penalties or enforcing certain requirements of *Schedule 5*. The cost of making a determination may be recovered from the operator or UK aircraft operator concerned.

Regulation 48 enables the Secretary of State, or relevant authority, to obtain relevant information from the regulator, and enables the Secretary of State, authority, regulator or registry administrator to obtain relevant information from other persons.

Regulation 49 limits the circumstances in which information obtained under the Regulations may be published or disclosed, and *regulation 50* imposes restrictions on the publication of certain information where this would (in the opinion of the Secretary of State) be contrary to the interests of national security.

Part 7 provides for the imposition of civil penalties for the breach of various provisions of the Regulations.

The procedure for the service of penalty notices is set out in *regulation 53*, which also provides for a penalty to be recovered as a civil debt. *Regulation 54* gives the regulator a discretion in imposing a penalty (other than the penalty under *regulation 58(2)* for a failure to surrender sufficient allowances), and under *regulation 55* regulators must publish guidance as on how that discretion is intended to be exercised. *Regulations 56 to 72* set out the various penalties that apply, which in some cases require a calculation to be made by the regulator. For the purpose of the calculation under *regulations 56* and *59*, *regulation 52* requires the Secretary of State to determine and publish the carbon price for each year. *Regulation 56(4)* requires authorities to give directions to as to the calculation of a penalty imposed under *regulation 56(2)* and (3).

Regulation 74 requires the regulator to publish the name of any person on whom a penalty for non-surrender of allowances has been imposed under *regulation 58(2)*.

Part 8 provides for appeals against decisions taken under the Regulations or under the Registries Regulation 2011.

Regulations 75 and 76 specify the matters that may be appealed, and *regulation 77* ensures that an appeal may be made on any ground. An appeal lies to the appeal body defined by *regulation 78*, which will be either the First-tier tribunal, the Scottish Ministers, or the Planning Appeals Commission in Northern Ireland. *Regulation 79* sets out the circumstances in which the effect of a decision is suspended following the appeal. *Regulation 80* provides for the powers of the appeal body in determining the appeal, which may include substituting a new decision for the decision under these Regulations that is appealed against, or giving directions to the regulator or to the registry administrator.

Regulation 81, with *Schedules 11* and *12*, provides the procedure for appeals where the appeal body is the Scottish Ministers or the Planning Appeals Commission. The procedure for appeals to the First-tier Tribunal, on the other hand, is provided by the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009(a). Appeals are assigned to the General Regulatory Chamber of the First-tier Tribunal by virtue of article 3(a) of the First-tier Tribunal and Upper Tribunal (Chambers) Order 2010(b).

Part 9 supplements, where necessary, the directly applicable provisions of the Registries Regulation 2011. That Commission Regulation implements Article 19(1) of the Directive, which requires all allowances issued from 1 January 2012 to be held in a Union Registry on accounts managed by the member States. *Regulation 8(1)* designates the Environment Agency as the UK “national administrator” for the purposes of that Regulation (as well as for the purposes of the Registries Regulation 2010). When acting in that capacity, the Environment Agency is referred to in these Regulations as the “registry administrator”.

Regulation 83(1) allows the registry administrator to require users of the Registry to comply with reasonable terms and conditions. *Regulation 83(2) to (4)* allocates responsibility for certain procedures under the Registries Regulation 2011, and *regulation 83(6), (8) and (9)* provides for circumstances in which a registry account must be blocked. *Regulation 83(15)* enables the registry administrator to refuse to open an account, or to approve an authorised representative, where the person concerned is not a fit and proper person.

Regulation 84 provides for the recovery by the regulator of unpaid fees, which may be done either through the court in proceedings for the recovery of a civil debt, or by means of the seizure and sale of allowances.

Regulation 85 provides for the issuing of guidance by the authority to the regulator, and by the Secretary of State to the registry administrator.

Part 11 provides for revocations, savings and transitional provisions.

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

(a) S.I. 2009/1976 (L. 20).

(b) S.I. 2010/2655.