



Department  
for Transport



Department  
of Energy &  
Climate Change

# Consultation Response Document: Implementing the Aviation Emissions Trading System 'Stop the Clock' Decision in UK Regulations



The Scottish  
Government



Llywodraeth Cymru  
Welsh Government



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# Introduction

On 18 March 2013 the Department of Energy & Climate Change and the Department for Transport launched an open consultation on the implementation of the Aviation Emissions Trading System 'Stop the Clock' Decision into UK Regulations. The consultation is available at the following link: <https://www.gov.uk/government/consultations/implementing-the-aviation-emissions-trading-system-stop-the-clock-decision-in-uk-regulations>

The consultation closed on 1 April and responses were received from the following organisations:

1. Aviation Consultants of Aspen
2. BAR UK
3. Cathay Pacific
4. Corporate Flight Department
5. easyJet
6. ELFAA (European Low Fare Airlines Association)
7. ERA (European Regions Airlines Association)
8. Etihad Airways
9. IATA (International Air Transport Association)
10. Ms Joanne Green
11. Swiss Air
12. TAG Aviation UK
13. Unite
14. United Airlines
15. Virgin Atlantic Airlines

The Departments have endeavoured, in good faith, to produce a summary of the responses received. Government takes note of stakeholders' views, and these have been taken into account in finalising the Greenhouse Gas Emissions Trading Scheme (Amendment) Regulations 2013. This document sets out the Government's position on the key issues highlighted through the consultation process.

Policy responsibility for the inclusion of aviation in emissions trading lies jointly with the Department of Energy & Climate Change (DECC) and the Department for Transport (DfT), together with the Scottish Government, Welsh [Assembly] Government and the Northern Irish Executive. Therefore references to Government in this document also cover the Devolved Administrations.

The Departments found the consultation responses constructive and helpful, and are very grateful to all the organisations who took the time to respond to this consultation.

# Summary of Responses

The consultation covered the UK implementation of the proposed Decision of the European Parliament and of the Council derogating temporarily from Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowance trading within the Community.

The regulations will amend the Greenhouse Gas Emissions Trading Scheme Regulations 2012 (“The 2012 Regulations”) to constrain the regulators’ powers of enforcement. They will remove the power of the regulators to penalise operators who fail to monitor and report emissions or surrender allowances for their extra-EEA flights prior to 2013, provided that the operator has returned (or not received) free allowances in respect of these flights. For the purposes of that derogation, an “extra-EEA” flight includes all flights that begin or end outside the EEA, with the exception of certain closely connected countries and territories.

The consultation questions were as follows:

- Do you have any comments on the text of the proposed amendment to the 2012 Regulations?
- Please explain how the proposed UK Regulations would impact on your business and/or your aircraft operations.
- Please explain how the proposed UK Regulations impact on the competitiveness of your business and/or your aircraft operations, in comparison to other businesses.
- Do you believe there is an enforceable alternative method than that proposed here, of implementing the EU Decision in the UK? If so, please outline your preferred method.
- Do you have any additional evidence relating to the costs and benefits associated with the amendment to the Greenhouse Gas Emissions Trading Scheme Regulations 2012?
- Do you have any further comments on the proposed regulations?

Please note that, where responses did not directly address the question that respondents listed them under, we have considered them under question six (‘do you have any further comments on the proposed regulations?’), in order to ensure the response is as clear as possible.

Taking each in turn:

## **Do you have any comments on the text of the proposed amendment to the 2012 Regulations?**

1. Four respondents provided comments on the text of the proposed amendments.
2. One respondent questioned whether the use of the expression ‘international activity’ in proposed regulation 87A(1) was appropriate, and argued it does not clearly differentiate between intra-EEA and extra-EEA flights, and could encroach on the competence of the International Civil Aviation Organisation.

The expressions “international activity”, “international emissions” and “international allowance” are defined terms in this regulation. Consequently, the Government considers there is no room for ambiguity; and that the competence of ICAO will not be affected by the use of this term. Depending upon the context, “international” can

be used to distinguish something from a purely national or domestic matter, or from a matter related to the EU, the EEA or another regional association (see for instance recital (26) to Directive 2003/87/EC, which refers to “Community, domestic and international action”).

3. One respondent suggested that, in proposed regulation 87A(2), “aircraft operators are not liable for penalties” is insufficient and should be replaced by “aircraft operators shall face no penalties”. However, the Government considers that the term “liable” is more appropriate in a legal context.
4. A further respondent suggested that the date by which free allowances must be returned to competent authorities should be prior to the surrender date of April 30<sup>th</sup> 2013. They propose that there is a risk that the amount of allowances that an operator assumes it will retain will not be the same as what the UK calculates, and they may be left in a position of relying on allowances they will be expected to return after the surrender date.

EU Member State regulators, including the UK Environment Agency and Scottish Environment Protection Agency, have been in close contact with aircraft operators regarding the EU ‘stop the clock’ proposal. On 14 January, aircraft operators were sent a letter from the UK regulators, on behalf of the European Commission, setting out the amount of free allowances they would be expected to return should they wish to take advantage of the derogation. Therefore, Government believes that aircraft operators have had certainty of how many allowances will need to be returned in sufficient advance of the April 30<sup>th</sup> deadline, by which aircraft operators who have decided to take advantage of the derogation must surrender allowances related to their intra-EEA 2012 flights.

5. Two respondents asked that there be sufficient time (a few weeks) for a notice to be issued to operators specifying the process by which allowances should be returned, and that this notice should be clear and comprehensive.

The UK agrees with the respondent that sufficient notice should be given by regulators on how free allowances should be returned. In the week that the EU Decision comes into force, EU Member State regulators will issue a clear and comprehensive letter to all aircraft operators participating in the Aviation ETS in 2012 explaining the specific process by which that individual aircraft operator must return their free allowances related to their extra-EEA flights. The deadline for the return of these free allowances has been set by the Decision for 30 days after the entry into force. This enables sufficient time for aircraft operators to take action accordingly.

6. Two respondents requested that, in proposed Regulation 87A(1), Switzerland should be removed from the exclusions in the definition of “international flights”. They believe that the European Union does not have a legal foundation for including Switzerland in the Aviation ETS given that it is not a member of either the EU or EFTA, and has not signed a Treaty of Accession with the EU.

The exclusion of Switzerland from the derogation and its classification as a “closely connected country” derives from the EU ‘stop the clock’ Decision itself (see Article 1 and recital (9)), which is reflected in the proposed UK amendment. Removing Switzerland from the definition of “international activity” in the proposed UK amendment would therefore place the UK regulations in breach of EU law, as it is not possible to change the scope of the derogation at the UK level.

**Please explain how the proposed UK Regulations would impact on your business and/or your aircraft operations.**

1. Two responses were received on how the proposed UK Regulations would impact upon respondents' businesses or aircraft operations.
2. Two respondents noted that, whilst the 2012 enforcement of Aviation ETS has been amended by the 'stop the clock' Decision, the calculation basis of the free allowances allocated to airlines has not. One respondent argued that the proposed regulations are creating a competitive distortion because the free allocation was calculated including long-haul flights. Long-haul flights are relatively more fuel (therefore CO<sub>2</sub>) efficient per RTK than short-haul flights. Therefore airlines with high proportions of long-haul flights did relatively well on the benchmark and the allocation free permits. However, the scheme now only covers intra-EU flights, which are short-haul.

The 'stop the clock' Decision derogates from certain aspects of the Aviation ETS Directive and does otherwise not alter any of the provisions contained within the Directive. It is therefore out of the scope of both the Decision and the UK Regulations for alterations to take place.

**Please explain how the proposed UK Regulations impact on the competitiveness of your business and/or your aircraft operations, in comparison to other businesses.**

1. One response was received regarding the impact of the proposed amendment to UK regulations upon competition. The respondent explained that they were unable to assess the competitive impact of the proposed regulations as they do not have access to the tonne-kilometre data that formed the basis of the allocation of free permits. The respondent requested that this data is released.

The UK have published free allocation levels<sup>1</sup> for their regulated aircraft operators based on the full scope of the EU ETS and the benchmark levels have been published by the Commission<sup>2</sup>, so it is possible to calculate the total tonne-kilometre data submitted by each aircraft operator. However we cannot provide a further breakdown of this data, for example showing specific flight routes, as this is commercially sensitive information.

**Do you believe there is an enforceable alternative method than that proposed here, of implementing the EU Decision in the UK? If so, please outline your preferred method.**

2. Seven respondents commented on Government's proposed course of action regarding the implementation of the EU 'stop the clock' Decision in the UK.
3. Five respondents supported the course of action proposed by Government, and agreed that changing the UK regulations is preferable to simply issuing a Direction to the UK regulators not to enforce EU ETS in respect of extra-EEA flights, as it provides more legal certainty.
4. Two respondents suggested that aviation should be completely removed from the Aviation ETS and replaced with taxation. One of these respondents requested a fuel tariff, and the other requested taxation linked to compliance and profitability, with the revenues used to incentivise public participation in the Green Deal.

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<sup>1</sup> <https://www.gov.uk/participating-in-the-eu-ets#aviation-in-the-eu-ets>

<sup>2</sup> [http://ec.europa.eu/clima/policies/transport/aviation/allowances/index\\_en.htm](http://ec.europa.eu/clima/policies/transport/aviation/allowances/index_en.htm)

The inclusion of aviation in the EU ETS is outside the scope of the proposed UK amendments and the EU Decision. It is enshrined in EU legislation, and Government is not able to remove aviation from the EU ETS at UK level. This would therefore not be a permissible alternative method of implementing the EU Decision in the UK.

### **Do you have any additional evidence relating to the costs and benefits associated with the amendment to the Greenhouse Gas Emissions Trading Scheme Regulations 2012?**

1. No additional evidence was received relating to the costs and benefits associated with the proposed amendments to UK Regulations.

### **Do you have any further comments on the proposed regulations?**

1. One respondent expressed their desire to see a harmonised approach among EU Member States to all aspects of implementation of the EU 'stop the clock' Decision.  
  
Government and the Environment Agency (who regulate the majority of UK administered aircraft operators included in the Aviation EU ETS) participate in a number of Working Groups at European level and engage with other Member States to ensure that there is a harmonised approach wherever possible. The EU Decision is addressed to the Member States (Article 4) and is therefore binding on them, although the Decision does not specify the form and means of achieving the required result.
2. One respondent requested that Government communicates effectively with airlines this year in order to minimise uncertainty and to enable aircraft operators to undertake proper business planning. The Environment Agency has undertaken thorough and on-going communication with airlines since the announcement and adoption of the 'stop the clock' proposal and will continue to do so as the Decision is implemented, and if any possible future amendments are proposed.
3. One respondent expressed their desire that, should a permanent amendment of the Aviation ETS take place as a result of the international negotiations, that there be a smooth transition to a global mechanism so that EU airlines are not negatively impacted (for example, if not all types of credits are accepted under the new system). Government is participating fully in the international negotiations, and is taking into account potential impacts on Aviation ETS. Government fully supports the eventual transition to a global mechanism.
4. Two respondents suggested that the Annual Subsistence Charge levied by Member State competent authorities should also be modified to reflect the smaller number of estimated emissions reported rather than basing this charge on the estimated international activity.  
  
The Annual Subsistence Charge is outside the scope of the proposed amendments to the UK Regulations, which purely intend to reflect the EU Decision. The European Commission proposed the 'stop the clock' Decision in November 2012 and it will apply retrospectively for 2012 flights. As a consequence, the work and resourcing of the Member State competent authorities in 2012 – maintaining and updating IT systems, issuance and evaluation of plans, managing the compliance process - has already been completed and was not affected by the Decision. For this reason, Annual Subsistence Charges have not been recalculated by the UK regulators.
5. One of the Aviation ETS de minimis thresholds is the exclusion of aircraft operators from the scheme that operate fewer than 243 flights into or out of the EEA for three

consecutive four-month periods. One respondent argued that this de minimis should also be applied to the derogation, so that aircraft operators that operate fewer than 243 intra-EEA flights for three consecutive four-month periods would also be exempt from Aviation ETS in relation to their 2012 emissions.

The exemptions and exemption thresholds for aircraft operators under the Aviation ETS are outside the scope of the proposed amendments to UK Regulations, and also of the EU Decision. They are set out in Annex I to Directive 2003/87/EC, and Government is therefore unable to make this change at the UK level.

6. Two respondents argued that the Aviation ETS is administratively complex, time consuming, and costly. One suggested that the system should be administered centrally by Eurocontrol rather than by Member State competent authorities. The other requested that the de minimis distinction for commercial operators should be extended to non-commercial operators.

The compliance process for aircraft operators is outside the scope of both the proposed amendments to the UK Regulations and the EU Decision, and it is not possible for Government to alter them at this stage. However, a European Commission review of the compliance process and of Aviation ETS more generally will be held in 2014 and a consideration of the administrative complexity of the measure for small emitters is likely to be a key consideration of this review. The UK welcomes aircraft operator views and suggestions in advance of this review.

7. One respondent requested that the proposed amendment to the UK Regulations should specify the level of training that verifiers should have before they are qualified to verify aircraft operators' emissions reports. The respondent also expressed their desire to see the qualified verifiers listed in the proposed amendment.

The process by which aircraft operators' emissions reports are verified is outside the scope of the proposed amendments to UK Regulations, and also of the EU Decision. However, Commission Regulation (EU No 600/2012), from which the EU Decision and UK Regulations derive, specifies the competency requirements for verifiers. It is the responsibility of UKAS (as the UK's National Accreditation Body (as by appointed by the Accreditation Regulations 2009 (SI 2009 No. 3155)) to publicise those verifiers to whom accreditation has been granted following the successful assessment of competency. UKAS currently publish a list of accredited verifiers on their website. Given that the name and number of verifiers change depending on the market forces, it is not appropriate or necessary to include such a list in the amended UK Regulation.

8. One respondent proposed that Heads of Government are no longer excluded from compliance with the Aviation ETS, in order to reduce costs and aviation emissions.

The exemptions and exemption thresholds for aircraft operators under the Aviation ETS are outside the scope of the proposed amendments to UK Regulations, and also of the EU Decision. They are set out in Annex I to Directive 2003/87/EC, and Government is therefore unable to make this change at the UK level.

## **Wider Responses Regarding the EU 'Stop the Clock' Proposal**

1. Whilst the scope of the consultation was limited to the proposed amendments to the UK regulations, a number of respondents took the opportunity to provide their views on the EU 'Stop the Clock' Decision, which the UK proposed amendments are intended to reflect in UK law.

2. Government welcomed the Commission's initiative to 'stop the clock' in return for progress on a global agreement in ICAO and think it is right that we give the UN process time to make progress on a global deal. The UK remains firmly committed to working through ICAO to push for an international agreement on aviation emissions and this remains our preferred option for addressing the climate change impacts of aviation.
3. The Decision is now in the final stages of co-decision agreement at European level. As the scope and nature of the derogation will be fixed in the EU Decision, it was not possible for Government to alter them in the UK Regulations. However, we are grateful to respondents for providing their views, which Government has noted.
4. For the sake of completeness and in order to provide further information to stakeholders, an indicative assessment of the costs and benefits of the "Stop the Clock" proposal to the UK as compared with a counterfactual scenario without "Stop the Clock" had been considered separately and presented as an Annex to the consultation stage Impact Assessment. The impacts considered in the Annex were different from the assessment of costs and benefits arising from a change in the UK Regulations that had been described in the consultation stage Impact Assessment. It has not been updated in light of consultation responses given that it is not directly relevant for assessing the impact of a change in UK Regulations to implement the "Stop the Clock" Decision.
5. A summary of the responses received regarding the EU 'Stop the Clock' Decision is given below.

#### **The purpose and intent of the 'Stop the Clock' Decision:**

1. Six respondents commented on the purpose and intent of the Decision.
2. Three of the respondents supported the 'stop the clock' Decision and welcomed its aim of facilitating an international agreement to tackle aviation carbon emissions. Two stated that the Decision was a "necessary step" and would act to focus international attentions on a global approach. The third respondent believed that an intra-EEA system was more justifiable than an Aviation ETS that included all flights into and out of the EEA.
3. Three respondents did not support the purpose of the 'stop the clock' Decision. Two stated that the Decision undermined the environment integrity of the Aviation ETS, the original inclusion of aviation in the EU Emissions Trading System and the importance of tackling aviation emissions. The third respondent argued that the Decision lets "airlines off the hook too easily" and reduces pressure on the international process to find a solution.

#### **The scope of the Decision:**

1. Four respondents commented on the scope of the Decision.
2. Three of these respondents suggested that the derogation should be extended to all 2012 flights, both extra-EEA and intra-EEA, in order to avoid discrimination against intra-EEA carriers and competitive distortions.
3. The fourth respondent requested that the scope of the derogation should be made permanent, rather than time-limited to one year.

#### **The impacts of the Decision:**

1. Eight respondents commented on the impacts of the Decision.
2. Four respondents argued that the Decision had caused increased administrative burden and cost for airline operators, with one respondent noting implications for job security of airline employees.
3. Three respondents suggested that the Decision would cause competitive distortion amongst airline operators who participated in the Aviation ETS in 2012. This would be to the detriment of European regional and point-to-point carriers, whose operations take place primarily in Europe. Although all aircraft operators flying on the same routes are treated equally, the respondents suggested that aircraft operators who flew both extra-EEA and intra-EEA routes would be able to cross-subsidise tickets on intra-EEA flights.
4. Three respondents indicated that the Decision had and would cause uncertainty in the carbon market, with one respondent noting the possible impact on the carbon price.
5. Two respondents commented that the Decision has an impact on the environmental integrity of the Aviation ETS and the amount of emissions that were covered by the measure in 2012.
6. Three respondents also took the opportunity to comment on the impacts of the Aviation ETS as a whole, notwithstanding the EU 'stop the clock' Decision. They suggested that the Aviation ETS could cause aircraft operators to reduce their operations in Europe in favour of non-European destinations. This in turn would lead to competitive distortions in the market in favour of non-European operators.

# Conclusions and Next Steps

1. Government has carefully considered the responses generated by this consultation, and informal comments received from the Regulators. Although no substantive changes have been made to the proposed statutory instrument, the following drafting changes have been made for the sake of clarity.
2. In the new regulation 87A(1) inserted in the 2012 Regulations, the definition of 'aviation activity' cross-referring to the Aviation Greenhouse Gas Emissions Trading Scheme Regulations 2010 has been omitted. Instead the definition of "international activity" now specifically mentions the years 2010, 2011 and 2012, which gives greater clarity.
3. In article 87A(1) the definition of 'international allowance' now includes the specification that these allowances are those that have been allocated 'free of charge'. This has been added to provide clarity and to align the text more closely with the wording of the EU Decision.
4. In article 87A(3)b, the term 'issued' has been replaced with 'allocated'. This provides greater accuracy, as the term 'issued' is used in the context of free allocation.
5. Article 87A(4) and (5) now set out the process for the return and cancellation of allowances
6. The EU Decision is expected to come into force on approximately 24 April, and it is expected that these proposed amendments to the UK regulations will be laid before Parliament shortly after that date. The statutory instrument will therefore be expected to come into force in mid-May 2013.

# Annex A – Statutory Instrument:

## The Greenhouse Gas Emissions Trading Scheme (Amendment) Regulations 2013

Please see <https://www.gov.uk/government/consultations/implementing-the-aviation-emissions-trading-system-stop-the-clock-decision-in-uk-regulations> for the final version of the statutory instrument.