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STATUTORY INSTRUMENTS

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**2010 No. 1996**

**The Aviation Greenhouse Gas Emissions  
Trading Scheme Regulations 2010**

**PART 8**

**Civil penalties**

**Procedure**

**30.**—(1) Where the regulator is satisfied that a person is liable to a civil penalty under regulations 33 to 41 the regulator must—

- (a) serve a notice on the person liable to the civil penalty; and
- (b) state in that notice whether or not the person is liable to a daily penalty in accordance with regulation 33(2), 34(2), 35(2), 37(2) or 39(2) (“additional daily penalty”).

(2) Where the regulator is satisfied that a person is liable to an additional daily penalty the regulator must, when the amount of the additional daily penalty can be determined, serve a notice on the person liable to the penalty specifying the total amount due under this Part.

(3) Where a civil penalty does not include an additional daily penalty the notice under paragraph (1) must specify the total amount due; and that penalty is due one month after notice is served under that paragraph.

(4) Where a civil penalty includes an additional daily penalty that penalty is due on the date one month after notice is served under paragraph (2).

(5) A civil penalty must be paid to the regulator.

(6) Any civil penalty imposed by virtue of a notice under paragraphs (1) or (2) is recoverable by the regulator—

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

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

- (a) give notice to the authority of any notice of a civil penalty served under paragraph (1) or (2), or any further notice served under paragraph (8); and
- (b) pass any civil penalty paid to it to the authority.

(8) Where the regulator has served a notice on a person under paragraph (1) or (2), and paragraph (9) applies, the regulator may (by serving a further notice)—

- (a) withdraw the notice; or
- (b) modify the notice by substituting a lower civil penalty.

(9) This paragraph applies where, at any time before the penalty specified in the notice is due, the regulator ceases to be satisfied that the person is liable to the penalty specified.

**Variable amounts**

31.—(1) Where—

- (a) an aircraft operator is liable to a civil penalty under regulation 34 or 37;
- (b) a UK operator is liable to a civil penalty under regulation 39;
- (c) an aerodrome operator is liable to a civil penalty under regulation 40; or
- (d) a person is liable to a civil penalty under regulation 41,

the regulator may, in a notice given under regulation 30, substitute a lower amount than specified in those regulations.

(2) Before substituting a lower amount under paragraph (1) the regulator must—

- (a) take into account the seriousness of the failure to comply; and
- (b) ensure that the new amount provides for an effective and dissuasive penalty.

**Waiver and modification**

32.—(1) Subject to paragraph (3), paragraph (2) applies where—

- (a) within 8 weeks of the service of the notice under regulation 30(1) the relevant person (“P”) demonstrates to the satisfaction of the regulator (or the regulator at any time becomes satisfied) that P exercised all due diligence and took all steps possible—
  - (i) to comply with the provision of these Regulations giving rise to the penalty; or
  - (ii) to rectify any failure in compliance as soon as it came to P’s notice, provided that P was acting reasonably in being unaware of the failure in compliance; and
- (b) in all the circumstances it is reasonable to exercise the powers set out in paragraph (2).

(2) The regulator may—

- (a) waive a civil penalty;
- (b) impose or substitute a lower civil penalty;
- (c) allow P a period of no more than 31 days to rectify any failure in compliance before it imposes a civil penalty, subject to such conditions (if any) as it considers appropriate;
- (d) extend the time for payment.

(3) Paragraph (2) does not apply where P is liable to a civil penalty under regulation 38 or where a civil penalty under that regulation has been imposed.

(4) In this regulation—

- (a) “the relevant person” means the person who is liable to a civil penalty under regulations 33 to 41, or on whom a civil penalty has been imposed;
- (b) “impose” means impose by virtue of a notice under regulation 30(1) or (2).

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

33.—(1) The civil penalties in paragraph (2) apply where an aircraft operator—

- (a) fails to submit (or to submit on time) an application for an emissions plan, contrary to regulation 18;
- (b) fails to resubmit (or to resubmit on time) an application for an emissions plan under regulation 19(4).

(2) The civil penalties are—

- (a) for a failure before 1st January 2012—

- (i) £500; and
  - (ii) £50 for each day that the application or resubmission of an application is not provided, following the service of a notice under regulation 30(1), up to a maximum of £4,500;
- (b) for a failure on or after 1st January 2012—
- (i) £1,500; and
  - (ii) £150 for each day that the application or resubmission of an application is not provided, following the service of a notice under regulation 30(1), up to a maximum of £13,500.

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

**34.**—(1) The civil penalties in paragraph (2) apply where an aircraft operator fails to monitor aviation emissions, contrary to regulation 20.

- (2) The civil penalties are—
- (a) for a failure before 1st January 2012—
- (i) £500; and
  - (ii) £50 for each day that the aircraft operator fails to monitor aviation emissions following the service of a notice under regulation 30(1), up to a maximum of £4,500;
- (b) for a failure on or after 1st January 2012—
- (i) £1,500; and
  - (ii) £150 for each day that the aircraft operator fails to monitor aviation emissions following the service of a notice under regulation 30(1), up to a maximum of £13,500.

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

**35.**—(1) The civil penalties in paragraph (2) apply where an aircraft operator fails to report (or to report on time) aviation emissions, contrary to regulation 21.

- (2) The civil penalties are—
- (a) for a failure before 1st January 2012—
- (i) £1,250; and
  - (ii) £125 for each day that the report is not submitted, following the service of a notice under regulation 30(1), up to a maximum of £11,250;
- (b) for a failure on or after 1st January 2012—
- (i) £3,750; and
  - (ii) £375 for each day that the report is not submitted, following the service of a notice under regulation 30(1), up to a maximum of £33,750.

#### **Making false or misleading statements**

**36.**—(1) The civil penalty is £1,000 where a person makes a statement which is false or misleading in a material particular in a report submitted under regulation 12.

(2) The civil penalty is £1,000 where a person makes a statement which is false or misleading in a material particular in an application under regulation 16.

(3) The civil penalty is £1,000 where an aircraft operator makes a statement which is false or misleading in a material particular in a report submitted under regulation 21.

#### **Failure to comply with emissions plan conditions**

**37.**—(1) The civil penalties in paragraph (2) apply where an aircraft operator fails to comply (or to comply on time) with a condition in its emissions plan, contrary to regulation 24.

(2) The civil penalties are—

(a) for a failure before 1st January 2012—

(i) £500; and

(ii) £50 for each day that the aircraft operator fails to comply with regulation 24 following the service of a notice under regulation 30(1), up to a maximum of £4,500;

(b) for a failure on or after 1st January 2012—

(i) £1,500; and

(ii) £150 for each day that the aircraft operator fails to comply with regulation 24 following the service of a notice under regulation 30(1), up to a maximum of £13,500.

#### **Failure to surrender sufficient allowances**

**38.**—(1) The civil penalty in paragraph (2) applies where an aircraft operator—

(a) fails to surrender sufficient allowances or project credits, contrary to regulation 26(1); or

(b) fails to surrender allowances or project credits equal to a deficit, contrary to regulation 26(2).

(2) The civil penalty is the sterling equivalent of 100 Euros for each allowance or project credit that the aircraft operator failed to surrender.

(3) In this regulation, “sterling equivalent” means—

(a) in relation to a penalty relating to aviation emissions in 2012, the sterling equivalent converted by reference to the first rate of conversion to be published in September of the calendar year in which the aircraft operator is liable to the penalty in the C series of the Official Journal of the European Union; or

(b) in relation to a penalty relating to aviation emissions on or after 1st January 2013, the sterling equivalent as defined in sub-paragraph (a) adjusted in accordance with paragraph (4).

(4) 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 the aircraft operator failed to surrender the allowances or project credits 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.

#### **Failure to comply with information notices**

**39.**—(1) The civil penalties in paragraph (2) apply where a UK operator fails to comply (or to comply on time) with a notice to provide information, contrary to regulation 29.

(2) The civil penalties are—

(a) for a failure before 1st January 2012—

(i) £500; and

- (ii) £50 for each day that the UK operator fails to comply following the service of a notice under regulation 30(1), up to a maximum of £4,500;
- (b) for a failure on or after 1st January 2012—
  - (i) £1,500; and
  - (ii) £150 for each day that the UK operator fails to comply, following the service of a notice under regulation 30(1), up to a maximum of £13,500.

**Failure to provide assistance and advice**

**40.** The civil penalty is £50,000 where an aerodrome operator fails to provide reasonable assistance and advice, contrary to regulation 47.

**Failure to comply with a direction relating to an operating ban**

**41.** The civil penalty is £50,000 where a person fails to comply with a direction, contrary to regulation 51(4).