

**EXPLANATORY MEMORANDUM TO**  
**THE GREENHOUSE GAS EMISSIONS TRADING SCHEME (AMENDMENT)**  
**REGULATIONS 2018**

**2018 No. 306**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

**2. Purpose of the instrument**

- 2.1 The instrument amends the 2012 Regulations to implement the EU Regulation to continue current limitations of the geographical scope for aviation activities and to prepare to implement a global market based measure from 2021, as set out in 4.4 to 4.6 below. A transposition table is attached as an Annex to this Memorandum.

**3. Matters of special interest to Parliament**

*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 section 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.

*Other matters of interest to the House of Commons*

- 3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

**4. Legislative Context**

- 4.1 Directive 2003/87/EC (“the Directive”) is currently implemented in the United Kingdom by the Greenhouse Gas Emissions Trading Scheme Regulations 2012 (S.I. 2012/3038) (the “2012 Regulations”).
- 4.2 The 2012 Regulations have been amended by S.I. 2013/755, 2013/1037, 2013/3135, 2014/3125, 2015/933, 2015/1388, 2015/1849 2016/28, 2016/1154 and 2017/1207.
- 4.3 The 2012 Regulations require aircraft operators which fall within the geographical scope of the EU ETS 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.
- 4.4 The instrument extends the 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 2016 to 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.

- 4.5 The 2012 Regulations provides that where an aircraft operator has total annual emissions of less than 25,000 tonnes of carbon dioxide (CO<sub>2</sub>) and the operator has determined its emissions using the small emitters tool, then its annual report shall be considered verified. The instrument extends this to aircraft operators with annual reportable emissions of less than 3,000 tonnes CO<sub>2</sub> on intra-EEA flights.
- 4.6 The instrument also extends an exemption from 2020 to 2030 which provides that flights of non-commercial air transport operators with total annual emissions of less than 1,000 tonnes of CO<sub>2</sub> are not deemed “aviation activities”.

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

- 5.1 The extent of this instrument is England, Wales, Scotland and Northern Ireland.
- 5.2 The territorial application of this instrument is England, Wales, Scotland and Northern Ireland.

## **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**

### *What is being done and why*

- 7.1 The EU Emissions Trading System (EU ETS) was established under the Directive to promote cost-effective reductions in CO<sub>2</sub> emissions. It supports the UK and EU’s commitment to a global carbon market as a key instrument for tackling climate change, and is a central instrument in enabling the achievement of the EU’s goal of a 20% reduction in emissions by 2020, compared to 1990 levels.
- 7.2 The EU ETS is a cap-and-trade system under which there is a limit (“cap”) on total emissions and those covered by the system need to surrender carbon allowances in line with their annual CO<sub>2</sub> emissions. Some allowances are allocated to operators for free, some auctioned, and others available for allocation to new entrants. Participants in the scheme must report their emissions for each calendar year and surrender allowances against these emissions (1 allowance = 1 tonne of CO<sub>2</sub>).
- 7.3 In 2008, the EU introduced Directive 2008/101/EC to include aviation in the EU ETS. This entered into force on 2 February 2009, and aviation was fully included from 1 January 2012. Initially all flights into or out of airports in the EEA were included in the geographical scope the aviation EU ETS (e.g. a flight between New York and London), known as “full scope”.
- 7.4 The introduction of the full scope aviation EU ETS provoked widespread international opposition. In response to the opposition and in order to promote a broader international agreement which was being discussed at the International Civil Aviation Organisation (ICAO), the EU temporarily reduced the scope of the aviation EU ETS to only include flights between EEA airports for 2012. This reduced scope was subsequently extended from 2013 until 2016.

- 7.5 In October 2016, ICAO agreed to implement a global market based measure known as Carbon Offsetting and Reduction Scheme for International Aviation (CORSA) to address any annual increase in total CO<sub>2</sub> emissions from international civil aviation. In light of this agreement, the EU Regulation extends the reduced scope derogation for the EU ETS from 2016 until 2023.
- 7.6 The instrument implements three provisions within the EU Regulation which came into force on 29 December 2017. These are to extend the reduced scope derogation, until 31 December 2023; to introduce simplified procedures for aircraft operators emitting less than 3,000 tonnes of CO<sub>2</sub> per year on intra-EEA flights; and to extend the exemption from obligations under the aviation EU ETS until 2030 for non-commercial operators emitting less than 1,000 tonnes of CO<sub>2</sub> per year.
- 7.7 The EU Regulation amends the Directive, and so amendments to the 2012 Regulations are necessary to ensure our domestic legislation is consistent with EU law. The changes reflect the change in scope of the aviation EU ETS, give certainty to UK operators, verifiers and other stakeholders, and ensure UK regulators have the appropriate powers to implement the provisions of the EU Regulation.
- 7.8 On 23 June 2016 the EU referendum took place and the people of the United Kingdom voted to leave the European Union. The Government respected the result and triggered Article 50 of the Treaty on European Union on 29th March 2017 to begin the process of exit. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will also continue to negotiate, implement and apply EU legislation

### ***Consolidation***

- 7.9 Although a number of amendments have now been made to the 2012 Regulations, the Department has not made consolidating regulations at this time, given the limited nature of these amendments, and the fact that negotiations have recently concluded on Phase IV of the EU ETS, which will lead to substantial changes to the EU ETS Directive, and therefore potentially to the UK legislation. It is therefore more appropriate for consolidated regulations to be made in respect of those more extensive amendments.

## **8. Consultation outcome**

- 8.1 A public consultation commenced on Friday 8 December 2017 for a four week period concluding on Friday 5 January 2018. The length of the consultation reflected the lack of discretion over how the EU Regulation could be implemented, the limited time frame available and the fact that stakeholders were aware of, and expecting, these changes. An invitation to respond was issued to any organisation or individual, but it was of particular interest to aircraft operators; non-governmental organisations; wider EU ETS participants and verifiers. There were seven responses. All of the responders either agreed with the Government approach or said that they welcomed the EU agreement to continue the current scope of the aviation EU ETS, which is being implemented through the UK regulations. The Government also held stakeholder workshops on 3 March 2017 and 10 July 2017 to update stakeholders on the EU negotiations; and a workshop on 11 December 2017 to explain the approach to amending UK legislation. A full consultation response is available on gov.uk.

## **9. Guidance**

- 9.1 The Environment Agency, the English regulator for EU ETS has amended their guidance for aircraft operators to take account of the changes to the legislation. This is available on gov.uk<sup>1</sup>.

## **10. Impact**

- 10.1 The impact on business, charities or voluntary bodies is predominantly limited to UK designated aviation operators and other UK regulated aviation operators. The instrument results in a net cost to the UK between 2017 and 2023 due to a reduction in the environmental benefits of the Aviation EU ETS; a reduction in the compliance costs for aircraft operators; and a reduction in government auction revenues as compared to a scenario where the EU and UK legislation was not amended. The costs and benefits are assessed in the accompanying Impact Assessment.
- 10.2 The impact on the public sector is on UK regulators as the instrument reduces the number of operators to be administered. This will reduce the regulators' incomes: the net impact will depend on the corresponding change in costs.
- 10.3 An Impact Assessment is submitted with this memorandum and is published alongside the Explanatory Memorandum on the legislation.gov.uk website.

## **11. Regulating small business**

- 11.1 The legislation applies to activities that are undertaken by small businesses.
- 11.2 No specific action is proposed to minimise regulatory burdens on small businesses, as these Regulations already minimise burdens. The SI will extend the threshold in the Regulations which excludes non-commercial aircraft operators which emit less than 1,000 tonnes of CO<sub>2</sub> per annum until 2030. The legislation introduces simplified procedures for aircraft operators emitting less than 3,000 tonnes of CO<sub>2</sub> per annum for intra EEA flights.
- 11.3 Small businesses had access to the public consultation (described in paragraph 8.1).

## **12. Monitoring & review**

- 12.1 Regulation 2 of the 2012 Regulations places an obligation on the Secretary of State to carry out a review of those Regulations, and to publish a report which must in particular: (a) set out the objectives intended to be achieved by the regulatory system established by these Regulations; (b) assess the extent to which those objectives are achieved; and (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

## **13. Contact**

- 13.1 Andrew Chandiramani at the Department for Business, Energy & Industrial Strategy can answer any queries regarding the instrument. Email: Andrew.chandiramani@beis.gov.uk or telephone 0300 068 6911.

---

<sup>1</sup> Updated guidance on monitoring and reporting is available at: <https://www.gov.uk/guidance/eu-ets-monitoring-and-reporting>