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STATUTORY INSTRUMENTS

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**2018 No.**

**CLIMATE CHANGE**

**The Greenhouse Gas Emissions Trading Scheme (Amendment)  
Regulations 2018**

*Made* - - - - - \*\*\*  
*Laid before Parliament* \*\*\*  
*Coming into force* - - - *31st March 2018*

The Secretary of State is a Minister designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to the environment.

In accordance with section 2(4)(c) of the Pollution Prevention and Control Act 1999 (“the 1999 Act”), the Secretary of State has consulted the Environment Agency, the Natural Resources Body for Wales, the Scottish Environment Protection Agency, and such bodies or persons appearing to the Secretary of State to be representative of the interests of local government, industry, agriculture and small businesses, and such other bodies and persons, as the Secretary of State considers appropriate.

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972, and it appears to the Secretary of State that it is expedient for the references to EU instruments in these Regulations to be construed as references to those instruments as amended from time to time.

The Secretary of State, in exercise of the powers conferred by sections 2 and 7(9) of and Schedule 1 to the 1999 Act and by section 2(2) of the European Communities Act 1972, as read with paragraph 1A of Schedule 2 to the European Communities Act 1972(d), makes the following Regulation(e):

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- (a) S.I. 2008/301
  - (b) 1972 c. 24. Section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51) and by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7).
  - (c) 1999 c. 24. Section 2(4) was amended by paragraph 395 of Schedule 2 to the Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755 (W. 90)).
  - (d) Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (c. 51) and amended by S.I. 2007/1388 and by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7).
  - (e) Under section 57 of the Scotland Act 1998 (c. 46), despite the transfer to the Scottish Ministers of functions in relation to observing and implementing obligations under EU law in respect of devolved matters, any function of the Secretary of State in relation to any matter continues to be exercisable as regards Scotland for the purposes specified in section 2(2) of the European Communities Act 1972. And similarly, under paragraph 5 of Schedule 3 to the Government of Wales Act 2006 (c.32), despite the transfer to the Welsh Ministers of functions under section 2 of the 1999 Act so far as exercisable in relation to Wales (except in relation to offshore oil and gas exploration and exploitation), those functions continue to be exercisable by the Secretary of State in relation to Wales for such purposes.

## Citation and commencement

1. These Regulations may be cited as the Greenhouse Gas Emissions Trading Scheme (Amendment) Regulations 2018 and come into force on 31st March 2018.

## Amendment of the Greenhouse Gas Emissions Trading Scheme Regulations 2012

2.—(1) The Greenhouse Gas Emissions Trading Scheme Regulations 2012(a) are amended in accordance with paragraphs (2) to (9).

(2) In regulation 32(7), for “2015 or 2016” substitute “2015 to 2023”.

(3) In regulation 32A—

(a) in the heading, for “2015 activities and 2016 activities” substitute “2015 to 2023 activities”;

(b) in paragraph (1), for “the scheme years 2015 (“the 2015 activities”) or 2016 (“the 2016 activities”)” substitute “the schemes years 2015 to 2023 (“the 2015 to 2023 activities”)”;

(c) in paragraph (3), for “commence, as appropriate, the 2015 activities or the 2016 activities”, substitute “commence the 2015 to 2023 activities”;

(d) For paragraph (3)(a), substitute—

“(a) subject to paragraph (3A), apply to the regulator for a monitoring plan without delay after B is aware that B will commence the 2015 to 2023 activities and in any event by a date no later than 6 weeks after the date on which the 2015 to 2023 activities commence; and”;

(e) Before paragraph (4) insert a new paragraph (3A)—

“(3A) Where paragraph (3)(a) applies to 2015 to 2023 activities that are due to commence during the scheme years 2017 or 2018, B must apply to the regulator for a monitoring plan without delay after B is aware that B will commence these activities and in any event by a date no later than 6 weeks after the 31st March 2018.”;

(f) In paragraph (5)(a), for “in respect of, as appropriate, the 2015 activities or the 2016 activities” substitute “in respect of the 2015 to 2023 activities”;

(g) in paragraph (8)(a)(i), for “in the case of 2015 activities” substitute “in the case of activities described in paragraph (1) commenced during the scheme year 2015”;

(h) For paragraph (8), substitute—

“(8) In this regulation—

(a) “application date” means—

(i) in the case of 2015 to 2023 activities which are due to commence during the scheme years 2017 or 2018, the later of 30th April 2018 or the date which is 4 months before the date on which these activities are due to commence; and

(ii) in the case of 2015 to 2023 activities which are due to commence during the scheme years 2019 to 2023, the date which is 4 months before the date on which these activities are due to commence;

(b) “transferred operator application date” means—

(i) in the case of 2015 to 2023 activities which are due to commence during the scheme years 2017 or 2018, the later of 30<sup>th</sup> April 2018 or the last day of the 8 week period beginning with the date on which B becomes a UK administered operator; and

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(a) SI 2012/3038, amended by S.I. 2013/755 (W. 90), S.I. 2013/1037, S.I. 2013/3135, S.I. 2014/3125, S.I. 2015/912, S.I. 2015/933, S.I. 2015/1388, S.I. 2015/1849, S.I. 2016/28 and S.I. 2016/1154.

(ii) in the case of the 2015 to 2023 activities which are due to commence during the scheme years 2019 to 2023, the last day of the 8 week period beginning with the date on which B becomes a UK administered operator; and

(c) “transferred operator cut-off date” means the date which is 6 months before the date on which the 2015 to 2023 activities are due to commence.”

(4) In regulation 32B—

- (a) for “post-2016”, in each place it occurs (including the heading), substitute “post-2023”;
- (b) in paragraph (1)(a), for “2015 or 2016”, substitute “2015 to 2023”;
- (c) in paragraph (1)(b), for “2016”, in the first place it occurs, substitute “2023”.

(5) In regulation 33A(2), for “2016”, in both places it occurs, substitute “2023”.

(6) In regulation 35—

- (a) in paragraph (5), for “2015 and 2016” substitute “2015 to 2023”;
- (b) in paragraph (6)(a), for “2016” substitute “2023”;
- (c) for paragraph (7), substitute—

“(7) The report shall be considered verified in accordance with the Verification Regulation where—

(a) either—

- (i) A has annual reportable emissions of less than 25,000 tonnes, or
- (ii) A has annual reportable emissions of less than 3,000 tonnes other than from an outermost region(a) flight, or flights departing from, or arriving in, an aerodrome situated in any country other than an EEA state,

and

- (b) A has determined its emissions using the small emitters tool approved under the Small Emitters Tool Regulation and populated with data by Eurocontrol.”.

(7) In regulation 42A(3), for “2016” substitute “2023”.

(8) In regulation 42B—

- (a) in paragraph (4)(a)(i), for “2016” substitute “2023”;
- (b) in paragraph (4)(a)(ii), for “2017” substitute “2024”.

(9) In Schedule 7, for paragraph (1A) substitute—

“For the purpose of paragraphs (2) to (9) of this Schedule, “aviation activity” means an activity listed in the table in Annex 1 to the Directive under the section titled “Aviation”, but excluding the activities listed under points (a) to (k) of that section.”

Date *Name*  
Parliamentary Under Secretary of State  
Department for Business, Energy and Industrial Strategy

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(a) Regulation 20 defines the outermost region as the Canary Islands, French Guiana, Guadeloupe, Martinique, Mayotte, Réunion, Saint-Martin, the Azores, or Madeira.

## EXPLANATORY NOTE

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

These Regulations implement Regulation No [awaiting number] of the European Parliament and of the Council amending Directive 2003/87/EC to continue current limitations of scope for aviation activities and to prepare to implement a global market based measure from 2021<sup>(a)</sup>. Directive 2003/87/EC (“the Directive”) is currently implemented in the UK by the Greenhouse Gas Emissions Trading Scheme Regulations 2012 (“the 2012 Regulations”). The 2012 Regulations require aircraft operators which fall within the 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. These Regulations amend the 2012 Regulations.

Regulation 2(2), (3), (4), (5), (6)(a) and (b), (7) and (8) set out amendments to extend a 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.

Regulation 35(7) of the 2012 Regulations provides that where an 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, then its annual report shall be considered verified. Regulation 2(6)(c) of these Regulations extends this, deeming that the annual report by operators with annual reportable emissions of less than 3,000 tonnes other than from an outermost region flight, or flights departing from, or arriving in, an aerodrome situated in any country other than an EEA state, will also be considered verified, if the operator has determined its emissions using the small emitters tool.

Regulation 2(8) of these Regulations amends paragraph 1A(b) of Schedule 7 to the 2012 Regulations. The Directive is being amended so that flights of non-commercial air transport operators with total annual emissions of less than 1,000 tonnes of carbon dioxide are not deemed “aviation activities” until 2030. They will therefore apply to Schedule 7 of the 2012 Regulations after 2020 until 2030.

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(a) [OJ reference to be inserted once published]