

---

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations implement Regulation No 421/2014 of the European Parliament and of the Council amending [Directive 2003/87/EC](#) establishing a scheme for greenhouse gas allowance trading with the Community (“the EU Regulation”)(1). [Directive 2003/87/EC](#) (“the Directive”) is currently implemented in the UK by the Greenhouse Gas Emissions Trading Scheme Regulations 2012 (“the 2012 Regulations”)(2). The 2012 Regulations require aircraft operators which 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.

The 2012 Regulations consolidated (with amendments) and replaced the previous implementing regulations, in particular the Aviation Greenhouse Gas Emissions Trading Scheme Regulations 2010 (“the 2010 Regulations”)(3). 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 regulation 26 of the 2010 Regulations (and the corresponding civil penalties) continue to apply in respect of aviation emissions arising before 2013, but subject to amendments made by the Greenhouse Gas Emissions Trading Scheme (Amendment) Regulations 2013(4), which implemented 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 allowance trading with the Community (the “2013 EU Decision”)(5).

The EU Regulation provides for a temporary derogation from the obligation to monitor and report emissions and to surrender allowances in respect of flights between an aerodrome in the European Economic Area (“the EEA”) and an aerodrome in a country outside the EEA in the calendar years from 2013 to 2016. For these purposes, flights between Croatia and an EEA state are treated as flights between states of the EEA for the whole of this period. The derogation also covers flights between an area of the EEA which is not an outermost region and an outermost region(6). In addition, the EU Regulation provides that flights of non-commercial air transport operators with total annual emissions of less than 1,000 tonnes of carbon dioxide are not “aviation activities” which are covered by the Directive from 2013 to 2020.

The EU Regulation also provides that 2013 emissions are required to be reported by 31st March 2015 (and not 31st March 2014), and allowances in respect of 2013 emissions are required to be surrendered by 30th April 2015 (and not 30th April 2014). It also provides a derogation from the obligation for the report of aviation emissions to be verified, where the 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(7).

---

(1) OJ No L 129, 30.4.2012, p 1.

(2) S.I. 2013/3038.

(3) S.I. 2010/1996.

(4) S.I. 2013/1037.

(5) OJ No L 113, 25.4.2013, p 1.

(6) The outermost regions are listed in Article 349 of the Treaty on the Functioning of the European Union.

(7) See regulation 4, which amends regulation 20 of the 2012 Regulations.

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

## Definitions

*Regulation 2* amends the definitions in regulation 3 of the 2012 Regulations. In particular, it amends the definition of “aviation activities” to refer to the new exemption in the EU Regulation in respect of flights by non-commercial air transport operators with total annual emissions of less than 1,000 tonnes of carbon dioxide, to apply from 2015 to 2020. The amended definition means that these flights will not be covered by the scheme over this period. *Regulation 2* also includes a definition of “exempt non-commercial air transport operator”, which is used in the Regulations in relation to the exemption of operators of such flights from duties and liabilities in respect of 2013 and 2014.

*Regulation 4* amends the definitions in regulation 20 of the 2012 Regulations. In particular, it includes a new definition of “excluded aviation activities”, which relates to flights between an EEA state and a country outside the EEA, and flights between a region of the EEA which is not an outermost region, and an outermost region.

## Offshore installations

*Regulation 3* updates the powers of entry exercisable by the Secretary of State in relation to offshore installations. It provides that the Secretary of State may exercise powers under the Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2013<sup>(8)</sup>.

## Application for an emissions plan

*Regulations 5 and 6* amend regulation 32 of the 2012 Regulations and add regulations 32A, 32B and 32C to implement the derogation from the duty to apply to the regulator for a monitoring plan for aviation operators which carry out only excluded aviation activity. Regulation 32A requires an operator which commences aviation activities other than excluded aviation activities in 2015 or 2016 to apply for a monitoring plan. Regulation 32B provides that an operator which has only carried out excluded aviation activity in 2015 and 2016 must apply for a monitoring plan before carrying out aviation activities after 2016. Regulation 32C sets out the requirements of an application for a monitoring plan and provides that if the operator has previously been issued with an emissions plan, any new plan issued replaces the existing emissions plan. The term “emissions plan” includes a plan issued under regulation 34 of the 2012 Regulations, under the 2010 Regulations or under the Aviation Greenhouse Gas Emissions Trading Scheme Regulations 2009<sup>(9)</sup>.

*Regulation 15* amends the penalty in regulation 60 of the 2012 Regulations for a failure to submit an application for an emissions plan. No penalty arises for a failure to submit an application where the duty arose in 2013 or 2014 and either the operator carried out only excluded aviation activities, or the operator was an exempt non-commercial air transport operator. There is also a penalty for failing to comply with regulation 32A or 32B. *Regulation 9* amends regulation 34 to provide for the issue of an emissions plan when an application is made under regulation 32A or 32B.

*Regulations 7 and 8* replace the duty in regulation 33 of the 2012 Regulations to notify the regulator that a monitoring plan is not applied for. A new duty applies from 1st January 2015 (in regulation 33A). The new duty implements the derogation from the duty to apply for a monitoring plan in respect of an operator who carries out only excluded aviation activities for the years 2015 and 2016. *Regulation 16* amends the penalty in regulation 61 of the 2012 Regulations (a failure to notify the regulator if an emissions plan is not applied for) to refer to a failure to comply with the new duty in regulation 33A. No liability to a penalty arises where the duty arose before 2015 and the operator only carried out excluded aviation activities or the operator was an exempt non-commercial air transport operator.

---

(8) [S.I. 2013/971](#).

(9) [S.I. 2009/2301](#). See the definition of “emissions plan” in regulation 20 of the 2012 Regulations.

### **Duty to monitor and report aviation emissions**

*Regulations 10, 17 and 18* together implement the derogations for monitoring and reporting aviation emissions. *Regulation 10* amends regulation 35 of the 2012 Regulations to provide that the duty to monitor aviation emissions does not apply for excluded aviation emissions in 2015 and 2016 and the duty to report aviation emissions does not apply to excluded aviation emissions between 2013 and 2016, or to exempt non-commercial air transport operators for 2013 and 2014 aviation activity. *Regulation 10* also provides that the verified report for 2013 must be submitted by 31st March 2015, and not 31st March 2014. It also implements the derogation from the obligation for a report of emissions to be verified for aviation operators with annual emissions of less than 25,000 tonnes of carbon dioxide, where the operator has determined their emissions using the small emitters tool. *Regulation 17* amends regulation 63 of the 2012 Regulations to provide that an operator is not liable to a civil penalty for a failure to monitor aviation emissions in respect of excluded aviation activities in 2013 and 2014 and that an operator which was an exempt non-commercial air transport operator in 2013 or 2014 is not liable to a penalty for a failure to monitor emissions for those years. *Regulation 18* amends the penalty for failing to report aviation emissions in regulation 64 to reflect that 2013 aviation emissions are required to be reported by 31st March 2015 (and not 31st March 2014).

### **Amendment of an emissions plan**

By *Regulation 11*, the regulator may amend an emissions plan to take account of any changes to the Directive.

### **Duty to surrender allowances in respect of aviation emissions from 2013**

*Regulations 12 and 13* revoke regulation 42 of the 2012 Regulations and replace it with new regulations 42A and 42B. Regulation 42A provides that allowances in respect of 2013 emissions and 2014 emissions must be surrendered by 30th April 2015. For subsequent years from 2015 onwards, sufficient allowances to cover aviation emissions for the year must be surrendered by 30th April the following year. Regulation 42A also provides that for 2013 to 2016, there is no duty to surrender allowances in respect of emissions from excluded aviation activities and there is no duty to surrender allowances if the operator was an exempt non-commercial air transport operator in 2013 or 2014. For 2015 to 2020, this exemption is implemented by virtue of the definition of “aviation activities”, which is amended to exclude flights of exempt non-commercial air transport operators. Regulation 42B provides that where an insufficient number of allowances are surrendered, the deficit is added to the amount of allowances to be surrendered in the following year.

### **Duty to surrender a deficit of allowances in respect of aviation emissions in 2012**

*Regulation 19* amends the saving provisions in regulation 87 of the 2012 Regulation in respect of regulation 26(2) of the 2010 Regulations. It inserts regulation 87AA into the 2012 Regulations. Regulation 26(2) of the 2010 Regulations requires an operator who did not surrender sufficient allowances or project credits by 30th April 2013 to cover 2012 emissions, to surrender allowances or project credits equal to the deficit, by the year following the year in which notice is given. Regulation 87AA amends the application of the duty in regulation 26(2) to implement the derogation under the 2013 EU Decision. It also provides that an appeal against a penalty for failing to surrender a deficit of allowances or project credits for 2012 emissions is an appeal against the notice requiring surrender of the deficit.

### **Amendments to Schedules**

*Regulation 20* amends the definition of “aviation activities” where it arises in Schedule 7.

*Regulation 21* amends Schedule 8 to the 2012 Regulations, to provide that an allocation of allowances from the special reserve must not exceed 1,000,000 allowances, and corrects an error

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

relating to the year for which operators are required to monitor tonne-kilometre data when making an application for an allocation of allowances from the special reserve.

*Regulation22* amends Schedule 10 to the 2012 Regulations to set out the requirements where the Secretary of State requests the European Commission to impose an operating ban under Article 16(5) of the Directive.

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 the Explanatory Memorandum on <http://www.legislation.gov.uk>. A transposition note setting out how these Regulations implement the relevant provisions of the EU Regulation is annexed to the Explanatory Memorandum.