



Department for
Business, Energy
& Industrial Strategy



Department
for Transport



Department of
Agriculture, Environment
and Rural Affairs
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Llywodraeth Cymru
Welsh Government



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Government

Implementing Amendments to the Aviation EU Emissions Trading System in UK Regulations: Government response



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Introduction

On 8 December 2017 the Department for Business, Energy & Industrial Strategy, Department for Transport and the Devolved Administrations jointly launched a consultation on the UK implementation of amendments to the Aviation EU Emissions Trading System¹.

The consultation closed on 5 January 2018 and seven responses were received, including from the following organisations:

1. British Helicopter Association
2. Board of Airline Representatives in the UK
3. Airlines UK
4. International Air Transport Association (IATA)

Three other organisations submitted responses but wished to remain anonymous.

The Government found the responses constructive and helpful, and is very grateful to all the organisations who took the time to respond to this consultation. Responses have been taken into account in finalising the Greenhouse Gas Emissions Trading Scheme (Amendment) Regulations 2018. This document sets out the Government's position on the key issues highlighted through the consultation process.

Policy responsibility for UK implementation of the Aviation EU ETS lies jointly with the Department for Business, Energy & Industrial Strategy (BEIS) and the Department for Transport (DfT), together with the Scottish Government, Welsh Government and the Northern Irish Executive. Therefore references to Government in this document also cover the Devolved Administrations.

On 23 June 2016, the EU referendum took place and the people of the UK voted to leave the EU. Until exit negotiations are concluded, the UK remains a full member of the EU and all the rights and obligations of EU membership remain in force. The outcome of the exit negotiations will determine what arrangements apply in relation to EU legislation once the UK has left the EU. As the Clean Growth Strategy sets out, the UK Government is considering the UK's future participation in the EU ETS after our exit from the EU and we remain firmly committed to carbon pricing as an emissions reduction tool, whilst ensuring energy and trade intensive businesses are appropriately protected from any detrimental impacts on competitiveness. Whatever our future relationship with the EU, we will seek to ensure that our future approach is at least as ambitious as the existing scheme and provide a smooth transition for the relevant sectors.

¹ EU regulation /2017/2392 was published on 29 December 2017

Summary of responses

The consultation covered the UK implementation of EU Regulation 2017/2392² (“the EU Regulation”), which amended Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowance trading within the Community.

The proposed statutory instrument (“the Amending Regulations”) will amend the Greenhouse Gas Emissions Trading Scheme Regulations 2012 (“the 2012 Regulations”) to reflect the changes implemented by the EU Regulation.

The Amending Regulations extend the temporary derogation³ 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 until 2023. The derogation also covers flights between different outermost regions, and between an area of the EEA which is not an outermost region and an outermost region. The Amending Regulations also extend the exemption threshold from 2020 to 2030 for non-commercial aircraft operators emitting less than 1,000 tonnes of carbon dioxide (CO₂) per year. They also introduce simplified procedures for operators emitting less than 3,000 tonnes of CO₂ per year on intra-EEA flights.

The consultation questions were as follows:

1. Do you agree with the proposed approach to amending the Greenhouse Gas Emissions Trading Scheme Regulations 2012? If not, please explain why.
2. Do you believe there is an alternative method, other than what is proposed here, of implementing the agreed changes into UK law? If so, please outline your suggested method.
3. Are there parts of the proposal to amend the Greenhouse Gas Emissions Trading Scheme Regulations 2012 where further clarity is needed? If so, please explain.

² EU Regulation 2017/2392 of the European Parliament and of the Council of 13 December 2017 amending Directive 2003/87/EC to continue current limitations of scope for aviation activities and to prepare to implement a global market-based measure from 2021

³ The EU temporarily reduced the scope of the Aviation EU ETS to only include flights between EEA airports (known as “intra-EEA scope”) for the 2012 compliance year under the “Stop the Clock” decision. It was subsequently agreed that the “intra-EEA scope” should be extended for 2013 until 2016. The Stop the Clock decision – available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32013D0377>

4. Are you able to provide any additional evidence relating to the impacts which the accompanying UK Impact Assessment has not taken into account? If so, please state these e.g. impacts on the competitiveness of your business and/or your aircraft operations in comparison to others.

Taking each question in turn:

Question 1: Do you agree with the proposed approach to amending the Greenhouse Gas Emissions Trading Scheme Regulations 2012? If no, please explain why.

Consultation response

Six respondents answered this question.

Five agreed with the proposed approach. The other respondent said that it is vital that the EU ETS and the corresponding UK regulations enable full support in the International Civil Aviation Organisation ICAO of the adoption of the Carbon and Offsetting and Reduction System (CORSIA).

Government response

In order to advance progress at ICAO, the EU has twice adopted time bound derogations on the scope of the Aviation EU ETS to cover just intra EEA flights. To facilitate ICAO's work it was agreed to extend the derogation until 2023. This derogation is being implemented into UK legislation through the Amending Regulations.

Question 2: Do you believe there is an alternative method, other than what is proposed here, of implementing the agreed changes into UK law? If so, please outline your suggested method.

Consultation response

Five respondents answered this question. All five thought that there was no alternative method other than the proposed approach to implement the changes to the Aviation EU ETS into UK law.

Question 3: Are there parts of the proposal to amend the Greenhouse Gas Emissions Trading Scheme Regulations 2012 where further clarity is needed? If so, please explain.

Consultation response

Five respondents answered this question.

Two respondents said that no parts of the proposal to amend the Greenhouse Gas Emissions Trading Scheme Regulations 2012 required further clarity. Three respondents said that there were parts of the proposal which required further clarity. Of these three:

- One asked for further clarity with regard to UK domestic compliance and EU exit.
- One asked for a justification of the introduction of the new threshold which allowed aircraft operators with emissions below 3,000 tonnes per annum from intra EEA flights to benefit from the use of the small emitters tool for the verification of emissions. They also asked what this new system would look like and whether there would be any impact of Eurocontrol Support Facility (ESF) reports once the UK leaves the EU.
- One queried whether the EU regulation excludes helicopter flights to the North Sea and that inclusion within the UK Regulations would place UK operators at a commercial disadvantage in comparison to other European operators.

Government response

With regard to UK domestic compliance, the regulations must be amended to apply to compliance for the 2017 calendar year and will therefore come into force on 31 March 2018, while the UK remains a full member of the EU and all the rights and obligations of EU membership remain in force. Looking further ahead, the Government is considering the UK's future participation in the EU ETS after our exit from the EU and we remain firmly committed to carbon pricing as an emissions reduction tool, whilst ensuring energy and trade intensive businesses are appropriately protected from any detrimental impacts on competitiveness. Article 50 negotiations have now progressed to their second phase, which will include discussions on an implementation period of around two years. The Government has been clear that this period will be based on the existing structure of EU rules and regulations. Should this be agreed, it will provide clarity for UK-regulated EU ETS participants for the remainder of Phase III.

The rules for operators emitting less than 3,000 tonnes of CO₂ per year were introduced to simplify the monitoring, reporting and verification requirements for operators emitting with only a small number of intra EEA flights. The EU Regulation states that emissions below 3,000 tonnes on intra-EEA flights shall be considered verified emissions if determined by using the small emitters tool approved under commission Regulation 606/2010 and populated by Eurocontrol data with data from its Eurosupport facility⁴. Aircraft operators covered by the EU ETS will continue to enjoy access to the Eurocontrol ETS Support

⁴ Updated guidance on monitoring and reporting is available at: <https://www.gov.uk/guidance/eu-ets-monitoring-and-reporting>

Facility after the UK leaves the EU. No decision has been taken on whether the UK competent authority will retain its access.

On helicopter flights to the North Sea, the EU Regulation extends the end date for the derogation which limits the scope of the Aviation EU ETS to intra EEA flights. It makes no change to the flights that are covered within the scheme. Flights between an aerodrome in the EEA and offshore installations of EEA countries that are outside territorial waters such as oil and gas platforms will still be covered. These rules apply to all operators.

Question 4: Are you able to provide any additional evidence relating to the impacts which the accompanying UK Impact Assessment has not taken into account? If so, please state these e.g. impacts on the competitiveness of your business and/or your aircraft operations in comparison to others.

Consultation response

Five respondents answered this question. Four of the respondents were not able to provide any additional evidence.

One respondent provided further evidence, making reference to a specific case where a penalty was issued to an operator.

Government response

The rules for issuing penalties for non-compliance are set out in Directive 2003/87/ EC. The specific details of enforcement action taken against individual operators is outside the scope of this consultation.

Wider responses to the EU regulation

Whilst the scope of the consultation was limited to the proposed amendments to the UK Regulations, three respondents commented more widely on the EU Regulation.

All three respondents thought that all international flights to/from/between EEA airports should only be subject to the CORSIA and removed from the EU ETS from 1 January 2021. They supported the extension to the derogation limiting the scope of the Aviation EU ETS until 2020. One of these respondents noted that the end date for the derogation of 31 December 2023 was inconsistent with the introduction of CORSIA.

Two of the three respondents noted that the de-minimis thresholds of 10,000 tonnes CO₂ per year or more than 243 flights in three consecutive four month periods remained unchanged and that non EEA carriers whose aviation activity was above these thresholds would need to meet EU ETS compliance requirements for a diverted flight. One of these

respondents welcomed the introduction of 3,000 tonne threshold for simplified procedures but believed that it was a missed opportunity to not exempt these operators fully to avoid a disproportionate burden on operators and authorities.

Government response

With regard to whether CORSIA should be the only the schemes in place from 2021, it was agreed during the EU negotiations that a review will be carried out once there is more certainty about the nature and content of the CORSIA and the steps taken by third countries for its implementation. The European Commission will report on these developments and consider the rules applicable to flights within the EEA as appropriate taking account of EU climate objectives and commitments under the Paris Agreement.

The introduction of a new provision to exempt emissions from diverted flights was considered during the EU negotiations but was not included in the final agreement. It was noted that such a provision would lead to an increase in the administrative burden on regulators and would be difficult to enforce because there was no agreed definition on what would constitute a diverted flight. It was also noted that diverted flights could be covered within the new threshold allowing operators to use simplified procedures if their intra EEA emissions are below 3,000 tonnes. The purpose of this new threshold was to reduce the administrative burden for operators with only a small number of intra EEA flights and is in addition to the existing threshold allowing simplified procedures for operators with emissions below 25,000 tonnes full scope.

Conclusions and next steps

The Government has carefully considered the responses generated by this consultation and has decided that no substantive changes need to be made to the proposed statutory instrument or the impact assessment on the basis of them.

It is expected that the proposed amendments to the UK Regulations in the statutory instrument will be laid before Parliament on 9 March. The statutory instrument is expected to come into force on 31 March.



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