

2018 No. 306

CLIMATE CHANGE

**The Greenhouse Gas Emissions Trading Scheme (Amendment)
Regulations 2018**

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|-------------------------------|---------|------------------------|
| <i>Made</i> | - - - - | <i>5th March 2018</i> |
| <i>Laid before Parliament</i> | | <i>7th March 2018</i> |
| <i>Coming into force</i> | - - | <i>31st March 2018</i> |

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)(c) of the Pollution Prevention and Control Act 1999 (“the 1999 Act”), the Secretary of State has consulted the Environment Agency, the Natural Resources Body for Wales, 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.

The Secretary of State, in exercise of the powers conferred by sections 2 and 7(9) of, and Schedule 1 to, the 1999 Act and by section 2(2) of the European Communities Act 1972, makes the following Regulations(d):

Citation and commencement

1. These Regulations may be cited as the Greenhouse Gas Emissions Trading Scheme (Amendment) Regulations 2018 and come into force on 31st March 2018.

(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. Section 2(4) was amended by paragraph 395 of Schedule 2 to the Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755 (W. 90)).
(d) 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 EU 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.

Amendment of the Greenhouse Gas Emissions Trading Scheme Regulations 2012

2.—(1) The Greenhouse Gas Emissions Trading Scheme Regulations 2012^(a) are amended in accordance with paragraphs (2) to (9).

(2) In regulation 32(7), for “2015 or 2016” substitute “2015 to 2023”.

(3) In regulation 32A—

(a) in the heading, for “2015 activities and 2016 activities” substitute “activities during 2015 to 2023”;

(b) in paragraph (1), for “the scheme years 2015 (“the 2015 activities”) or 2016 (“the 2016 activities”)” substitute “the scheme years 2015 to 2023 (“the relevant activities”)”;

(c) for paragraph (3), substitute—

“(3) Where B is unable to foresee the date on which B is due to commence the relevant activities, B must—

(a) where the relevant activities are due to commence during the scheme years 2017 or 2018, apply to the regulator for a monitoring plan without delay after B is aware that B will commence these activities and in any event by the later of 6 weeks after 31st March 2018 or 6 weeks after the date on which the relevant activities commence;

(b) where the relevant activities are due to commence during a scheme year other than 2017 or 2018, apply to the regulator for a monitoring plan without delay after B is aware that B will commence the relevant activities and in any event by a date no later than 6 weeks after the date on which the relevant activities commence; and

(c) include with the application a written explanation of why B was unable to comply with paragraph (2).”;

(d) in paragraph (5)(a), for “in respect of, as appropriate, the 2015 activities or the 2016 activities” substitute “in respect of the relevant activities”;

(e) for paragraph (8), substitute—

“(8) In this regulation—

(a) “application date” means—

(i) where the relevant activities are due to commence during the scheme year 2015, the later of 31st January 2015 or the date which is 4 months before the date on which the 2015 activities are due to commence;

(ii) where the relevant activities are due to commence during the scheme year 2016, the date which is 4 months before the date on which the 2016 activities are due to commence;

(iii) where the relevant activities are due to commence during the scheme years 2017 or 2018, the later of 30th April 2018 or the date which is 4 months before the date on which these activities are due to commence; and

(iv) where the relevant activities are due to commence during the scheme years 2019 to 2023, the date which is 4 months before the date on which these activities are due to commence;

(b) “transferred operator application date” means—

(i) where the relevant activities are due to commence during the scheme year 2015, the later of 31st January 2015 or the last day of the 8 week period beginning with the date on which B becomes a UK administered operator;

^(a) S.I. 2012/3038, amended by S.I. 2013/755 (W. 90), S.I. 2013/1037, S.I. 2013/3135, S.I. 2014/3125, S.I. 2015/912, S.I. 2015/933, S.I. 2015/1388, S.I. 2015/1849, S.I. 2016/28, S.I. 2016/1154 and S.I. 2017/1207.

- (ii) where the relevant activities are due to commence during the scheme year 2016, the last day of the 8 week period beginning with the date on which B becomes a UK administered operator;
 - (iii) where the relevant activities are due to commence during the scheme years 2017 or 2018, the later of 30th April 2018 or the last day of the 8 week period beginning with the date on which B becomes a UK administered operator; and
 - (iv) where the relevant activities are due to commence during the scheme years 2019 to 2023, the last day of the 8 week period beginning with the date on which B becomes a UK administered operator; and
- (c) “transferred operator cut-off date” means the date which is 6 months before the date on which the relevant activities are due to commence.”.
- (4) In regulation 32B—
- (a) for “post-2016”, in each place it occurs (including the heading), substitute “post-2023”;
 - (b) in paragraph (1)(a), for “2015 or 2016”, substitute “2015 to 2023”;
 - (c) in paragraph (1)(b), for “2016”, in the first place it occurs, substitute “2023”.
- (5) In regulation 33A(2), for “2016”, in both places it occurs, substitute “2023”.
- (6) In regulation 35—
- (a) in paragraph (5), for “2015 and 2016” substitute “2015 to 2023”;
 - (b) in paragraph (6)(a), for “2016” substitute “2023”;
 - (c) for paragraph (7), substitute—
- “(7) The report shall be considered verified in accordance with the Verification Regulation where—
- (a) either—
 - (i) A has annual reportable emissions of less than 25,000 tonnes, or
 - (ii) A has annual reportable emissions of less than 3,000 tonnes other than from an outermost region^(a) flight, or flights departing from, or arriving in, an aerodrome situated in any country other than an EEA state, and
 - (b) A has determined its emissions using the small emitters tool approved under the Small Emitters Tool Regulation and populated with data by Eurocontrol.”.
- (7) In regulation 42A(3), for “2016” substitute “2023”.
- (8) In regulation 42B—
- (a) in paragraph (4)(a)(i), for “2016” substitute “2023”;
 - (b) in paragraph (4)(a)(ii), for “2017” substitute “2024”.
- (9) In Schedule 7, for paragraph (1A) substitute—
- “(1A) For the purpose of paragraphs (2) to (9) of this Schedule, “aviation activity” means an activity listed in the table in Annex 1 to the Directive under the section titled “Aviation”, but excluding the activities listed under points (a) to (k) of that section.”.

5th March 2018

Claire Perry
 Minister of State for Energy and Clean Growth
 Department for Business, Energy and Industrial Strategy

(a) Regulation 20 defines the outermost region as the Canary Islands, French Guiana, Guadeloupe, Martinique, Mayotte, Réunion, Saint-Martin, the Azores, or Madeira.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Regulation (EU) 2017/2392 of the European Parliament and of the Council of 13 December 2017 amending Directive 2003/87/EC to continue current limitations of scope for aviation activities and to prepare to implement a global market based measure from 2021(a). Directive 2003/87/EC (“the Directive”) is currently implemented in the UK by the Greenhouse Gas Emissions Trading Scheme Regulations 2012 (“the 2012 Regulations”). The 2012 Regulations require aircraft operators which fall within the scope of the EU Emissions Trading Scheme and are administered by the UK to monitor and report their aviation emissions each calendar year and then to surrender sufficient emissions trading allowances to cover those emissions. These Regulations amend the 2012 Regulations.

Regulation 2(2), (3), (4), (5), (6)(a) and (b), (7) and (8) makes amendments to extend a temporary derogation from the obligation to monitor and report emissions and to surrender allowances in respect of flights between (i) an aerodrome in the European Economic Area (“the EEA”), and (ii) an aerodrome in a country outside the EEA in the calendar years from ending in 2016 to ending in 2023. The derogation also covers flights between different outermost regions, and between an area of the EEA which is not an outermost region and an outermost region.

Regulation 35(7) of the 2012 Regulations provides that where an operator has total annual emissions of less than 25,000 tonnes of carbon dioxide and the operator has determined its emissions using the small emitters tool, then its annual report shall be considered verified. Regulation 2(6)(c) of these Regulations extends this, so that the annual report by operators with annual reportable emissions of less than 3,000 tonnes other than from an outermost region flight, or flights departing from, or arriving in, an aerodrome situated in any country other than an EEA state, will also be considered verified, if the operator has determined its emissions using the small emitters tool.

Regulation 2(9) of these Regulations amends paragraph 1A of Schedule 7 to the 2012 Regulations. The Directive is being amended so that flights of non-commercial air transport operators with total annual emissions of less than 1,000 tonnes of carbon dioxide are not deemed “aviation activities” until 2030. These flights will be excluded from the definition of “aviation activity” in paragraph 1A of Schedule 7 to the 2012 Regulations after 2020 until 2030.

A full impact assessment of the effect that this instrument will have on the costs of business and the public sector is available from the Department for Business, Energy and Industrial Strategy Heat and Business Energy Team (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 Directive is annexed to that Explanatory Memorandum.

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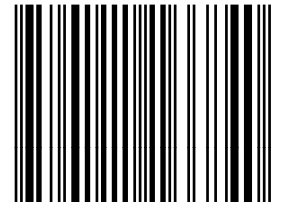
(a) OJ L 350, 29.12.2017, p 7-14.

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