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 S T A T U T O R Y I N S T R U M E N T S
 

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2014 No. [ ]

## CLIMATE CHANGE

 The Greenhouse Gas Emissions Trading Scheme (Amendment)  
 Regulations 2014

<i>Made</i>	- - - -	2014
<i>Laid before Parliament</i>		2014
<i>Coming into force</i>	- -	2014

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 Natural Resource Body for Wales, 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 section 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):

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- (a) S.I. 2008/301.  
 (b) 1972 c. 68; section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51) and by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7).  
 (c) 1999 c. 24.  
 (d) 1999 c. 24; section 2(4) was amended by paragraph 395 of Schedule 2 to the Natural Resources Body for Wales (Functions) Order 2013 (W.S.I. 2013/755 (W. 90)).  
 (e) Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (c. 51) 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 (c. 7).  
 (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.

## PART 1

### General

#### Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Greenhouse Gas Emissions Trading Scheme (Amendment) Regulations 2014 and come into force on xxxx 2014.

(2) In these Regulations a reference to a numbered regulation or a numbered schedule is to that regulation or schedule of the Greenhouse Gas Emissions Trading Scheme Regulations 2012(a).

## PART 2

### Amendment of the Greenhouse Gas Emissions Trading Scheme Regulations 2012

#### Amendments to definitions

2.—(1) In regulation 3(1)—

- (a) in the definition of “allowance”, for “and 87B(5)”, substitute, “87B(5) and 87C(7)(a)”;
- (b) for the definition of “aviation activity”, substitute—
  - ““aviation activity”—
  - (a) in respect of paragraphs (2) to (9) of Schedule 7, has the meaning given in paragraph 1A of that Schedule; or
  - (b) otherwise, means an activity listed in the table in Annex I to the Directive under the section titled ‘Aviation’, excluding the activities listed under—
    - (i) points (a) to (j) of that section; and
    - (ii) point (k) of that section, but as if the reference to 1 January 2013 is to 1 January 2015;”;
- (c) for the definition of “aviation emissions”, substitute—
  - ““aviation emissions” means emissions of carbon dioxide arising from an aviation activity;”;
- (d) after the definition of “chief inspector”, insert—
  - ““commercial air transport operator” has the meaning given in Article 3(p) of the Directive;”;
- (e) after the definition of “excluded installation emissions permit”, insert—
  - ““exempt non-commercial air transport operator” means, for the scheme years beginning on 1st January 2013 or 1st January 2014, a UK administered operator which—
  - (a) is a non-commercial air transport operator; and
  - (b) has annual reportable emissions of less than 1,000 tonnes;”
- (f) after the definition of “new operator”, insert—
  - ““non-commercial air transport operator” means any UK administered operator which is not a commercial air transport operator;”;
- (g) for the definition of “the Offshore Regulations”, substitute—
  - ““the Offshore Regulations” means the Offshore Combustion Installations (Pollution Prevention and Control) Regulations 2013;”(a).

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(a) S.I. 2012/3038; those Regulations are amended by Schedule 4 to W.S.I. 2013/755 (W. 90) (see in particular paragraph 425), by S.I. 2013/1037 and by S.I. 2013/3135.

### **Powers of entry: offshore installations**

3.—(1) This regulation applies to regulation 17.

(2) For paragraphs (2) and (3), substitute—

“(2) The powers exercisable under paragraph (1) are the powers in regulation 25 of the Offshore Regulations (but subject to regulation 26 of those regulations).

(3) Regulations 34(2)(d) and (e) of the Offshore Regulations apply to a failure to comply with an obligation imposed pursuant to a power exercisable under paragraph (1) as they apply to a failure to comply with an obligation imposed pursuant to regulation 25 of the Offshore Regulations.”.

### **Amendments to definitions: aviation**

4.—(1) In regulation 20—

(a) after the definition of “emissions plan”, insert—

““Eurocontrol” means the European organisation for air safety navigation;

“excluded aviation activity” means an activity consisting in a flight—

(a) departing from, or arriving in, an aerodrome situated in any country other than an EEA state or Croatia; or

(b) a flight between an aerodrome located in an outermost region and an aerodrome located in—

(i) a different outermost region;

(ii) an area of the EEA which is not an outermost region; or

(iii) Croatia;

“excluded aviation emissions” means aviation emissions arising from an excluded aviation activity;”;

(b) after the definition of “member State”, insert—

““non-UK operator” has the meaning given in regulation 24(2);

“outermost region” means—

(a) in respect of aviation activity for the scheme year beginning on 1st January 2013, the Canary Islands, French Guiana, Guadeloupe, Martinique, Réunion, Saint-Martin, the Azores, or Madeira;

(b) in respect of aviation activity in any scheme year beginning with the scheme year beginning on 1st January 2014, the Canary Islands, French Guiana, Guadeloupe, Martinique, Mayotte, Réunion, Saint-Martin, the Azores, or Madeira;”;

(c) after the definition of “registered office”, insert—

““Small Emitters Tool Regulation” means Commission Regulation (EU) No 606/2010 of 9 July 2010 on the approval of a simplified tool developed by the European organisation for air safety navigation (Eurocontrol) to estimate the fuel consumption of certain small emitting aircraft operators<sup>(b)</sup>;”.

### **Application for an emissions plan by a UK administered operator**

5.—(1) This regulation applies to regulation 32.

(2) For paragraph (1), substitute—

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(a) S.I. 2013/971

(b) OJ No L 175, 10.7.2010, p 25.

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“(1) Subject to paragraphs (3), (4), (6) and (7), a UK administered operator (“A”) must apply to the regulator for a monitoring plan where required by Article 51(1) and within the period of time required by that Article.”.

(3) After paragraph (6) insert—

“(7) This regulation does not apply to a UK administered operator which commences aviation activities during the scheme years beginning on 1st January 2015 or 1st January 2016.”.

6. After regulation 32, insert—

### **“Application for an emissions plan by a UK administered operator: 2015 activities and 2016 activities**

**32A.**—(1) This regulation applies to a UK administered operator (“B”) which commences aviation activities other than excluded aviation activities during the scheme years beginning on 1st January 2015 (“the 2015 activities”) or 1st January 2016 (“the 2016 activities”).

(2) Subject to paragraphs (3) to (7), B must apply to the regulator for a monitoring plan by the application date.

(3) Where B is unable to foresee the date on which it is due to commence, as appropriate, the 2015 activities or the 2016 activities, B must—

- (a) apply to the regulator for a monitoring plan without delay after B commences, as appropriate, the 2015 activities or the 2016 activities and in any event by a date no later than 6 weeks after the date on which the 2015 activities or the 2016 activities commence; and
- (b) include with the application a written explanation why B was unable to comply with paragraph (2).

(4) Paragraph (5) applies where B is unable to comply with paragraph (2) by reason only that B’s administering member State, referred to in Article 18a of the Directive, is not known by the application date.

(5) Where this paragraph applies B must—

- (a) apply to the regulator for a monitoring plan in respect of, as appropriate, the 2015 activities or the 2016 activities, without delay once information on B’s administering member State becomes available; and
- (b) include with the application a written explanation why B was unable to comply with paragraph (2).

(6) Paragraph (7) applies where B was a non-UK operator and becomes a UK administered operator after the transferred operator cut-off date.

(7) Where this paragraph applies, B must apply to the regulator for a monitoring plan by the transferred operator application date.

(8) In this regulation—

- (a) “application date” means—
  - (i) in the case of 2015 activities, the later of the date which is 4 months before the date on which the 2015 activities are due to commence or 31st January 2015; and
  - (ii) in the case of 2016 activities, the date which is 4 months before the date on which the 2016 activities are due to commence;
- (b) “transferred operator application date” means—
  - (i) in the case of 2015 activities, the later of the last day of the 8 week period beginning with the date on which B becomes a UK administered operator or 31st January 2015; and

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- (ii) in the case of 2016 activities, the last day of the 8 week period beginning with the date on which B becomes a UK administered operator; and
- (c) “transferred operator cut-off date” means the date which is 6 months before the date on which the 2015 activities, or 2016 activities, as appropriate, are due to commence.

### **Application for an emissions plan by a UK administered operator: post 2016 activities**

**32B.**—(1) This regulation applies—

- (a) to a UK administered operator (“C”) which commences only excluded aviation activities during the scheme years beginning on 1st January 2015 or 1st January 2016; and
- (b) where C carries out aviation activities after 31st December 2016 (“post-2016 activities”).

(2) Subject to paragraphs (3) to (7), C must apply to the regulator for a monitoring plan in respect of C’s post-2016 activities by a date which is no later than 4 months before the date on which C’s post-2016 activities are due to commence (the “application date”).

(3) Where C is unable to foresee the date on which it is due to commence post-2016 activities, C must apply to the regulator for a monitoring plan in respect of C’s post-2016 activities—

- (a) without delay after C commences the post-2016 activities and in any event by a date no later than 6 weeks after the date on which the post-2016 activities commence; and
- (b) include with the application a written explanation why C was unable to comply with paragraph (2).

(4) Paragraph (5) applies where C is unable to comply with paragraph (2) by reason only that C’s administering member State, referred to in Article 18a of the Directive, is not known by the application date.

(5) Where this paragraph applies, C must—

- (a) apply to the regulator for a monitoring plan in respect of C’s post-2016 activities without delay once information on C’s administering member State becomes available; and
- (b) include with the application a written explanation why C was unable to comply with paragraph (2).

(6) Paragraph (7) applies where C was a non-UK operator and becomes a UK administered operator after the transferred operator cut-off date.

(7) Where this paragraph applies, C must apply to the regulator for a monitoring plan by the transferred operator application date.

(8) In this regulation—

- (a) “transferred operator cut-off date” means the date which is 6 months before the post-2016 activities are due to commence; and
- (b) “transferred operator application date” means , the last day of the 8 week period beginning with the date on which C becomes a UK administered operator.

**32C.**—(1) An application for a monitoring plan under regulation 32A or 32B must include a draft plan to monitor the UK administered operator’s aviation emissions, together with the supporting documents which are required to be submitted under Article 12(1).

(2) If a UK administered operator has already been issued with an emissions plan (the “existing plan”)—

- (a) an application under regulation 32A or 32B may not be made without the agreement of the regulator; and

- (b) any plan issued under regulation 32A or 32B replaces the existing plan.”.

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

- 7.—(1) This regulation applies to regulation 33.  
(2) In the heading to the regulation, at the end, insert “before 1st January 2015”.  
(3) In paragraph (1), for “Without”, substitute “Subject to paragraph (4), without”.  
(4) After paragraph (3), insert—  
    “(4) This regulation does not apply after 31st December 2014.”.

8. After regulation 33, insert—

**“Requirement to notify the regulator if an emissions plan is not applied for on or after 1st January 2015**

- 33A.—(1) Where A person (“B”)—

- (a) becomes a UK administered operator on or after 1st January 2015; but  
(b) is not required to apply for a monitoring plan under regulation 32 or 32A,

B must, by the relevant date, notify the regulator in accordance with paragraph (2).

- (2) Where—

- (a) the relevant date is before 1st September 2016, the notification must state that—  
(i) B does not expect to commence an aviation activity within the four-month period beginning with the relevant date; or  
(ii) B does expect to commence an aviation activity within the four-month period beginning with the relevant date, but B expects to carry out only excluded aviation activities within that four-month period;  
(b) the relevant date is on or after 1st September 2016, 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.”.

**Monitoring and reporting emissions**

- 9.—(1) This regulation applies to regulation 35.  
(2) In paragraph (1), replace “Once” with “Subject to paragraph (5), once”.  
(3) In paragraph (2), replace “Monitoring” with “Subject to paragraph (5), monitoring”.  
(4) In paragraph (3), before “A” insert “Subject to paragraphs (6) and (9)”.  
(5) After paragraph (4), insert—  
    “(5) The obligation to monitor aviation emissions does not apply in respect of excluded aviation emissions for the scheme years beginning on 1st January 2015 and 1st January 2016.  
(6) The obligation to prepare a verified report of aviation emissions does not apply—  
(a) in respect of excluded aviation emissions, for the scheme years beginning with the scheme year beginning on 1st January 2013 and ending with the scheme year beginning on 1st January 2016; or  
(b) where, for the scheme years beginning on 1st January 2013 or 1st January 2014, A is an exempt non-commercial air transport operator.

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(7) Subject to paragraphs (8) and (9), A must submit to the regulator, by 31st March 2015, a verified report of aviation emissions for the scheme year beginning on 1st January 2013.

(8) The obligation in paragraph (7) does not apply—

- (a) in respect of excluded aviation emissions; or
- (b) where, for the scheme year beginning on 1st January 2013, A is an exempt non-commercial air transport operator.

(9) The obligation for the report to be verified in accordance with the Verification Regulation does not apply where—

- (a) A has annual reportable emissions of less than 25,000 tonnes; and
- (b) A has determined its emissions using the small emitters tool approved under the Small Emitters Tool Regulation and populated with data by Eurocontrol.”.

### **Variation of an emissions plan**

**10.**—(1) This regulation applies to regulation 37.

(2) After paragraph (3), insert—

“(3A) The regulator may, by giving notice to a UK administered operator, vary an emissions plan in order to take account of any amendments to the Directive which may be made from time to time.”.

### **Detention and sale of aircraft**

**11.** In regulation 39(2)(a)(i), after “Part 7”, insert “or regulation 87D(1)”.

### **Surrender of allowances: UK aircraft operators**

**12.**—(1) This regulation applies to regulation 42.

(2) In paragraph (1), for “For each scheme year”, substitute “Subject to paragraph (4), for each scheme year”.

(3) After paragraph (3), insert—

“(4) This regulation does not apply after 31st December 2014.”

**13.** After regulation 42, insert—

#### **“Surrender of allowances: UK aircraft operators: 2013, 2014 and subsequent scheme years**

**42A.**—(1) Subject to paragraph (3), by 30th April 2015, a UK administered operator (“A”) must surrender a number of allowances or aviation allowances equal to the sum of A’s annual reportable emissions for the scheme years beginning on 1st January 2013 and 1st January 2014.

(2) Subject to paragraph (3) and regulation 42B, for each scheme year beginning with the scheme year beginning on 1st January 2015, A must, by 30th April in the year following the end of the scheme year, surrender a number of allowances or aviation allowances equal to A’s annual reportable emissions for that scheme year.

(3) In respect of each scheme year beginning with the scheme year beginning on 1st January 2013 and ending with the scheme year beginning on 1st January 2016, the duty in paragraphs (1) and (2) does not apply in respect of A’s excluded aviation emissions.

(4) Subject to regulation 42B, in respect of the scheme years beginning on 1st January 2013 and 1st January 2014, the duty in paragraph (1) does not apply if the UK administered operator is an exempt non-commercial air transport operator.

**Surrender of a deficit of allowances: UK administered operators**

**42B.**—(1) Paragraphs (2) and (3) apply where a deficit arises in respect of compliance by a UK administered operator with regulation 42A(1) or 42A(2) in respect of a scheme year (the “non-compliance year”).

(2) Where the deficit does not result from an error in the verified emissions report submitted by the UK administered operator, the amount of allowances or aviation allowances that the UK administered operator is required to surrender under regulation 42A(2) in respect of the recovery year is increased by an amount of allowances or aviation allowances equal to the deficit.

(3) Where the deficit results from an error in the verified emissions report submitted by the UK administered operator, the amount of annual reportable emissions of the UK administered operator in the year in which the error is discovered, for the purpose of regulation 42A(1) or (2), is increased by an amount of annual reportable emissions equal to the deficit.

(4) In this regulation—

(a) the “deficit” means a shortfall in the number of allowances or aviation allowances surrendered, calculated as—

(i) where the non-compliance year is any scheme year beginning with the scheme year beginning on 1st January 2013 and ending with the scheme year beginning on 1st January 2016,  $x - y - z$ , where—

‘x’ is the amount of annual reportable emissions arising in the non-compliance year;

‘y’ is the amount of excluded emissions arising in the non-compliance year; and

‘z’ is the amount of allowances or aviation allowances which the UK administered operator surrendered in respect of the non-compliance year; and

(ii) where the non-compliance year is any scheme year beginning with the scheme year beginning on 1st January 2017,  $x - y$ , where—

‘x’ is the amount of annual reportable emissions arising in the non-compliance year; and

‘y’ is the amount of allowances or aviation allowances which the UK administered operator surrendered in respect of the non-compliance year; and

(b) the “recovery year” means, in respect of a failure to comply with—

(i) regulation 42A(1), the scheme year beginning on 1st January 2015; or

(ii) regulation 42A(2), the scheme year following the non-compliance year.”.

**Penalty notices**

**14.** In regulation 50(1), after “this Part”, insert “or regulation 87D(1)”.

**Failure to surrender allowances**

**15.** In regulation 54(1), for “regulation 42”, substitute “regulation 42A”.

**Failure to submit an application for an emissions plan**

**16.**—(1) This regulation applies to regulation 60.

(2) In paragraph (1), for “A UK administered operator”, substitute “Subject to paragraphs (3) and (4), a UK administered operator”.



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(3) In paragraph (1)(a), for “regulation 32(1)”, substitute “regulation 32(1), 32A(2) or 32B(2)”.

(4) In paragraph 1(b), for “regulation 32(4)”, substitute “regulation 32(4), 32A(3)(b), 32A(5)(b), 32B(3)(b) or 32B(5)(b)”.

(5) After paragraph (2), insert—

“(3) A is not liable to a civil penalty for a failure to apply to the regulator for a monitoring plan, contrary to regulation 32(1), in so far as the duty to apply arose—

(a) before 1st January 2015; and

(b) only in relation to excluded aviation activities.

(4) To the extent that A was required to apply to the regulator for a monitoring plan under regulation 32(1), A is not liable to a civil penalty for a failure to apply where—

(a) the duty to apply arose before 1st January 2015; and

(b) when the duty arose, A was an exempt non-commercial air transport operator.”.

### **Failure to notify the regulator if an emissions plan is not applied for**

**17.**—(1) This regulation applies to regulation 61.

(2) In paragraph (1), for “A UK administered operator”, substitute “Subject to paragraph (3), a UK administered operator” and after “regulation 33(1)”, insert “or regulation 33A(1)”.

(3) After paragraph (2), insert—

“(3) A is not liable to a civil penalty for a failure to comply with regulation 33(1), where the duty under that regulation arose before 1st January 2015 and, at the time the duty arose—

(a) A carried out only excluded aviation activities; or

(b) A was an exempt non-commercial air transport operator.”.

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

**18.**—(1) In regulation 63(1), for “A UK administered operator”, substitute “Subject to paragraph (3), a UK administered operator”.

(2) After paragraph (2), insert—

“(3) A is not liable to a civil penalty for a failure to monitor emissions for the scheme years beginning on 1st January 2013 and 1st January 2014 in so far as—

(a) the duty to monitor arose in respect of excluded aviation activities; or

(b) A was an exempt non-commercial air transport operator.”.

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

**19.**—(1) This regulation applies to regulation 64.

(2) In paragraph (1), for “A UK administered operator”, substitute “Subject to paragraph (3), a UK administered operator”.

(3) After paragraph (2), insert—

“(3) A is not liable for a civil penalty for a failure to report, by 31st March 2014, aviation emissions for the scheme year beginning on 1st January 2013.

(4) A is liable to the civil penalty in paragraph (2) where, contrary to regulation 35(7), A fails to report, by 31st March 2015, its aviation emissions for the scheme year beginning on 1st January 2013.”.

**Publication of names of persons subject to penalties under regulation 54(1) or regulation 87D(1)**

- 20.—(1) This regulation applies to regulation 71.
- (2) In the heading to regulation 71, after “regulation 54(1)”, insert “or regulation 87D(1)”.
- (3) In paragraph (1), after “regulation 54(1)”, insert “or regulation 87D(1)”.
- (4) In paragraph (2), after “regulation 54(1)”, insert “or regulation 87D(1)”.

**Savings and transitional provisions: the 2010 Regulations**

- 21.—(1) This regulation applies to regulation 87.
- (2) In paragraph (5), for “Regulations”, substitute “Subject to regulation 87C, regulations”.
- (3) In paragraph (8), for “87A and 87B”, substitute “87A, 87B and 87C”.
- (4) After regulation 87B insert—

**“Duty to surrender allowances equal to the deficit in respect of emissions arising in 2012**

87C.—(1) Paragraph 26(2)(b) of the 2010 Regulations ceases to have effect after 31st December 2014.

(2) A person is not liable to a civil penalty for a failure to surrender allowances or project credits equal to a deficit, contrary to regulation 26(2)(b) of the 2010 Regulations.

(3) Where a person (“P”) is subject to a duty under regulation 26(1) of the 2010 Regulations in respect of the calendar year beginning on 1st January 2012, paragraph (6) applies if the condition in paragraph (4) or (5) is met.

(4) This condition is that—

- (b) the condition in regulation 87A(3) applies; and
- (b) P has failed, by 30th April 2013, to surrender allowances or project credits equal to P’s non-international emissions, in respect of the calendar year from 1st January 2012.

(5) This condition is that—

- (a) the condition in regulation 87A(3) does not apply; and
- (b) P has failed, by 30th April 2013, to surrender sufficient allowances or project credits equal to P’s aviation emissions, in respect of the calendar year from 1st January 2012.

(6) Where this paragraph applies, P must, by the relevant date, surrender allowances or project credits equal to the deficit.

(7) For the purpose of this regulation—

- (a) “allowance” includes an aviation allowance;
- (b) the “deficit” means a shortfall in the number of allowances or aviation allowances surrendered, calculated as—

(i) where paragraph (4) applies,  $w - x$ , where—

‘w’ is the amount of non-international emissions of P arising in the calendar year from 1st January 2012; and

‘x’ is the amount of allowances or project credits which P surrendered in respect of the calendar year from 1st January 2012; and

(ii) where paragraph (6) applies,  $y - z$ , where—

‘y’ is the amount of annual reportable emissions of P arising in the calendar year from 1st January 2012; and

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‘z’ is the amount of allowances or project credits which P surrendered in respect of the calendar year from 1st January 2012;

- (c) “international activity” has the meaning given in regulation 87A;
- (d) “international emissions” has the meaning given in regulation 87A;
- (e) “non-international emissions” means aviation emissions arising from all aviation activity except for international activity;
- (f) “project credits” has the meaning given in regulation 26 of the 2010 Regulations; and
- (g) the “relevant date” means the later of—
  - (i) 30th April 2015; or
  - (ii) 30th April in the year after the aircraft operator is given notice under regulation 26(2)(a) of the 2010 Regulations.

### **Failure to surrender allowances equal to the deficit in respect of emissions arising in 2012**

**87D.**—(1) A person (“Q”) is liable to a civil penalty where Q fails to surrender sufficient allowances or project credits by the relevant date, contrary to regulation 87C.

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

(3) Regulation 54(8) applies to the excess emissions penalty under paragraph (2), as it applies to the excess emissions penalty under regulation 54(2).”.

### **Allocation of allowances: interpretation**

**22.** After paragraph (1) of Schedule 7, insert—

#### **“Interpretation**

**1A.** For the purpose of paragraphs (2) to (9) of this Schedule—

“aviation activity” means an activity listed in the table in Annex I to the Directive under the section titled ‘Aviation’, but—

- (a) excluding the activities listed under points (a) to (j) of that section, and
- (b) disapplying the exclusion in point (k) of that section.”.

### **Allocation of aviation allowances from the special reserve**

**23.**—(1) This regulation applies to Schedule 8.

(2) In paragraph (5), for “benchmarking year”, substitute “second calendar year in the trading period”.

(3) In paragraph 8, after “Article 3f(7), insert “and Article 28a(2)”.

(4) After paragraph 8 of Schedule 8, insert—

#### **“Maximum allocation of aviation allowances from the special reserve**

**9.** An allocation of allowances to be issued from the special reserve under Article 3f of the Directive in any trading period shall not exceed 1,000,000 allowances.”.

### **Aircraft operator bans**

**24.** After paragraph 1(4) of Schedule 10, insert—

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“(5) A request from the Secretary of State to the European Commission under Article 16(5) of the Directive must include—

- (a) evidence that A has not complied with its obligations under these Regulations;
- (b) details of any enforcement action against A that has been taken by the regulator;
- (c) a justification for the imposition of an operating ban under Article 16(5) of the Directive; and
- (d) a recommendation for the scope of the operating ban and any conditions that should be applied.”.

Date 2014

*Name*  
Minister of State  
Department of Energy and Climate Change

### EXPLANATORY NOTE

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

These Regulations implement Regulation No 241/2014 of the European Parliament and of the Council of 16 April 2014 (the “EU Regulation”), (a) amending Directive 2003/87/EC (the “Directive”), in view of the implementation by 2020 of an international agreement applying a single global market-based measure to international aviation emissions. The Directive is currently implemented in the UK by the Greenhouse Gas Emissions Trading Scheme Regulations 2012 (S.I. 2012/3038) (the “2012 Regulations”). The 2012 Regulations require aircraft operators which are administered by the UK to monitor and report their aviation emissions each calendar and then to surrender sufficient emissions trading allowances to cover those emissions. These regulations amend the 2012 Regulations.

The 2012 Regulations consolidated (with amendments) and replaced the previous implementing Regulations, in particular the Aviation Greenhouse Gas Emissions Trading Scheme Regulations 2010 (S.I. 2010/1996) (the “2010 Regulations”). The 2010 Regulations were revoked, with savings and transitional provisions, by Part 11 of the 2012 Regulations. By virtue of regulation 87 of that Part, the obligations of aircraft operators under regulation 26 of the 2010 Regulations (and the corresponding civil penalties) continue to apply in respect of aviation emissions arising before 2013.

The EU Regulation provides for a temporary derogation from the obligation to monitor and report emissions and to surrender allowances in respect of flights between an aerodrome in the European Economic Area (the “EEA”) and an aerodrome in a country outside the EEA in the calendar years from 2013 to 2016. For these purposes, flights between Croatia and an EEA state are treated as flights between states of the EEA for the whole of this period. The derogation also covers flights between an area of the EEA which is not an outermost region and an outermost region. The EU Regulation also provides for a derogation from the obligation to apply to the regulator for a monitoring plan in respect of these flights.

In addition, the EU Regulation provides that flights of non-commercial air transport operators with total annual emissions of less than 1,000 tonnes of carbon dioxide are not “aviation activities” which are covered by the Directive from 2013 to 2020.

The EU Regulation also provides that 2013 emissions are required to be reported by 31st March 2015 (not 2013 March 2014, as in the ordinary course), and allowances in respect of 2013

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(a) OJ No L 129, 30.4.2012, p 1-4.

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emissions are required to be surrendered by 30th April 2015 (not 30th April 2014, as in the ordinary course). The EU Regulation also provides a derogation from the obligation for the report of aviation emissions to be verified, for operators with total annual emissions of less than 25,000 tonnes of carbon dioxide, and where the operator has determined its emissions using the small emitters tool.

*Regulation 2* amends the definitions in regulation 3 of the 2012 Regulations. In particular, it amends the definition of “aviation activities” to refer to the new exemption in the EU Regulation in respect of flights by non-commercial air transport operators with total annual emissions of less than 1,000 tonnes of carbon dioxide, to apply from 2015 to 2020. It also includes a definition of “exempt non-commercial air transport operator”.

*Regulation 3* updates the powers of entry exercisable by the Secretary of State in relation to offshore installations. It provides that the Secretary of State may exercise powers under the Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2013.

*Regulation 4* amends the definitions in regulation 20 of the 2012 Regulations. In particular, it includes a new definition of “excluded aviation activities”, which relates to flights between an EEA state and a country outside the EEA, and flights between a region of the EEA which is not an outermost region, and an outermost region.

*Regulation 5* and *Regulation 6* amend regulation 32 of the 2012 Regulations and add new regulations 32A and 32B. The amendment to regulation 32 and new regulation 32A implement the derogation from the duty to apply to the regulator for a monitoring plan in respect of aviation operators which carry out only excluded aviation activity. New regulation 32B then provides that an operator which has only carried out excluded aviation activity in 2015 and 2016 must apply for a monitoring plan before carrying out aviation activities after 2016.

*Regulation 7* and *regulation 8* replace the existing duty in regulation 33 of the 2012 Regulations to notify the regulator that a monitoring is not applied for, with a new duty which applies from 1st January 2015 (in regulation 33A). The new duty takes account of the derogation from the duty to apply for a monitoring plan in respect of an operator which carries out only excluded aviation activities for the years 2015 and 2016.

*Regulation 9* amends regulation 35 of the 2012 Regulations to provide that the duty to monitor and report emissions does not apply for excluded aviation activity between 2013 and 2016 and does not apply to exempt non-commercial air transport operators for 2013 and 2014 aviation activity. It also provides that the verified report for 2013 must be submitted by 31st March 2015. In addition, it implements the derogation from the obligation for a report of emissions to be verified, in respect of operators with annual emissions of less than 25,000 tonnes of carbon dioxide, where the operator has determined their emissions using the small emitters tool.

*Regulation 10* provides a power for the regulator to amend an emissions plan to take account of any changes to the Directive.

*Regulation 11* makes provision for the detention and sale of aircraft if an operator fails to pay a civil penalty under new regulation 87D.

*Regulation 12* and *regulation 13* replace regulation 42 of the 2012 Regulations with new regulations 42A and 42B. New regulation 42A provides that allowances in respect of 2013 emissions and 2014 emissions must be surrendered by 30th April 2015. For subsequent years from 2015 onwards, sufficient allowances to cover emissions for the year must be surrendered by 30th April the following year. Regulation 42A also provides that for 2013 to 2016, there is no duty to surrender allowances in respect of emissions from excluded aviation activities. Regulation 42B provides that where an insufficient number of allowances are surrendered, the deficit is deemed to be added to the amount of allowances to be surrendered in the following year.

*Regulation 14* provides for the service of a penalty notice in respect of the penalty in new regulation 87D.

*Regulation 15* provides that a penalty applies for a failure to surrender sufficient allowances.

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*Regulation 16* amends the penalty in regulation 60 of the 2012 Regulations which applies for a failure to submit an application for an emissions plan. It provides that a penalty also applies to a failure to comply with regulation 32A or 32B. It also provides that there is no penalty for a failure to submit an application where the duty arose in 2013 or 2014 and either the operator carried out only excluded aviation activities, or the operator was an exempt non-commercial air transport operator.

*Regulation 17* amends the penalty in regulation 61 of the 2012 Regulations for a failure to notify the regulator if an emissions plan is not applied for to refer to a failure to comply with the new duty in regulation 33A.

*Regulation 18* provides that an operator is not liable to a civil penalty for a failure to monitor emissions in respect of excluded aviation activities in 2013 and 2014 and that an operator which was an exempt non-commercial operator in 2013 or 2014 shall not be liable to a penalty for a failure to monitor emissions for those years.

*Regulation 19* provides that an operator is not liable to a civil penalty for a failure to report 2013 emissions by 31st March 2014. It also provides for a new civil penalty for a failure to report 2013 emissions by 31st March 2015.

*Regulation 20* provides that the regulators must publish the names of operators which have not complied with the duty to surrender allowances equal to a deficit under regulation 87D.

*Regulation 21*, which inserts a new regulation 87C, relates to the duty under regulation 26(2)(b) of the 2010 Regulations for an operator which did not surrender sufficient allowances or project credits in any year, to surrender a number of allowances or project credits equal to the deficit in the year following the year in which the regulator gives notice of the failure. It provides that this duty no longer applies after 31st December 2014 and an operator is not liable to a civil penalty for a failure to comply with that duty. Instead, it provides a new duty to surrender a number of allowances equal to the deficit by the later of 30th April 2015, or 30th April in the year following the year in which the operator is given notice of the failure to surrender sufficient allowances or project credits in respect of 2012 emissions. *Regulation 21* also inserts a new regulation 87D which provides for a civil penalty for the failure to comply with the duty to surrender the deficit in new regulation 87C.

*Regulation 22* amends the definition of “aviation activities” where it arises in Schedule 7.

*Regulation 23* amends Schedule 8 of the 2012 Regulations, to provide that an allocation of allowances from the special reserve shall not exceed 1,000,000 allowances, and corrects an error relating to the year for which operators are required to monitor tonne-kilometre data when making an application for an allocation of allowances from the special reserve.

*Regulation 24* amends Schedule 10 of the 2012 Regulations to set out the requirements where the Secretary of State requests the European Commission to impose an operating ban under Article 16(5) of the Directive.

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 EU Regulation is annexed to that Explanatory Memorandum.