

**A Direction given by:**

**The Secretary of State concurrently with the Welsh Ministers to the  
Environment Agency**

**The Scottish Ministers to the Scottish Environment Protection Agency**

**The Department of the Environment, Northern Ireland to the chief inspector,  
Northern Ireland**

**under regulation 52(4) of the Greenhouse Gas Emissions Trading Scheme  
Regulations 2012**

**1. Interpretation**

1.1. In this Direction:

1.1.1. “authority” and “regulator” have the same meaning as given in the Regulations; and

1.1.2. “Regulations” means the Greenhouse Gas Emissions Trading Scheme Regulations 2012.

**2. Purpose**

2.1. This is a Direction to the regulator made under the powers in Section 40 of the Environment Act 1995. The purpose of the Direction is to fulfil the requirements of Regulation 52(4) of the Regulations, namely:

“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).”

2.2. Regulation 52(1) of the Regulations provides that the operator of an installation carrying out a regulated activity (‘a EU ETS activity’) without a Greenhouse Gas Permit (‘a permit’) is liable to a civil penalty. Paragraphs 2 and 3 set out how such a civil penalty should be calculated, which is as follows:

“(2) For each such year, 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 51 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.”

### **3. Direction as to calculations**

3.1. The regulator is directed to calculate the civil penalties applicable under regulation 52(2) and (3) on an annual basis and for these annual totals to be added together as the basis for the total civil penalty an operator shall be liable for. The first year during Phase III that EU ETS activities take place without a permit shall have higher civil penalties calculated for it compared with subsequent years to reflect the higher costs that operators face in setting up their administrative systems for complying with the EU ETS.

3.2. The regulator is directed to assess the following costs in their calculation of A:

3.2.1. avoided charges

3.2.2. avoided monitoring, reporting and verification costs

3.3. In relation to avoided charges the regulator should calculate the following:

3.3.1. For the first year of non-compliance:

3.3.1.1. Annual subsistence fee the operator would have been liable for in that year.

3.3.1.2. The permit variation fee as set out in the EU ETS charging scheme in place for that year.

3.3.2. For each subsequent year of non-compliance, the annual subsistence fee the operator would have been liable for in that year.

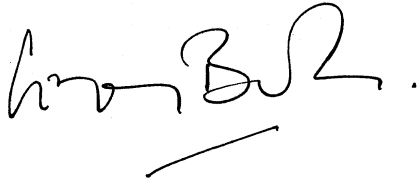
3.4. The sum of these costs shall together form the total avoided charges.

- 3.5. In relation to avoided monitoring, reporting and verification costs, the regulator should base its calculations on Table 1, which is derived from the following study – ‘Assessing the cost to UK operators of compliance with the EU Emissions Trading System’ (Aether 2010). This number should be multiplied by the total number of years of non-compliance to reach total avoided monitoring, reporting and verification costs.
- 3.6. Annex 1 to this Direction sets out how these numbers could be calculated.
- 3.7. The regulator is directed to estimate the following for their calculation of B:  
  
Annual reportable emissions from the installation from 1 January 2013 to the date<sup>1</sup> that the installation is issued with a permit.
- 3.8. The regulator must use powers available to it under regulations 44(1)(d) to obtain the information necessary to make the estimation. The regulator may recover from the operator any costs associated with estimating the emissions using powers under regulation 44 (6) or serve separate civil penalties for failure on the part of the operator to provide the information.
- 3.9. The regulator is directed to use the annual carbon price published by the Secretary of State under regulation 49 in their calculation of C.
- 3.10. In line with the intention that this penalty provide an incentive for participation within the EU ETS, the regulator is directed to ensure that the total civil penalty is higher than the total costs the installation would have faced if the operator had a permit during the years of non-compliance. To do this, the regulator must apply an additional factor of 5% of the total civil penalty to reach a final total civil penalty amount. Annex 2 to this Direction provides a worked example in calculating the final total civil penalty.
4. This Direction does not restrict the exercise by the regulator of the discretion available to them under regulation 51 of the Regulations.
5. This Direction comes into force on 1 January 2013, after the coming into force of the Regulations.

Signed by:

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<sup>1</sup> Emission estimates should be pro-rated where they don't take into account a full year.

A handwritten signature in black ink, appearing to read 'Greg Barker', with a horizontal line underneath.

**Gregory Barker, Minister of State, on behalf of the Secretary of State for Energy & Climate Change**

A handwritten signature in black ink, appearing to read 'John Griffiths'.

**John Griffiths AM, Minister for Environment & Sustainable Development**

A handwritten signature in black ink, appearing to read 'Paul Wheelhouse'.

**Paul Wheelhouse MSP, Minister for Environment & Climate Change**

A handwritten signature in black ink, appearing to read 'Alex Attwood'.

**Alex Attwood, Minister of the Environment, Northern Ireland**

## Annex 1 – Example Calculation of A

- Annual subsistence fees as set out in the Environment Agency EU ETS charging scheme for 2012:

Annual emissions >500KtCO<sub>2e</sub> = £4,080

50-500KtCO<sub>2e</sub> = £3,320

<50KtCO<sub>2e</sub> = £2,550

- Permit variation fee as set out in the Environment Agency EU ETS charging scheme for 2012:

£430

- The relevant compliance costs as taken from the Aether study are:

Average admin burden - £16,400 (this excludes one-off costs and charges)

Average admin burden including charges and one-off costs - £21,000

However these figures are skewed by costs for the power sector and refineries. The majority of installations have an average admin burden of between £8,000 - £15,000. To reflect that one-off costs usually occur in the first year of compliance we can state that the operating cost are:

**Table 1**

First year of non-compliance	£15,000
Subsequent years of non-compliance	£8,000

- Adding together these numbers would give the following:

### First year avoided costs

Annual emissions >500KtCO<sub>2e</sub> = **£19,510** (£4,080 + £430 + £15,000)

50-500KtCO<sub>2e</sub> = **£18,750** (£3,320 + £430 + £15,000)

<50KtCO<sub>2e</sub> = **£17,980** (£2,550 + £430 + £15,000)

### Subsequent years avoided costs

Annual emissions >500KtCO<sub>2e</sub> = **£12,080** (£4,080 + £8,000)

50-500KtCO<sub>2e</sub> = **£11,320** (£3,320 + £8,000)

<50KtCO<sub>2e</sub> = **£10,550** (£2,550 + £8,000)

## Annex 2 – Example of calculating final total civil penalty

This example uses an installation with annual emissions of 100,000tCO<sub>2</sub> and a carbon price of £12. These figures remain constant during the whole Phase. The other costs used to calculate A also remain constant. The table assumes the installation is issued with a permit on the 31 December of each example year.

Year of operation	A (£)	B x C (£)	Annual Civil Penalty (£)	Total civil penalty if permit issued in this year (£)	Additional factor of 5%	Total final Civil Penalty if permit issued in this year (£)
2013	18,750	1,200,000	1,218,750	1,218,750	60,937	1,279,688
2014	11,320	1,200,000	1,211,320	2,430,070	121,503	2,551,574
2015	11,320	1,200,000	1,211,320	3,641,390	182,069	3,823,460
2016	11,320	1,200,000	1,211,320	4,852,710	242,635	5,095,346
2017	11,320	1,200,000	1,211,320	6,064,030	303,201	6,367,232
2018	11,320	1,200,000	1,211,320	7,275,350	363,767	7,639,118
2019	11,320	1,200,000	1,211,320	8,486,670	424,333	8,911,004
2020	11,320	1,200,000	1,211,320	9,697,990	484,899	10,182,890