
STATUTORY INSTRUMENTS

2020 No. 1265

The Greenhouse Gas Emissions Trading Scheme Order 2020

PART 7

Enforcement

CHAPTER 1

Enforcement notices and determination of emissions by regulator

Enforcement notices

44.—(1) Where the regulator considers that a person has contravened, is contravening or is likely to contravene a relevant requirement, the regulator may give notice (an “enforcement notice”) to the person.

(2) In paragraph (1), “relevant requirement” means—

(a) a requirement imposed on the person by or under—

(i) this Order;

(ii) the Monitoring and Reporting Regulation 2018;

(b) a condition of a permit;

(c) a condition of an emissions monitoring plan.

(3) An enforcement notice must set out—

(a) the relevant requirement that the regulator considers has been contravened, is being contravened or is likely to be contravened;

(b) details of the contravention or likely contravention;

(c) the steps that must be taken to remedy the contravention or to ensure that a contravention does not occur;

(d) the period within which the steps must be taken;

(e) information about rights of appeal.

(4) The person to whom the enforcement notice is given must comply with the requirements of the notice within the period set out in the notice.

(5) The regulator may withdraw an enforcement notice at any time by giving notice of the withdrawal to the person to whom the enforcement notice is given.

Determination of reportable emissions or aviation emissions by regulator

45.—(1) The regulator must make a determination of emissions of an installation or an aircraft operator in either of the following circumstances—

- (a) if the operator of the installation fails to submit a report of the installation's reportable emissions in accordance with a condition of a permit included under paragraph 4(2)(b) of Schedule 6 or paragraph 11(2)(b) of Schedule 7;
- (b) if the aircraft operator fails to submit a report of aviation emissions in accordance with article 33.

(2) Where a verifier states in a verification report under the Verification Regulation 2018 that there are non-material misstatements in the annual emissions report of the operator of an installation or of an aircraft operator that have not been corrected by the operator or the aircraft operator before the verification report is issued—

- (a) the regulator must—
 - (i) assess the misstatements;
 - (ii) if the regulator considers it appropriate, make a determination of emissions of the installation or the aircraft operator; and
 - (iii) give notice to the operator or the aircraft operator as to whether or not corrections are required to the annual emissions report and, if corrections are required, set out the corrections in the notice; and
- (b) the operator or the aircraft operator must make the information referred to in subparagraph (a)(iii) available to the verifier.

(3) The regulator may make a determination of emissions of an installation or of an aircraft operator in any of the following circumstances—

- (a) if the operator of the installation fails to satisfy the regulator in accordance with a condition of a permit included under paragraph 4(2)(c) of Schedule 6 (as to sustainability criteria in respect of the use of bioliquids);
- (b) if the operator of the installation fails to submit a report in accordance with paragraph 11(4)(b) of Schedule 6;
- (c) if the operator of the installation fails to submit a report in accordance with paragraph 12(5)(b) of Schedule 6;
- (d) if the regulator considers that the determination of emissions is necessary for the purpose of imposing, or considering whether to impose, a civil penalty under article 47.

(4) In making a determination under paragraph (3)(a), the regulator may substitute an emission factor of greater than zero for the factor reported in respect of the bioliquids concerned.

(5) A regulator who makes a determination of emissions must give notice of the determination to the operator, the aircraft operator or the person on whom the civil penalty may be imposed.

(6) A notice of a determination of emissions determines for the purposes of this Order (including for calculating a civil penalty under article 47) the installation's reportable emissions or the aviation operator's aviation emissions for the period to which the determination relates.

(7) Where, after making a determination of emissions (including a rectified determination of emissions, or a further rectified determination of emissions, made under this paragraph), the regulator considers that there is an error in the determination, the regulator must—

- (a) withdraw any notice of the determination given under paragraph (5);
- (b) make a rectified determination of the emissions; and
- (c) give notice of the rectified determination in accordance with paragraph (5),

and paragraph (6) applies to a notice of the rectified determination as it does to the notice of the previous determination.

(8) For the purposes of this article, emissions must be determined on the basis of a set of assumptions designed to ensure that no under-estimation occurs.