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## 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<sup>(1)</sup> (“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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(1) OJ No L 113, 25.4.2013, p 1.

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.