
DRAFT STATUTORY INSTRUMENTS

2020 No.

The Greenhouse Gas Emissions Trading Scheme Order 2020

PART 1

Preliminary

Citation

1. This Order may be cited as the Greenhouse Gas Emissions Trading Scheme Order 2020.

Commencement

2.—(1) Except as provided by paragraph (2), this Order comes into force on the day after the day on which it is made.

(2) Article 25, Schedule 5 and paragraph 4 of Schedule 8 come into force—

- (a) on the day after the day on which this Order is made; or
- (b) immediately after IP completion day,

whichever is later.

Extent

3. This Order extends to the whole of the United Kingdom.

Interpretation

4.—(1) In this Order—

“2021-2025 allocation period” means the 2021, 2022, 2023, 2024 and 2025 scheme years;

“2026-2030 allocation period” means the 2026, 2027, 2028, 2029 and 2030 scheme years;

“aerodrome” means a defined area (including any buildings, installations and equipment) on land or water or on a fixed, fixed offshore or floating structure to be used either wholly or in part for the arrival, departure and surface movement of aircraft;

“aircraft operator” has the meaning given in article 6;

“allocation period” means—

- (a) the 2021-2025 allocation period; or
- (b) the 2026-2030 allocation period;

“allowance” means an allowance created under this Order (see article 18);

“aviation activity” means an activity set out in paragraph 1 of Schedule 1;

“aviation emissions” means emissions of carbon dioxide arising from an aviation activity;

“carbon price”, in relation to a scheme year, has the meaning given in article 46;

“CCA 2008” means the Climate Change Act 2008;

“the Chicago Convention” means the Convention on International Civil Aviation which was, on 7th December 1944, signed on behalf of the Government of the United Kingdom at the International Civil Aviation Conference held at Chicago⁽¹⁾;

“chief inspector” means the chief inspector constituted under regulation 8(3) of the Pollution Prevention and Control (Industrial Emissions) Regulations (Northern Ireland) 2013⁽²⁾;

“commercial air transport operator” means a person that, for remuneration, provides scheduled or non-scheduled air transport services to the public for the carriage of passengers, freight or mail and holds an air operator certificate (AOC) or equivalent document as required by Part I of Annex 6 to the Chicago Convention;

“Directive” means [Directive 2003/87/EC](#) of the European Parliament and of the Council of 13 October 2003 establishing a system for greenhouse gas emission allowance trading within the Union and amending Council [Directive 96/61/EC](#)⁽³⁾;

“emission factor” has the same meaning as in the Monitoring and Reporting Regulation 2018;

“emissions monitoring plan” has the meaning given in article [28\(1\)](#);

“EU ETS” means the system for greenhouse gas emission allowance trading established by the Directive;

“Eurocontrol” has the meaning given in section 24 of the Civil Aviation Act 1982⁽⁴⁾;

“excluded flights” means flights set out in paragraph [2](#) of Schedule 1;

“flight” means one flight sector that is a flight or one of a series of flights which commences at a parking place of the aircraft and terminates at a parking place of the aircraft;

“full-scope flights” means flights departing from, or arriving in, an aerodrome situated in the United Kingdom, Gibraltar or an EEA state, other than excluded flights;

“GGETSR 2012” means the Greenhouse Gas Emissions Trading Scheme Regulations 2012⁽⁵⁾;

“GGETSR emissions plan” means an emissions plan as defined in regulation 20 of the GGETSR 2012;

“greenhouse gas emissions permit” means a greenhouse gas emissions permit—

(a) issued under paragraph 3 or 9 of Schedule 6; or

(b) converted under paragraph 24 or 26 of Schedule 7 or paragraph 1(4) of Schedule 11;

“hospital and small emitter list for 2021-2025” has the meaning given in paragraph 3(2) of Schedule 7;

“hospital and small emitter list for 2026-2030” has the meaning given in paragraph 5(4)(b) of Schedule 7;

“hospital or small emitter” must be construed in accordance with paragraphs 3 and 4 of Schedule 7;

“hospital or small emitter permit” means a hospital or small emitter permit—

(a) issued under paragraph 9 of Schedule 7; or

(b) converted under paragraph 10 of Schedule 7 or paragraph 1(3) of Schedule 11;

“installation” must be construed in accordance with Schedule 2;

“monitoring and reporting conditions” means—

(1) Treaty Series No. 8 (1953); Cmd 8742.

(2) [S.R. 2013 No. 160](#).

(3) OJ No. L 275, 25.10.2003, p. 32.

(4) [1982 c. 16](#). Section 24 was amended by section 3(1) of the Civil Aviation (Eurocontrol) Act [1983 \(c. 11\)](#).

(5) [S.I. 2012/3038](#), to which there are amendments not relevant to this Order.

(a) in relation to a greenhouse gas emissions permit, the conditions referred to in paragraph 4(2) of Schedule 6;

(b) in relation to a hospital or small emitter permit, the conditions referred to in paragraph 11(2) of Schedule 7;

“Monitoring and Reporting Regulation 2012” means [Commission Regulation \(EU\) No. 601/2012](#) of 21 June 2012 on the monitoring and reporting of greenhouse gas emissions pursuant to [Directive 2003/87/EC](#) of the European Parliament and of the Council⁽⁶⁾;

“Monitoring and Reporting Regulation 2018” means Commission Implementing Regulation (EU) 2018/2066 of 19 December 2018 on the monitoring and reporting of greenhouse gas emissions pursuant to [Directive 2003/87/EC](#) of the European Parliament and of the Council⁽⁷⁾ as given effect subject to modifications by article 24;

“non-commercial air transport operator” means a person who operates flights and is not a commercial air transport operator;

“NRW” means the Natural Resources Body for Wales⁽⁸⁾;

“operator”, in relation to an installation, has the meaning given in article 5;

“outermost region” means—

(a) the Canary Islands;

(b) French Guiana;

(c) Guadeloupe;

(d) Mayotte;

(e) Martinique;

(f) Réunion;

(g) Saint-Martin;

(h) the Azores; or

(i) Madeira;

“permit” means—

(a) a greenhouse gas emissions permit; or

(b) a hospital or small emitter permit,

and a reference to a permit includes the monitoring plan (see paragraph 4(1)(f) of Schedule 6 and paragraph 11(1)(g) of Schedule 7);

“regulated activity” has the meaning given in paragraph 3(1) of Schedule 2;

“regulator” must be construed in accordance with articles 9 to 13;

“relevant Northern Ireland electricity generator” means an installation within the meaning of GGETSR 2012 to which those Regulations continue to apply to regulate the carrying out of regulated activities at the installation on or after 1st January 2021;

“reportable emissions”, in relation to an installation, means the total specified emissions (in tonnes of carbon dioxide equivalent⁽⁹⁾) from the regulated activities carried out at the installation;

“scheme year” means the calendar year beginning on 1st January 2021 or any of the 9 subsequent calendar years; and a reference to a scheme year described by a calendar year (for

(6) OJ No. L 181, 12.7.2012, p. 30.

(7) OJ No. L 334, 31.12.2018, p. 1.

(8) The Natural Resources Body for Wales was established by article 3 of [S.I. 2012/1903 \(W.230\)](#).

(9) Section 93(2) of the Climate Change Act 2008 defines “tonne of carbon dioxide equivalent”.

example, the “2021 scheme year”) is a reference to the scheme year beginning on 1st January of that year;

“SEPA” means the Scottish Environment Protection Agency⁽¹⁰⁾;

“specified emissions” has the meaning given in paragraph 3(7) of Schedule 2;

“surrender”, in relation to an allowance, means use the allowance to account for reportable emissions or aviation emissions in a particular scheme year in such a way that the allowance ceases to be available for any other purpose;

“surrender condition” has the meaning given in paragraph 4(3) of Schedule 6;

“trading period” means the period beginning on 1st January 2021 and ending on 31st December 2030;

“UK coastal waters” has the meaning given in section 89(2) of CCA 2008;

“UK ETS” has the meaning given in article 16(1);

“UK ETS authority” has the meaning given in article 14;

“UK sector of the continental shelf” has the meaning given in section 89(2) of CCA 2008;

“ultra-small emitter” must be construed in accordance with paragraph 2 of Schedule 8;

“ultra-small emitter list for 2021-2025” has the meaning given in paragraph 2(2) of Schedule 8;

“ultra-small emitter list for 2026-2030” has the meaning given in paragraph 3(5) of Schedule 8;

“Verification Regulation 2012” means [Commission Regulation \(EU\) No 600/2012](#) of 21 June 2012 on the verification of greenhouse gas emission reports and tonne-kilometre reports and the accreditation of verifiers pursuant to [Directive 2003/87/EC](#) of the European Parliament and of the Council⁽¹¹⁾;

“Verification Regulation 2018” means Commission Implementing Regulation (EU) 2018/2067 of 19 December 2018 on the verification of data and on the accreditation of verifiers pursuant to [Directive 2003/87/EC](#) of the European Parliament and of the Council⁽¹²⁾.

(2) For the purposes of this Order, the amount of an installation’s reportable emissions (including reportable emissions within the meaning of GGETSR 2012) from biomass must be treated as zero where the emission factor of the biomass under the Monitoring and Reporting Regulation 2012 or the Monitoring and Reporting Regulation 2018 is zero.

(3) For the purposes of this Order, an installation has ceased operation if—

- (a) a regulated activity is no longer being carried out at the installation; and
- (b) it is technically impossible to resume operation.

(4) For the purposes of this Order, the question of whether any waters are adjacent to Northern Ireland, Scotland or Wales must be determined in accordance with—

- (a) any Order in Council made under section 98(8) of the Northern Ireland Act 1998⁽¹³⁾;
- (b) any Order in Council made under section 126(2) of the Scotland Act 1998⁽¹⁴⁾;
- (c) any Order in Council made under sections 58 and 158(4), or order made under section 158(3), of the Government of Wales Act 2006⁽¹⁵⁾.

⁽¹⁰⁾ The Scottish Environment Protection Agency was established by section 20 of the Environment Act 1995 (c. 25).

⁽¹¹⁾ OJ No. L 181, 12.7.2012, p. 1.

⁽¹²⁾ Commission Implementing Regulation (EU) 2018/2067 is amended prospectively by [S.I. 2019/916](#) with effect from IP completion day and is further amended by this Order.

⁽¹³⁾ 1998 c. 47.

⁽¹⁴⁾ 1998 c. 46.

⁽¹⁵⁾ 2006 c. 32. Section 58 was amended by paragraph 6(3) of Schedule 4 to the Marine and Coastal Access Act 2009 (c. 23) and sections 21(1) and 49 of the Wales Act 2017 (c. 4). Section 158(3) was substituted by section 43(3) of the Marine and Coastal Access Act 2009.

Meaning of operator

5.—(1) In this Order, the “operator” of an installation is the person who has control over its operation.

(2) But where—

- (a) a regulated activity has not begun to be carried out at an installation, the operator of the installation is the person who will have control over its operation when a regulated activity is carried out at the installation;
- (b) a regulated activity is no longer carried out at an installation, the operator of the installation is the person who holds the permit for the installation or, if no permit authorises a regulated activity to be carried out at the installation, the person who had control over its operation immediately before regulated activities ceased to be carried out at the installation;
- (c) the holder of a permit for an installation ceases to have control over its operation, the operator of the installation is the permit holder.

Meaning of aircraft operator

6.—(1) In this Order, a person is an aircraft operator in relation to a scheme year, where in respect of that year that person—

- (a) performs an aviation activity; and
- (b) is not exempt under article 7 or 8.

(2) For the purposes of paragraph (1)(a), an aviation activity is performed by the person who operates the aircraft at the time of the flight, or where that person is not known, the owner of that aircraft is deemed to be the person that performed the aviation activity.

Exempt commercial air transport operators

7.—(1) A commercial air transport operator is not an aircraft operator for the purposes of this Order in relation to a scheme year, where in respect of that year it operates—

- (a) less than 243 full-scope flights per period for 3 consecutive 4-month periods; or
- (b) full-scope flights with total annual emissions of less than 10,000 tonnes of carbon dioxide.

(2) In this article, “4-month period” means any of the following periods—

- (a) January to April;
- (b) May to August;
- (c) September to December.

(3) For the purposes of this article, a full-scope flight is taken to have occurred in the 4-month period that included its local time of departure.

Exempt non-commercial air transport operators

8. A non-commercial air transport operator is not an aircraft operator for the purposes of this Order in relation to a scheme year, where in respect of that year it operates full-scope flights with total annual emissions of less than 1,000 tonnes of carbon dioxide.

Meaning of regulator

9.—(1) Each of the following is a “regulator” for the purposes of this Order—

- (a) the chief inspector;

- (b) the Environment Agency⁽¹⁶⁾;
- (c) NRW;
- (d) the Secretary of State;
- (e) SEPA.

(2) In this Order, “regulator” means—

- (a) in relation to an installation, the regulator determined in accordance with article 10;
- (b) in relation to an aircraft operator, the regulator determined in accordance with articles 11 to 13.

(3) Each regulator is an administrator of the UK ETS for the purposes of paragraph 21 of Schedule 2 to CCA 2008.

Meaning of regulator: installations

10.—(1) This article applies for the purposes of article 9.

(2) The regulator, in relation to an installation set out in column 1 of table A, is the regulator set out in the corresponding entry in column 2.

Table A

<i>Column 1</i>	<i>Column 2</i>
<i>Installation</i>	<i>Regulator</i>
Installation in— (a) England; (b) the territorial sea adjacent to England, except where the installation is used for a purpose referred to in paragraph (3)	Environment Agency
Installation in— (a) Northern Ireland; (b) controlled waters adjacent to Northern Ireland; (c) the territorial sea (other than controlled waters) adjacent to Northern Ireland, except where the installation is used for a purpose referred to in paragraph (3)(a)	Chief inspector
Installation in— (a) Scotland; (b) controlled waters adjacent to Scotland; (c) the territorial sea (other than controlled waters) adjacent to Scotland, except where the installation is used for a purpose referred to in paragraph (3)(a)	SEPA
Installation in— (a) Wales; (b) the territorial sea adjacent to Wales	NRW
Installation in— (a) the territorial sea adjacent to England, where the installation is used for a purpose referred to in paragraph (3);	Secretary of State

(16) The Environment Agency was established by section 1 of the Environment Act 1995 (c. 25).

<i>Column 1</i>	<i>Column 2</i>
<i>Installation</i>	<i>Regulator</i>
(b) the territorial sea (other than controlled waters) adjacent to Northern Ireland and Scotland, where the installation is used for a purpose referred to in paragraph (3)(a);	
(c) the UK sector of the continental shelf	

(3) The purposes are—

- (a) a purpose connected with the exploration for, or exploitation of, petroleum (within the meaning of section 1 of the Petroleum Act 1998⁽¹⁷⁾);
- (b) a purpose connected with an activity referred to in section 2(3) of the Energy Act 2008⁽¹⁸⁾ (unloading and storage of combustible gas);
- (c) a purpose connected with an activity referred to in section 17(2) of that Act (storage of carbon dioxide).

(4) In this article—

“controlled waters” means the part of the territorial sea that is between the landward limit of the territorial sea and the line that is 3 nautical miles seaward of the landward limit of the territorial sea;

“territorial sea” means the territorial sea of the United Kingdom;

“territorial sea adjacent to England” means the part of the territorial sea that is not adjacent to Northern Ireland, Scotland or Wales.

(5) In this article, a reference to England, Northern Ireland, Scotland or Wales includes a reference to waters adjacent to England or, as the case may be, Northern Ireland, Scotland or Wales that are landward of the landward limit of the territorial sea.

Meaning of regulator: aircraft operators

11.—(1) This article applies for the purposes of article 9.

(2) Subject to articles 12 and 13 the regulator of an aircraft operator is—

- (a) the Environment Agency, where the aircraft operator —
 - (i) has its registered office or place of residence in England; or
 - (ii) does not have a registered office or a place of residence in the United Kingdom;
- (b) NRW, where the aircraft operator has its registered office or place of residence in Wales;
- (c) SEPA, where the aircraft operator has its registered office or place of residence in Scotland;
- (d) the chief inspector, where the aircraft operator has its registered office or place of residence in Northern Ireland.

Aircraft operator: change in regulator

12.—(1) This paragraph applies where—

- (a) an aircraft operator (“A”) does not have a registered office or a place of residence in the United Kingdom;
- (b) “B” is the regulator of A; and

⁽¹⁷⁾ 1998 c. 17.

⁽¹⁸⁾ 2008 c. 32.

- (c) a different regulator (“C”) is satisfied that the highest percentage of aviation emissions of A in the 2023 and 2024 scheme years is attributable to flights departing from aerodromes situated in the area of C.

(2) Where paragraph (1) applies, on or before 30th June 2025, C must give notice to—

- (a) A;
- (b) B; and
- (c) the UK ETS authority,

that C is the regulator of A from the beginning of the 2026-2030 allocation period.

(3) A notice under paragraph (2) must be accompanied by evidence demonstrating that the highest percentage of aviation emissions of A in the 2023 and 2024 scheme years is attributable to flights departing from aerodromes situated in the area of C.

(4) In this article, “area” in relation to a regulator, means—

- (a) in respect of the Environment Agency, England;
- (b) in respect of the NRW, Wales;
- (c) in respect of the SEPA, Scotland;
- (d) in respect of the chief inspector, Northern Ireland.

Aircraft operator: change in registered office

13.—(1) Where—

- (a) an aircraft operator (“A”) with a registered office or a place of residence in the area of a regulator, in the course of the 2021-2025 allocation period, changes the address of its registered office or place of residence to the area of a different regulator (“R”); and
- (b) A’s registered office or place of residence is in the area of R at the end of the 2021-2025 allocation period,

R is the regulator of A from the beginning of the 2026-2030 allocation period.

(2) Where—

- (a) an aircraft operator (“B”) which did not have a registered office or a place of residence in the United Kingdom at the beginning of the 2021-2025 allocation period acquires a registered office or a place of residence in the United Kingdom in the course of that period; and
- (b) at the end of the 2021-2025 allocation period that registered office or place of residence is in the area of a regulator (“S”) who is not the regulator of B in that allocation period,

S is the regulator of B from the beginning of the 2026-2030 allocation period.

(3) In this article “area” has the same meaning as in article 12.

Meaning of UK ETS authority, etc.

14.—(1) A reference in this Order to the “UK ETS authority” is a reference to all of the national authorities⁽¹⁹⁾.

(2) Functions conferred or imposed by this Order on the “UK ETS authority” may be exercised—

- (a) by all of the national authorities jointly; or
- (b) by one of the national authorities (or by more than one of the national authorities jointly) on behalf of the other national authorities with their agreement.

⁽¹⁹⁾ Section 95(1) of the Climate Change Act 2008 defines “national authority”.

(3) Where this Order provides for a person to do anything in relation to the “UK ETS authority” (for example, to give a notice to the UK ETS authority), it is sufficient for the person to do it in relation to any of the national authorities.

(4) Each national authority is an administrator of the UK ETS for the purposes of paragraph 21 of Schedule 2 to CCA 2008.

Applications, notices, etc.

15.—(1) Part 1 of Schedule 3 (which makes provision in relation to applications, notices and reports submitted to a regulator) has effect.

(2) Part 2 of Schedule 3 (which makes provision in relation to notices given by a regulator, a national authority or the UK ETS authority) has effect.