STATUTORY INSTRUMENTS

2013 No. 1037

CLIMATE CHANGE

The Greenhouse Gas Emissions Trading Scheme (Amendment) Regulations 2013

Made - - - -	*29th April 2013*
Laid before Parliament	*3rd May 2013*
Coming into force - -	*23rd May 2013*

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.

Accordingly the Secretary of State, in exercise of the powers conferred by section 2 of and Schedule 1 to the 1999 Act(**d**), and by section 2(2) of the European Communities Act 1972, makes the following Regulations(**e**):

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Greenhouse Gas Emissions Trading Scheme (Amendment) Regulations 2013 and come into force on 23rd May 2013.

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

(**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**) There are amendments to Schedule 1 which are not relevant to these Regulations.
(**e**) 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.
(**f**) S.I. 2012/3038; those Regulations are amended by Schedule 4 to W.S.I. 2013/755 (W. 90) (see in particular paragraph 425).

Amendment of the Greenhouse Gas Emissions Trading Scheme Regulations 2012

2.—(1) In regulation 3, in the definition of "allocation"—

(a) for "1 or 2" substitute "2 or 3"; and

(b) insert at the end "(and, except in regulation 87A(3), "allocated" has the corresponding meaning)".

(2) In regulation 87(8), for "The following" substitute "Subject to regulation 87A below, the following".

(3) After regulation 87 insert—

"**Obligations in relation to aviation emissions arising before 2013**

87A.—(1) In this regulation—

"international activity" means an aviation activity performed in 2010, 2011 or 2012 and consisting in a flight departing from, or arriving in, an aerodrome situated in any country or territory other than—

(a) an EEA state;

(b) Croatia;

(c) Switzerland; or

(d) a country or territory listed in paragraph (6);

"international allowance" means an aviation allowance that has been allocated free of charge for 2012 in consequence of an international activity;

"international emissions" means aviation emissions arising from an international activity;

"P" is any person on whom a duty is imposed under regulation 20, 21 or 26 of the 2010 Regulations.

(2) Where the condition in paragraph (3) is satisfied, P is not liable to any civil penalty in respect of a failure to—

(a) monitor aviation emissions, contrary to regulation 20 of the 2010 Regulations, in so far as the duty to monitor arises in respect of P's international emissions;

(b) report aviation emissions, contrary to regulation 21 of the 2010 Regulations, in so far as the duty to report arises in respect of P's international emissions; or

(c) surrender sufficient allowances or project credits, contrary to regulation 26(1) of the 2010 Regulations, in so far as the duty to surrender arises in respect of P's international emissions.

(3) The condition is that P—

(a) has not been issued with any international allowances; or

(b) has, before 29th May 2013, returned a sum of aviation allowances allocated for 2012 equal to the international allowances that were issued to P.

(4) For the purposes of paragraph (3)(b), an allowance is returned if it is transferred to an account in the Union Registry opened by the registry administrator with the name "aviation return account".

(5) The registry administrator must cancel any allowances returned under paragraph (3)(b).

(6) The countries or territories are—

Greenland;

Faeroe Islands;

French Polynesia;

Mayotte;

New Caledonia,
Saint Barthélemy;
Saint Pierre and Miquelon;
Wallis and Futuna;
Aruba;
Bonaire;
Saba;
Sint Eustasius;
Curaçao;
Sint Maarten;
Svalbard;
Anguilla;
Bermuda;
British Antarctic Territory;
British Indian Ocean Territory;
British Virgin Islands;
Cayman Islands;
Falkland Islands;
Bailiwick of Guernsey;
Isle of Man;
Bailiwick of Jersey;
Montserrat;
Pitcairn Islands;
Saint Helena;
Ascension and Tristan da Cunha;
South Georgia and the South Sandwich Islands;
Turks and Caicos Islands;
Sovereign Base Areas of Akrotiri and Dhekelia;
Andorra;
Monaco;
San Marino;
Vatican City.".

Greg Barker
Minister of State
Department of Energy and Climate Change

29th April 2013

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Decision No 377/2013/EU of the European Parliament and of the Council of 24 April 2013 derogating temporarily from Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community(**a**) ("the EU Decision"). That Directive is currently implemented in United Kingdom by the Greenhouse Gas Emissions Trading Scheme Regulations 2012 (S.I. 2012/3038), which came into force on 1st January 2013 ("the 2012 Regulations"). Those 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 regulations 21 and 26 of the 2010 Regulations (and the corresponding civil penalties) continue to apply in respect of aviation emissions arising before 2013. Under regulation 21, an aircraft operator must (for each calendar year from 1st January 2010) submit to the regulator a verified report of aviation emissions, and must do so by 31st March in the following year. Those obligations are accordingly preserved up to and including the 31st March 2013 reporting deadline. Under regulation 26, the aircraft operator must (for each calendar year from 1st January 2012) surrender emissions trading allowances, or project credits under the Kyoto Protocol, equal to the operator's aviation emissions in that year, and must do so by 30th April in the following year. That obligation is accordingly preserved for the purpose of the 30th April 2013 surrender deadline. Furthermore, the civil penalty for failing to monitor aviation emissions in each of the calendar years 2010, 2011 and 2012 continues to apply.

The EU Decision requires Member States not to enforce those obligations for the years in question, to the extent that they arise in respect of flights to or from an aerodrome outside the European Economic Area (EEA), unless the aerodrome is in a closely connected area (such as Switzerland, Croatia, or a dependent territory of an EEA state). However, that temporary derogation does not apply where the aircraft operator has (for 2012) been issued with a free allocation of aviation allowances in respect of such flights, and has not returned an equivalent number of such allowances.

Regulation 2(2) and (3) of these Regulations amends Part 11 of the 2012 Regulations to give effect to that derogation. Thus no liability to a civil penalty arises in relation to a failure to monitor and report emissions arising from such flights, or to surrender the corresponding number of allowances, provided that the relevant number of free allowances issued to the operator for 2012 has been returned. Any allowances that are returned must then be cancelled by the registry administrator. *Regulation 2(1)* makes a consequential amendment to a definition in regulation 3 of the 2012 Regulations, and corrects a numbering error in that definition.

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 Decision is annexed to that Explanatory Memorandum.

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(**a**) OJ No L 113, 25.4.2013, p 1.

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