

**EXPLANATORY MEMORANDUM TO  
THE GREENHOUSE GAS EMISSIONS TRADING SCHEME (AMENDMENT)  
REGULATIONS 2013**

**2013 No. 1037**

1. This explanatory memorandum has been prepared by the Department of Energy and Climate Change and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments

2. **Purpose of the instrument**

- 2.1 These Regulations transpose a Decision ('the 'Stop the Clock' Decision') of the European Parliament and of the Council derogating temporarily from Directive 2003/87EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowance trading within the Community ('the EU ETS Directive).

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

- 3.1 These Regulations are made in exercise of the powers conferred by both section 2 (2) of the European Communities Act 1972 and section 2 of the Pollution Prevention and Control Act 1999. A combination of these powers is needed as s.2 of the 1999 Act is the appropriate domestic power, but does not extend to Northern Ireland. It is, therefore necessary to exercise the powers in section 2 (2) of the 1972 Act as well as those in section 2 of the 1999 Act.

- 3.2 The instrument was laid before Parliament on 3 May and comes into force on 23rd May 2013. The Department wishes to apologise for this breach of the 21 day rule, which required the instrument to be laid on 2nd May at the latest.

- 3.3 That breach was inadvertent and a result of an administrative error. The Department recognises that such a failure in its internal procedures does not constitute an excuse for breaching the 21 day rule, and will be reviewing those procedures in order to ensure that such an error does not occur again. However, it should be noted that the instrument could not be made and laid before Parliament until the EU's 'Stop the Clock' Decision came into force on 25th April.

4. **Legislative Context**

- 4.1 The EU ETS 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) two previous sets of implementing Regulations, including 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.

4.2 The effect of those savings and transitional provisions was to preserve the obligations of aircraft operators under regulations 21 and 26 of the 2010 Regulations, with their associated civil penalties. 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.

4.3 The EU Decision requires Member States not to enforce those obligations, to the extent that they arise in respect of flights to or from an aerodrome outside the EEA, unless the aerodrome is in a closely connected area such as Switzerland, Croatia, or a dependent territory of an EEA state. (Thus for these purposes such closely connected countries and territories are treated as part of the EEA.) However, that temporary derogation does not apply unless the aircraft operator has returned any free emissions trading allowances that were issued to the operator for the year 2012. Accordingly, operators have the choice of complying in the usual way with their obligations to monitor and report emissions and surrender allowances in respect of their emissions in 2012, or complying in respect of their intra-EEA flights only while returning any free allowances issued for flights that begin or end outside the EEA.

4.4 A transposition note is attached as an annex to this Memorandum.

## **5. Territorial Extent and Application**

5.1 This instrument extends to all of the United Kingdom.

## **6. European Convention on Human Rights**

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

7.1 The establishment of a system for greenhouse gas emission allowance trading within the European Community in 2005 by the EU ETS Directive was a major milestone in the global efforts to tackle climate change. The purpose of the EU ETS is to promote cost-effective reductions in greenhouse gas (GHG) emissions. It supports the EU's commitment to a global carbon market as a key instrument for tackling climate change, and will be central in enabling the EU to achieve its stated goal of reducing emissions by 20% in 2020 compared to 1990 levels.

7.2 The rationale behind emissions trading is that it enables emission reductions to take place where the cost of the reduction is lowest, thus lowering the overall costs of combating climate change. More abatement will be undertaken by operators with lower abatement costs, therefore reducing the overall costs of meeting the emissions target (cap) set by any trading scheme. It also ensures that emissions reduction targets are met

by setting a cap. This is unlike other systems, such as taxation, where the amount of emissions reductions is uncertain.

7.3 In September 2005, the European Commission adopted a Communication entitled ‘Reducing the Climate Change Impact of Aviation which considered a variety of policies and instruments, and concluded that in view of the likely future growth in international air traffic, a new market-based instrument at Community level, such as emissions trading, was preferable to other financial measures. The Directive to include aviation in the EU ETS (2008/101/EC) (“the Aviation Directive”) was adopted by the Council of the European Union on 24 October 2008, and aviation was included in the EU ETS for the first time in 2012.

7.4 Under the aviation ETS all aircraft operators who fly into or out of aerodromes in the European Economic Area (EEA) are required to monitor their carbon emissions each calendar year from 1 January 2010. Aircraft operators are required to then submit an independently verified report of their carbon emissions for these flights, to their respective regulator, by 31 March of the following year. Subsequently, from 30 April 2013, aircraft operators must surrender the corresponding number of carbon dioxide (CO<sub>2</sub>) allowances and project credits to the Registry, to account for their annual verified emissions in the preceding year. Failure to surrender enough allowances will result in a civil penalty for the operator.

7.5 In November 2012 the European Commission announced that it would “stop the clock” on the implementation of the extra-EEA aspects of the Aviation Emissions Trading System. On 20<sup>th</sup> November it published its proposed Decision, to be agreed through the European co-decision process. The ‘Stop the Clock’ Decision temporarily suspends the enforcement of the obligations of aircraft operators operating flights to or from aerodromes located in the European Economic Area (EEA), (including for this purpose Croatia, Switzerland and the dependent territories of EEA States) and third-party countries under the Aviation ETS. The effect of this is that only aircraft operators’ flights between EEA aerodromes will face enforcement for failing to monitor emissions and submit emissions reports and surrender allowances and project credits for their 2012 emissions. The suspension of compliance obligations is on the condition that aircraft operators return any free allowances that have already been allocated for 2012 in respect of their international flights.

7.6 The proposal aims to foster goodwill at the International Civil Aviation Organisation (ICAO) and allow negotiations in ICAO to make progress towards reducing aviation emissions, free from the distraction of opposition to the Aviation ETS. Should no “clear and sufficient” progress be made, obligations on international flights will once again apply. However, if there is sufficient progress in ICAO then the Commission states it will propose further legislative action to permanently amend the aviation EU ETS. Article 25a of the Aviation Directive allows amendments to be made to the scope of the aviation activities covered, in the case of equivalent measures being adopted by one or more third countries, or of a global agreement.

## **8. Consultation outcome**

8.1 The consultation period ran from 18 March – 1 April 2013. 14 responses were received from airlines, aircraft operator associations and members of the public. The scope of the consultation was limited to the UK’s proposed implementation of the ‘Stop

the Clock' Decision rather than the Decision itself. However comments were also received on the purpose and intent of the 'Stop the Clock' Decision.

8.2 There was general support for the UK's proposed implementation of the 'Stop the Clock Decision', as amending UK regulations provides greater legal certainty compared to the alternative of issuing a Direction to UK EU ETS Regulators not to enforce the EU ETS in respect of extra-EEA flights. Several comments on the UK implementation were on wider issues relating to the inclusion of aviation in the EU ETS, which is set in EU legislation and cannot be changed through amending UK regulations. There were a range of views on the 'Stop the Clock' Decision from supporting its intention as a means to aid ICAO negotiations, to concerns over its competitiveness impacts and it undermining the environmental integrity of the aviation EU ETS. The Government's response to this consultation will be published on the .gov.uk website.

## **9. Guidance**

9.1 The main EU ETS regulator of aircraft operators in the UK, the Environment Agency, has published a compliance manual on the EU ETS, and provided informal guidance to aircraft operators on the 'Stop the Clock' Decision. The European Commission has published a set of FAQs on specific requirements related to the 'Stop the Clock' Decision. These FAQs were also annexed to the consultation document on the UK implementation of the Decision.

## **10. Impact**

10.1 An Impact Assessment for these amendments and an annex on the impacts of the 'Stop the Clock' Decision will be published alongside the Explanatory Memorandum on [www.legislation.gov.uk](http://www.legislation.gov.uk).

## **11. Regulating small business**

11.1 The legislation does apply to small business in so far as they carry out aviation activities listed in Annex I of the Aviation Directive.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, there are de minimis thresholds for commercial aircraft operators in the Aviation Directive. Where these thresholds do not apply e.g. for private aircraft operators, there are simplified monitoring and reporting requirements and lower regulator charges compared to larger emitters.

## **12. Monitoring & review**

12.1 Article 5 and paragraph 11 of the recitals in the 'Stop the Clock' Decision place a requirement for the European Commission to provide regular updates on the progress of the ICAO negotiations to the European Parliament and Council, a full report on the progress made at the 2013 ICAO Assembly, and to swiftly propose measures in line with the results, as appropriate. The UK Regulations will need to reflect any subsequent changes to the Aviation EU ETS Directive.

12.2 The review clause in The Greenhouse Gas Emissions Trading Scheme Regulations 2012 is also still applicable to this amendment. This requires that the

Secretary of State reviews the operation and effect of the Regulations and set out the conclusions of the review in a published report within 5 years of them coming into force, and within every 5 years after that.

### **13. Contact**

13.1 Adam Kidson at the Department of Energy and Climate Change, email: [adam.kidson@decc.gsi.gov.uk](mailto:adam.kidson@decc.gsi.gov.uk), can answer any queries regarding the instrument.

**Transposition Table: Decision of the European Parliament and of the Council derogating temporarily from Directive 2003/87EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowance trading within the Community.**

This note describes in table form, how the Articles of the Stop the Clock Decision have been transposed into UK legislation via The Greenhouse Gas Emissions Trading Scheme (Amendment) Regulations 2013

<b>Article</b>	<b>Copy out (yes/no)</b>	<b>If no - justification</b>	<b>Previous National Provision</b>	<b>New National Provision</b>
Article 1 – sets out that Member States shall take no enforcement action against aircraft operators in respect of their extra-EEA flights, provided that these aircraft operators have returned or have not been issued with free allowances in respect of these flights.	No	Greater detail is required in the transposition of this requirement than would be provided by copy-out. In the first place, it is necessary to relate the derogation provided by Article 1 to the specific provisions of UK legislation that implement the existing obligations that are being derogated from. Furthermore, in order to provide greater legal clarity a list of closely connected countries and territories that will still fall within the scope of the aviation EU ETS is included, and the	N/A	Regulation 2(2), inserting a new regulation 87A in the Greenhouse Gas Emissions Trading Scheme Regulations 2012. Paragraphs (2) and (3) of the new regulation remove liability to penalties where the relevant allowances have been returned or not issued. Paragraph (4) specifies the procedure for returning allowances, and paragraph (6) provides a list of closely connected countries and territories.

		procedure for returning allowances is specified.		
Article 2 – Places an obligation on Member States to cancel allowances returned or not issued in respect of extra EEA flights. The Article also sets out that the level of aviation allowances to be auctioned shall be reduced in proportion to the reduction in total aviation allowances still in circulation.	Some	The Regulations place an obligation on the registry administrator to cancel any allowances returned by aircraft operators. It is not necessary to transpose the requirement to cancel allowances that have not been issued, as in the UK no such allowances have been allocated to operators. The auctioning obligation has not been transposed as the obligation is on the European Commission under the EU Auctioning Regulation (no. 1031/2010) to approve amended auctioning calendars.	N/A	Paragraph (5) of the new regulation 87A inserted by regulation 2(2)
Article 3 – Sets out that aviation allowances cancelled should not be taken into account when calculating the permitted use of project credits for EU ETS compliance.	No	The level of project credits permitted for use by aircraft operators in 2012 is already set in the Greenhouse Gas Emissions Trading Scheme Regulations 2012 (see regulation 87 (5), preserving the effect	N/A	N/A

		of regulations 26 and 27 of the Aviation Greenhouse Gas Emissions Trading Scheme Regulations 2010). The Decision does not change this limit		
Article 4 – Places an obligation on the European Commission to issue guidance for the implementation of the Decision.	N/A	No transposition required	N/A	N/A
Article 5 – Requires that the European Commission regularly inform the European Parliament and the Council on progress of the ICAO negotiations and to provide a full report on the outcome of the 2013 ICAO Assembly.	N/A	No transposition required	N/A	N/A
Article 6 – Sets the date that the Decision shall enter into force	N/A	No transposition required	N/A	N/A
Article 7 – Makes the Member States addressees of the Decision	N/A	No transposition required	N/A	N/A

