
STATUTORY INSTRUMENTS

2012 No. 3038

The Greenhouse Gas Emissions
Trading Scheme Regulations 2012

PART 11

Revocations, savings and transitional provisions.

Revocations

85. The following enactments are revoked—

- (a) the 2005 Regulations;
- (b) the following enactments amending the 2005 Regulations—
 - (i) [S.I. 2006/737](#);
 - (ii) [S.I. 2007/465](#);
 - (iii) [S.I. 2007/1096](#);
 - (iv) [S.I. 2007/3433](#);
 - (v) regulation 3 of [S.R. \(N.I.\) 2010/92](#);
 - (vi) regulation 4 of [S.I. 2005/2903](#);
 - (vii) regulation 8 of [S.I. 2010/1513](#);
 - (viii) regulations 3 and 4 of [S.I. 2011/1506](#);
 - (ix) paragraphs 1 to 20 of the Schedule to [S.I. 2011/2911](#);
- (c) the Greenhouse Gas Emissions Data and National Implementation Measures Regulations 2009⁽¹⁾;
- (d) the 2010 Regulations;
- (e) the Aviation Greenhouse Gas Emissions Trading Scheme (Amendment) Regulations 2011⁽²⁾.

Savings and transitional provisions: the 2005 Regulations

86.—(1) Notwithstanding the revocations made by regulation 85, the following provisions of the 2005 Regulations (“the relevant provisions”) continue to have effect to the extent specified below.

(2) Part 1 and Schedule 1 have effect for the purpose of the relevant provisions.

(3) Regulations 16 and 17 have effect for the purposes of making an application for the surrender of a permit, or the service of a notice of revocation in respect of a failure to make such an application, where the circumstances giving rise to the requirement to make the application occurred before 1st January 2013.

(1) [S.I. 2009/3130](#).

(2) [S.I. 2011/765](#).

(4) Regulation 18(3) to (5) has effect in relation to the charging schemes referred to in that regulation.

(5) Regulation 22 (other than paragraph (2)) has effect for the purpose of allowing an operator to make an application for an allocation from the new entrant reserve (as defined by regulation 2 of the 2005 Regulations).

(6) But for the purpose of paragraph (5) above, the reference in regulation 22(22) to regulation 15(1) of the 2005 Regulations is to be read as a reference to regulation 12(1) of these Regulations (and the reference to the proposed transferee is accordingly to be read as a reference to the new operator).

(7) Subject to paragraph (8) below, regulation 26 has effect for all purposes relating to the registry referred to in Article 3(2) of the Registries Regulation 2010.

(8) In regulation 26—

(a) paragraphs (2) to (5) do not have effect; and

(b) paragraph (8) has effect as if the references to Articles 18, 20(4) and 27(5) were omitted.

(9) The following provisions have effect in so far as they relate to any activities carried out, or emissions arising, prior to 1st January 2013—

(a) regulation 27A;

(b) Part 4.

(10) Subject to paragraph (11) below, Part 5 and Schedules 2 to 4 have effect in relation to any appeal brought against a decision or notice specified in regulation 32(1) to (5) of the 2005 Regulations.

(11) Regulation 32(4) has effect as if the reference to the appropriate authority were a reference to the First-tier tribunal (and the reference to the appropriate authority in regulation 32(7) is to be construed accordingly).

(12) Regulation 35 has effect in so far as it relates to functions carried out before 1st January 2013 or under the relevant provisions.

(13) Regulation 36 has effect in so far as it relates to a civil penalty in respect of emissions arising before 1st January 2013.

(14) Regulation 37 has effect.

(15) Paragraph (1)(c) to (f) of regulation 38 has effect in so far as it relates to the relevant provisions, but where the conduct giving rise to the offence occurs after 31st December 2012 the following civil penalties apply instead of the offences under that paragraph—

(a) the penalty in regulation 59 above applies instead of the offence of failing to making an application to surrender a permit;

(b) the penalties in regulation 53 above apply instead of the offence of failing to comply with a notice under regulation 22(13)(a) (and for that purpose the condition of the notice is deemed to be a condition falling within paragraph (1)(c) of regulation 53);

(c) the penalties in regulation 68 above apply instead of the offence of failing to comply with an enforcement notice; and

(d) the penalty in regulation 70 above applies instead of an offence under paragraph (1)(f) of regulation 38.

(16) Subject to paragraph (17) below, regulation 38(2) and (3) has effect.

(17) No prosecution may be brought in respect of an offence under regulation 38(1)(a) if—

(a) the conduct that gave rise to the offence continues after 31st December 2012; and

(b) the person who has committed the offence will be liable to a civil penalty under regulation 52 above.

(18) Regulations 39 to 41 have effect in relation to a failure to surrender allowances in respect of emissions arising before 1st January 2013, and regulation 40 has effect in relation to an understatement of such emissions.

(19) Parts 8 to 10 have effect in so far as they relate to functions carried out, or powers exercised, under the relevant provisions or as national administrator under the Registries Regulation 2010.

Savings and transitional provisions: the 2010 Regulations

87.—(1) Notwithstanding the revocations made by regulation 85, the following provisions of the 2010 Regulations (“the relevant provisions”) continue to have effect to the extent specified below.

(2) Part 1 has effect for the purpose of the relevant provisions.

(3) The time period in regulation 18(1) has effect in relation to a person who became an aircraft operator under the 2010 Regulations before 1st January 2013, but the application for an emissions plan must otherwise be made under regulation 32 of these Regulations.

(4) Regulations 21 and 22 have effect in relation to aviation emissions arising before 1st January 2013.

(5) Regulations 26 and 27 have effect in relation to aviation emissions arising before 1st January 2013.

(6) Regulation 28 has effect in relation to the charging schemes referred to in that regulation.

(7) Regulation 29 has effect in relation to the functions referred to in that regulation.

(8) The following have effect in relation to civil penalties arising under the 2010 Regulations—

(a) Part 8;

(b) regulation 49.

(9) Part 11 and Schedules 3 to 5 have effect in relation to any appeal brought against any decision made or notice served under the 2010 Regulations.

(10) The following have effect in relation to decisions or functions of the regulator under the 2010 Regulations—

(a) Part 12;

(b) regulations 58 and 59.

(11) Regulations 55 to 57, and Schedule 6, have effect in relation to information provided, reports submitted, or notices served under the 2010 Regulations.

(12) Paragraph (3), and (5) to (8), of regulation 60 have effect.

Transitional provisions: permits

88.—(1) An application under regulation 8 of the 2005 Regulations for a greenhouse gas emissions permit that is made to the regulator before 1st January 2013, and not determined before that date, may be treated by the regulator as an application made under—

(a) regulation 10(1) above; or

(b) if the installation to which the application relates is an excluded installation, regulation 10(2) above.

(2) An application under regulation 14 of the 2005 Regulations for the variation of a permit that is made to the regulator before 1st January 2013, and not determined before that date, may be treated by the regulator as an application made under regulation 11(3)(a) above.

(3) An application under regulation 15 of the 2005 Regulations for the transfer of a permit (other than for a partial transfer) that is made to the regulator before 1st January 2013, and not determined before that date, may be treated by the regulator as an application made under regulation 12(1) above.

(4) An application under regulation 15 of the 2005 Regulations for the partial transfer of a permit that is made to the regulator before 1st January 2013 and not determined before that date may be treated by the regulator as an application made under regulation 12(1) above, provided that the application has been amended to the satisfaction of the regulator (and is otherwise deemed to have been withdrawn).

(5) Subject to paragraphs (6) and (7), a permit granted under regulation 9 of the 2005 Regulations that is in force immediately before 1st January 2013 (“the permit”) continues to have effect until it is revoked or surrendered under these Regulations.

(6) The regulator must vary the permit as necessary to bring it into a form in which it could have been granted under regulation 10 above.

(7) Until such variations are made, the permit has effect in relation to emissions in the year beginning with 1st January 2013, or in any subsequent scheme year, as if—

- (a) any reference in the permit to Commission Decision [2007/589/EC](#) of 18 July 2007 were a reference to the Monitoring and Reporting Regulation, and any reference to Section 5.2, 5.3 or Section 9 of Annex 1 to that Decision were a reference to the corresponding provision of that Regulation;
- (b) any reference in the permit to Annex 5 to the Directive were a reference to the Verification Regulation;
- (c) any reference in the permit to the Emission Trading Registry for the UK were a reference to the Union Registry; and
- (d) any requirement of the permit to submit a report to the regulator by 30th June each year, setting out proposed improvements in monitoring at the installation, applied only in relation to the report required to be submitted by 30th June 2013.

(8) Notwithstanding the variations made pursuant to paragraph (6), the permit as it had effect immediately before 1st January 2013 continues to have such effect in relation to any emissions arising before that date and any obligations relating to them.

Transitional provisions: aviation emissions plans

89.—(1) An application for an emissions plan under regulation 18 of the 2010 Regulations that has not been determined under those Regulations may be treated by the regulator as an application made under regulation 32 above.

(2) An application for the variation of an emissions plan, pursuant to a condition of the plan, that is made to the regulator before 1st January 2013 may be treated by the regulator as an application made under regulation 37(2)(a) above.

(3) Subject to paragraph (4) and (5), an aviation emissions plan that is in force immediately before 1st January 2013 (“the plan”) continues to have effect.

(4) The regulator must vary the plan as necessary to bring it into a form in which it could have been issued under regulation 34 above.

(5) Until such variations are made, the plan has effect in relation to emissions in the year beginning with 1st January 2013, or in any subsequent scheme year, as if—

- (a) any reference in the plan to Commission Decision [2007/589/EC](#) of 18 July 2007 were a reference to the Monitoring and Reporting Regulation, and any reference to Section 9 of Annex 1 and Sections 2, 3 and 4 of Annex 14 to that Decision were a reference to the corresponding provision of that Regulation; and

- (b) any requirement of the plan to submit a report to the regulator by 30th June each year, setting out proposed improvements in monitoring of aviation activities, applied only in relation to the report required to be submitted by 30th June 2013.