

S.I. No. 261/2010 — European Communities (Greenhouse Gas Emissions Trading) (Aviation) Regulations 2010.

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Regulations 2010. 2010 261

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S.I. No. 261 of 2010

EUROPEAN COMMUNITIES (GREENHOUSE GAS EMISSIONS TRADING)
(AVIATION) REGULATIONS 2010

Notice of the making of this Statutory Instrument was published in

“Iris Oifigiúil” of 8th June, 2010.

I, JOHN GORMLEY, Minister for the Environment, Heritage and Local Government, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and by sections 6 and 53 of the Environmental Protection Agency Act 1992 (No. 7 of 1992) and for the purpose of giving further effect to Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003¹, as amended by Directive 2004/101/EC of the European Parliament and of the Council of 27 October 2004² and Directive 2008/101/EC of the European Parliament and of the Council of 19 November 2008³ hereby make the following regulations:

Citation

1. These Regulations may be cited as the European Communities (Greenhouse Gas Emissions Trading) (Aviation) Regulations 2010.

Interpretation

2. (1) In these Regulations—

“administering Member State” means the Member State responsible for administering the Community scheme in respect of an aircraft operator in accordance with Regulation 4;

“Agency” means the Environmental Protection Agency established under section 19 of the Environmental Protection Agency Act 1992 (No. 7 of 1992);

“aircraft operator” means the person who operates an aircraft at the time it performs an aviation activity listed in Schedule 1 or, where that person is not known or is not identified by the owner of the aircraft, the owner of the aircraft;

“allowance” means an allowance to emit one tonne of carbon dioxide equivalent during a specified period, which shall be valid only for the purposes of meeting the requirements of these Regulations;

“Annex I Party” means a Party listed in Annex I to the United Nations Framework Convention on Climate Change that has ratified the Kyoto Protocol as specified in Article 1(7) of the Protocol;

“attributed aviation emissions” means emissions from all flights falling within the aviation activities listed in Schedule 1 which depart from an aerodrome situated in the territory of a Member State and those which arrive in such an aerodrome from a third country;

“certified emission reduction unit” or “CER” means a unit issued pursuant to Article 12 of the Kyoto Protocol and the decisions adopted pursuant to the Convention or the Protocol;

“commercial air transport operator” means an operator that, for remuneration, provides scheduled or non-scheduled air transport services to the public for the carriage of passengers, freight or mail;

“Commission” means the Commission of the European Communities;

“Commission for Aviation Regulation” means the Commission for Aviation Regulation established under section 5 of the Aviation Regulation Act 2001 (No. 1 of 2001);

“Commission’s Interpretation of Aviation Activities” means Commission Decision of 8 June 2009 ⁴ on the detailed interpretation of the aviation activities listed in Annex I to Directive 2003/87/EC ⁵ ;

“Commission’s Monitoring and Reporting Guidelines” means Commission Decision of 18 July 2007 ⁶ establishing guidelines for the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87/EC⁵, as amended by Commission Decision of 17 December 2008 ⁷ as regards the inclusion of monitoring and reporting guidelines for

emissions of nitrous oxide, and by Commission Decision of 16 April 2009⁸ as regards the inclusion of monitoring and reporting guidelines for emissions and tonne-kilometre data from aviation activities;

“Community scheme” means the scheme for greenhouse gas emission allowance trading within the European Community provided for in the Directive;

“competent authority” means, in respect of the State, the Agency, and in respect of other Member States of the European Communities, any competent authority specified in the national law of that State as notified by the Commission;

“Convention” means the 1992 United Nations Framework Convention on Climate Change;

“direction” means a direction issued by the Agency pursuant to Regulation 18;

“Directive” means Directive 2003/87/EC of 13 October 2003⁵ establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC⁹, as amended by Directive 2004/101/EC of 27 October 2004¹⁰ in respect of the Kyoto Protocol’s project mechanisms, and by Directive 2008/101/EC of 19 November 2008¹¹ so as to include aviation activities in the scheme for greenhouse gas emission allowance trading within the Community;

“emission reduction unit” or “ERU” means a unit issued pursuant to Article 6 of the Protocol and the decisions adopted pursuant to the Convention or the Protocol;

“emissions” means the release of greenhouse gases into the atmosphere from an aircraft performing an aviation activity listed in Schedule 1 of the gases specified in respect of that activity;

“greenhouse gases” means the gases listed in Schedule 2;

“historical aviation emissions” means the mean average of the annual emissions in the calendar years 2004, 2005 and 2006 from aircraft performing an aviation activity listed in Schedule 1;

“Irish Aviation Authority” means the Irish Aviation Authority established under the Irish Aviation Authority Act 1993 (No. 29 of 1993);

“Minister” means the Minister for the Environment, Heritage and Local Government;

“person” means any natural or legal person;

“project activity” means a project activity within the meaning of Article 6 or Article 12 of the Protocol and the decisions adopted pursuant to the Convention or the Protocol;

“Protocol” means the 1997 Kyoto Protocol to the 1992 United Nations Framework Convention on Climate Change;

“public” means one or more persons and associations, organisations or groups of persons;
and

“tonne of carbon dioxide equivalent” means one metric tonne of carbon dioxide (CO₂) or an amount of any other greenhouse gas listed in Schedule 2 with an equivalent global-warming potential.

(2) A word or expression that is used in these Regulations and is also used in the Directive has the same meaning in these Regulations that it has in the Directive.

(3) A word or expression that is used in these Regulations and is also used in the Commission’s Monitoring and Reporting Guidelines has the same meaning in these Regulations that it has in the Commission’s Monitoring and Reporting Guidelines.

Purpose and Application

3. (1) These Regulations provide for the implementation in the State of a scheme for greenhouse gas emission allowance trading within the European Community in order to promote reductions of greenhouse gas emissions from aviation activities in a cost effective and economically efficient manner.

(2) These Regulations apply to emissions from aviation activities listed in Schedule 1.

Administering Member State

4. (1) The administering Member State in respect of an aircraft operator shall be the State—

(a) in the case of an aircraft operator with a valid operating licence granted by the Commission for Aviation Regulation in accordance with the provisions of Council Regulation (EEC) No 2407/92 of 23 July 1992¹² on licensing of air carriers, and

(b) in the case of an aircraft operator who does not have a valid operating licence in accordance with the provisions of Council Regulation (EEC) No. 2407/92 of 23 July 1992¹² on licensing of air carriers from any Member State, where the greatest estimated aviation emissions from flights performed by that aircraft operator in the base year are attributable to the State.

(2) The administering Member State shall be the State for those aircraft operators assigned to the State in accordance with the list of aircraft operators published by the Commission pursuant to Article 18a(3) of the Directive.

(3) For the purposes of this Regulation, “base year” means, in relation to an aircraft operator which started operating in the Community after 1 January 2006, the first calendar year of operation, and in all other cases, the calendar year starting on 1 January 2006.

(4) (a) Where in the first two years of any period referred to in Regulation 6, none of the attributed aviation emissions from flights performed by an aircraft operator falling within Regulation 4(1)(b) are attributed to the State, the aircraft operator shall be transferred to another administering Member State in respect of the next period.

(b) The new administering Member State shall be the Member State with the greatest estimated attributed aviation emissions from flights performed by that aircraft operator during the first two years of the previous period.

Competent Authority

5. (1) The Agency is designated as the competent authority in the State for the purposes of these Regulations and the Directive.

(2) As competent authority, the Agency shall be responsible for administering the Community scheme in respect of aircraft operators for whom the State is the administering Member State.

Trading Periods

6. The trading periods for aviation are—

(a) the period from 1 January 2012 to 31 December 2012, and

(b) periods of eight years beginning on 1 January 2013.

Monitoring Plan for Emissions

7. (1) An aircraft operator shall submit to the Agency a monitoring plan setting out measures to monitor and report emissions and in accordance with—

(a) the principles set out in Schedule 3,

(b) the Commission's Monitoring and Reporting Guidelines, and

(c) any other requirements of the Agency which are necessary for the purposes of the administration and implementation of the Directive.

(2) The monitoring plan for monitoring and reporting emissions shall be approved by the Agency if the Agency is satisfied that an aircraft operator has complied with Regulations 7(1) and 9(1).

(3) A person who fails to comply with paragraph (1) is guilty of an offence.

(4) A person who in making an application for approval of a monitoring plan pursuant to this Regulation wilfully makes a false or misleading statement is guilty of an offence.

Monitoring Plan for Tonne-Kilometre Data

8. (1) For the purpose of an application under Regulation 13, an aircraft operator shall submit to the Agency a monitoring plan setting out measures to monitor and report tonne-kilometre data and in accordance with—

(a) the principles set out in Schedule 3,

(b) the Commission's Monitoring and Reporting Guidelines, and

(c) any other requirements of the Agency which are necessary for the purposes of the administration and implementation of the Directive.

(2) The monitoring plan for monitoring and reporting tonne-kilometre data shall be approved by the Agency if the Agency is satisfied that an aircraft operator has complied with

Regulations 8(1) and 9(1).

Fee

9. (1) An administration fee, subject to a minimum fee of €200 and a maximum fee of €500, shall be determined by the Agency in respect of an application for the approval of a monitoring plan pursuant to Regulations 7 and 8. The Agency may, however, waive the fee payable where it is satisfied that the payment of a similar fee for the approval of a monitoring plan has already been paid to another administering Member State.

(2) A fee charged under this Regulation shall be payable by an aircraft operator to whom the approval relates and the Agency may refuse to grant or may revoke an approval of a monitoring plan if the fee has not been paid.

(3) A fee charged under this Regulation may be recovered by the Agency, as a simple contract debt in a court of competent jurisdiction.

(4) The Public Offices Fees Act 1879 does not apply in respect of fees payable under this Regulation.

Monitoring of Emissions

10. (1) From 1 January 2010, an aircraft operator shall monitor emissions from the aircraft which it operates in accordance with—

(a) its monitoring plan for monitoring and reporting emissions as approved by the Agency under Regulation 7,

(b) the principles set out in Schedule 3, and

(c) the Commission's Monitoring and Reporting Guidelines.

(2) A person who fails to comply with paragraph (1) is guilty of an offence.

Monitoring of Tonne-Kilometre Data

11. For the purpose of an application under Regulation 13, an aircraft operator shall, from 1 January 2010, monitor tonne-kilometre data from the aircraft which it operates in accordance with—

(a) its monitoring plan for monitoring and reporting tonne-kilometre data as approved by the Agency under Regulation 8,

(b) the principles set out in Schedule 3, and

(c) the Commission's Monitoring and Reporting Guidelines.

Reporting and Verification of Emissions

12. (1) An aircraft operator shall report the emissions from the aircraft which it operates during each calendar year commencing on 1 January 2010, to the Agency, not later than 31 March of the following year in accordance with—

(a) its monitoring plan for monitoring and reporting emissions as approved by the Agency under Regulation 7,

(b) the principles set out in Schedule 3, and

(c) the Commission's Monitoring and Reporting Guidelines.

(2) The aircraft operator shall ensure that the report referred to in paragraph (1) is verified in accordance with—

(a) the criteria set out in Schedule 4, and

(b) any detailed provisions on verification adopted by the Commission pursuant to Article 15 of the Directive

to the satisfaction of the Agency, and shall provide a copy of the said verification report to the Agency when submitting the report specified in paragraph (1).

(3) An aircraft operator whose report has not been verified or has not submitted a verification report to the satisfaction of the Agency by 31 March each year in accordance with paragraph (1), for emissions during the preceding year, cannot make further transfers of allowances until a report from that operator has been verified as satisfactory.

(4) A person who fails to comply with paragraph (1) or (2) is guilty of an offence.

(5) A person who in submitting a report of emissions pursuant to this Regulation wilfully makes a false or misleading statement is guilty of an offence.

Application for and Allocation of Allowances free of charge

13. (1) An aircraft operator may apply to the Agency for an allocation of allowances that are to be allocated free of charge.

(2) An application under this Regulation shall—

(a) be accompanied by a report of the tonne-kilometre data for the aviation activities listed in Schedule 1 performed by that aircraft operator for the monitoring year in accordance with—

(i) the monitoring of tonne-kilometre data pursuant to Regulation 11,

(ii) its monitoring plan for monitoring and reporting tonne-kilometre data as approved by the Agency under Regulation 8,

(iii) the principles set out in Schedule 3,

(iv) the Commission's Monitoring and Reporting Guidelines, and

(b) be submitted to the Agency at least 21 months before the start of the period to which it relates or, in relation to the 2012 period, by 31 March 2011.

(3) The aircraft operator shall ensure that the report referred to in paragraph (2) is verified

in accordance with—

(a) the criteria set out in Schedule 4, and

(b) any detailed provisions on verification adopted by the Commission pursuant to Article 15 of the Directive

to the satisfaction of the Agency, and shall provide a copy of the said verification report to the Agency when submitting the report specified in paragraph (2).

(4) For the purposes of this Regulation, the monitoring year shall be the calendar year ending 24 months before the start of the period to which it relates in accordance with Schedules 3 and 4 or, in relation to the 2012 period, 2010.

(5) At least 18 months before the start of the period to which the application relates or, in relation to the 2012 period, by 30 June 2011, the Agency shall submit applications received under this Regulation to the Commission if the Agency is satisfied that an aircraft operator has complied with Regulations 8, 11, 13(2) and 13(3).

(6) Within three months from the date on which the Commission adopts a decision pursuant to Article 3e(3) of the Directive, the Agency shall calculate and publish—

(a) the total allocation of allowances for the period to each aircraft operator whose application the Agency submitted to the Commission in accordance with this Regulation, calculated by multiplying the tonne-kilometre data included in the application by the benchmark referred to in Article 3e(3(e)) of the Directive, and

(b) the allocation of allowances to each aircraft operator for each year, which shall be determined by dividing its total allocation of allowances for the period calculated under subparagraph (a) by the number of years in the period for which the aircraft operator is performing an aviation activity listed in Schedule 1.

(7) The Agency shall, not later than 28 February of each year and commencing after 1 January 2012, issue to each aircraft operator the number of allowances allocated to that aircraft operator for that year under this Regulation and in accordance with any detailed provisions for a standardised and secured system of registries adopted by the Commission pursuant to Article 19 of the Directive.

Special Reserve for certain aircraft operators

14. (1) An aircraft operator is eligible for a free allocation of allowances from the special reserve where the aircraft operator—

(a) starts performing an aviation activity falling within Schedule 1 after the monitoring year for which tonne-kilometre data was submitted under Regulation 13 in respect of a period referred to in Regulation 6(b), or

(b) whose tonne-kilometre data increases by an average of more than 18% annually between the monitoring year for which tonne-kilometre data was submitted under Regulation 13 in respect of a period referred to in Regulation 6(b) and the second

calendar year of that period,

and whose activity under subparagraph (a), or additional activity under subparagraph (b), is not in whole or in part a continuation of an aviation activity previously performed by another aircraft operator.

(2) An aircraft operator who is eligible under paragraph (1) may apply to the Agency for a free allocation of allowances from the special reserve.

(3) An application under this Regulation shall—

(a) be accompanied by a report of the verified tonne-kilometre data in accordance with Schedules 3 and 4 for the aviation activities listed in Schedule 1 performed by the aircraft operator in the second calendar year of the period referred to in Regulation 6(b) to which the application relates,

(b) provide evidence that the criteria for eligibility under paragraph (1) are fulfilled,

(c) in the case of an aircraft operator falling within paragraph (1)(b), state—

(i) the percentage increase in tonne-kilometres performed by that aircraft operator between the monitoring year for which tonne-kilometre data was submitted under Regulation 13 in respect of a period referred to in Regulation 6(b) and the second calendar year of that period,

(ii) the absolute growth in tonne-kilometres performed by that aircraft operator between the monitoring year for which tonne-kilometre data was submitted under Regulation 13 in respect of a period referred to in Regulation 6(b) and the second calendar year of that period,

(iii) the absolute growth in tonne-kilometres performed by that aircraft operator between the monitoring year for which tonne-kilometre data was submitted under Regulation 13 in respect of a period referred to in Regulation 6(b) and the second calendar year of that period which exceeds the percentage specified in paragraph (1)(b), and

(d) be submitted to the Agency by 30 June in the third year of the period referred to in Regulation 6(b) to which it relates.

(4) No later than six months from the deadline for making an application under paragraph (3)(d), the Agency shall submit applications received under this Regulation to the Commission if the Agency is satisfied that an aircraft operator has complied with paragraphs (1) and (3).

(5) Within three months from the date on which the Commission adopts a decision pursuant to Article 3f(5) of the Directive, the Agency shall calculate and publish—

(a) the allocation of allowances from the special reserve to each aircraft operator whose application it submitted to the Commission in accordance with paragraph (4) and this allocation shall be calculated by multiplying the benchmark referred to in Article

3f(5) of the Directive by—

(i) in the case of an aircraft operator falling within paragraph (1)(a), the tonne-kilometre data included in the application submitted to the Commission under paragraphs (3)(a) and (4),

(ii) in the case of an aircraft operator falling within paragraph (1)(b), the absolute growth in tonne-kilometres exceeding the percentage specified in paragraph (1)(b) included in the application submitted to the Commission under paragraphs (3)(c)(iii) and (4), and

(b) the allocation of allowances to each aircraft operator for each year, which shall be determined by dividing its allocation of allowances under subparagraph (a) by the number of full calendar years remaining in the period referred to in Regulation 6(b) to which the allocation relates.

(6) The Agency shall, not later than 28 February of each year and commencing after 1 January 2012, issue to each aircraft operator the number of allowances allocated to that aircraft operator for that year under this Regulation and in accordance with any detailed provisions for a standardised and secured system of registries adopted by the Commission pursuant to Article 19 of the Directive.

(7) An allocation to an aircraft operator under paragraph (1)(b) shall not exceed 1,000,000 allowances.

(8) The Agency shall arrange for the auctioning of any unallocated allowances in the special reserve in accordance with the detailed provisions on auctioning adopted pursuant to Article 3d of the Directive.

Use of CERs and ERUs from project activities in the Community Scheme

15. (1) Subject to paragraphs (3) and (4), during the period referred to in Regulation 6(a), an aircraft operator may use certified emission reduction units and emission reduction units, up to 15% of the number of allowances they are required to surrender pursuant to Regulation 16(3).

(2) Subject to paragraphs (3) and (4), for periods referred to in Regulation 6(b), the percentage of certified emission reduction units and emission reduction units that may be used in relation to aviation activities shall be determined in accordance with the provisions of Article 11a of the Directive.

(3) Certified emission reduction units or emission reduction units generated from project activities related to—

(a) nuclear facilities, or

(b) land use, land use change or forestry activities,

may not be used for the purpose of compliance with Regulation 16(3).

(4) The use of certified emission reduction units and emission reduction units shall be in

accordance with any detailed provisions for a standardised and secured system of registries adopted by the Commission pursuant to Article 19 of the Directive.

Transfer, Surrender and Cancellation of Allowances

16. (1) Subject to Regulations 12(3) and 26, allowances shall be transferable between persons within the Community.

(2) Subject to paragraph (6), only allowances issued by a competent authority shall be recognised for the purpose of meeting an aircraft operator's obligations under paragraph (3).

(3) Subject to Regulation 15, each aircraft operator shall surrender, not later than 30 April of each year and commencing after 1 January 2013, a number of allowances equal to the total emissions during the preceding calendar year from aviation activities listed in Schedule 1 for which it is the aircraft operator, as verified in accordance with Regulation 12(3).

(4) The Agency shall cancel or cause to be cancelled allowances surrendered in accordance with paragraph (3).

(5) The Agency shall cancel or cause to be cancelled allowances at any time at the request of the person holding them.

(6) The transfer, surrender and cancellation of allowances shall be in accordance with any detailed provisions for a standardised and secured system of registries adopted by the Commission pursuant to Article 19 of the Directive.

(7) A person who fails to comply with paragraph (3) is guilty of an offence.

Validity of allowances

17. (1) Allowances shall only be valid for emissions during the periods for which they are issued.

(2) (a) Four months after the beginning of each eight year period beginning on 1 January 2013, allowances which are no longer valid and have not been surrendered and cancelled in accordance with Regulation 16 shall be cancelled or caused to be cancelled by the Agency.

(b) The Agency shall, as soon as practicable, issue allowances to persons for the current period to replace any allowances held by them which are cancelled or caused to be cancelled in accordance with subparagraph (a).

Issue of Direction

18. (1) The Agency may issue a direction to an aircraft operator to comply with Regulations 7, 10, 12 or 16(3).

(2) An aircraft operator who fails to comply with a direction issued to him or her is guilty of an offence.

Direction

19. A direction issued by the Agency pursuant to Regulation 18 shall be—

- (a) in writing,
- (b) served in accordance with Regulation 20,
- (c) contain reasons for the direction, and
- (d) advise the recipient of his or her right of appeal pursuant to Regulation 21.

Service of Direction

20. (1) Where a direction is required to be issued by the Agency, the direction shall be in writing and shall be addressed to the aircraft operator and shall be given to the aircraft operator in one of the following ways—

- (a) by delivering it to the aircraft operator,
- (b) by leaving it at the address at which the aircraft operator carries on business,
- (c) by sending it by post in a pre-paid registered letter addressed to the aircraft operator at the address at which the aircraft operator carries on his or her business,
- (d) if an address for the service of a direction has been furnished by the aircraft operator, by leaving it at, or sending it by pre-paid registered post addressed to the aircraft operator, to that address,
- (e) by sending it by means of electronic mail or a facsimile machine, to a device or facility for the reception of electronic mail or facsimiles located at the address at which the aircraft operator carries on business or, if an address for the service of a direction has been furnished by the aircraft operator, that address:

provided that—

- (i) the sender's—

- (I) facility for the reception of electronic mail generates a message confirming a receipt of the electronic mail, or

- (II) facsimile machine generates a message confirming successful transmission of the total number of pages of the direction, and

- (ii) the direction is also given in one of the other ways mentioned in any of the preceding paragraphs.

(2) For the purposes of paragraph (1)—

- (a) a company registered under the Companies Acts is deemed to be ordinarily resident at its registered office, and

- (b) every other body corporate and every unincorporated body is deemed to be ordinarily resident at its principal office or place of business.

(3) A copy of a direction, which has endorsed on it a certificate purporting to be signed by an officer of the Agency authorised in that behalf by the Agency stating that the copy is a true copy of the direction or reply may, without proof of signature of that person, be produced in every court and in all legal proceedings and is evidence, unless the contrary is shown, of the direction or reply.

Appeal from a Direction issued under Regulation 18

21. (1) A direction referred to in Regulation 18 shall take effect—

(a) where it is received by the person on whom it is served, or

(b) where an appeal is brought against the direction, on the day immediately following—

(i) the day on which the direction is confirmed on appeal or the appeal is withdrawn, or

(ii) the day specified in the direction.

(2) The bringing of an appeal against a direction referred to in paragraph (1) shall not have the effect of suspending the operation of the direction, but the appellant may apply to the court to have the operation of the direction suspended until the appeal is disposed of and, on such application, the court may, if it thinks proper to do so, direct that the operation of the notice be suspended until the appeal is disposed of.

(3) A person on whom a direction referred to in paragraph (1) is served may, within 7 days beginning on the day on which the direction is served on him or her, appeal against the direction to a judge of the District Court in the district court district in which the direction was served and in determining the appeal the judge may, if he or she is satisfied that it is reasonable to do so, confirm, vary or cancel the notice.

(4) Where, on the hearing of an appeal under this Regulation, a direction is confirmed, notwithstanding paragraph (1), the judge by whom the appeal is heard may, on the application of the appellant, suspend the operation of the direction for such period as in the circumstances of the case the judge considers appropriate.

(5) A person who—

(a) brings an appeal under paragraph (3), or

(b) applies for the suspension of the operation of a direction under paragraph (4) shall at the same time notify the Agency of the appeal or application, and the grounds for the appeal or application.

Injunctive Relief

22. (1) Where, on application by the Agency to the High Court, the Court is satisfied that an aircraft operator has failed to comply with a direction or a requirement of these Regulations, the Court may by order—

(a) direct the person to comply with the direction or requirement, and

(b) make such other provision, including provision in relation to the payment of costs, as the Court considers appropriate.

(2) An application for an order under this Regulation shall be by motion, and the High Court, when considering the matter, may make such interim or interlocutory order as it considers appropriate.

(3) An application for an order under this Regulation may be made whether or not there has been a prosecution for an offence under these Regulations in relation to the activity concerned, and shall not prejudice the initiation of a prosecution for an offence under these Regulations in relation to the activity concerned.

Offences

23. (1) For the purposes of paragraphs (1) to (9) of this Regulation, sections 8, 9, 10, 11 and 12 of the Environmental Protection Agency Act 1992 (No. 7 of 1992) shall apply to the prosecution of an offence.

(2) A person guilty of an offence under Regulation 7, 10, 12, 16(3) or 18 shall be liable—

(a) on summary conviction, to a fine not exceeding €3,000, or to imprisonment for any term not exceeding 12 months or, at the discretion of the court, to both such fine and such imprisonment, or

(b) on conviction on indictment, to a fine not exceeding €15,000,000, or to imprisonment for a term not exceeding 10 years or, at the discretion of the court, to both such fine and such imprisonment.

(3) Where a person, after conviction of an offence under these Regulations, continues to contravene the Regulations, he or she shall be guilty of an offence on every day on which the contravention continues and for each such offence, he or she shall be liable to a fine, on summary conviction, not exceeding €1,000 or on conviction on indictment, not exceeding €130,000.

(4) Where an offence under these Regulations is committed by a body corporate or by a person acting on behalf of a body corporate and is proved to have been so committed with the consent, connivance or approval of, or to have been facilitated by any neglect on the part of any director, manager, secretary or any other officer of such body, such person shall also be guilty of an offence.

(5) Where a court imposes a fine or affirms or varies a fine imposed by another court for an offence under these Regulations, prosecuted by the Agency, it shall, on the application of the Agency (made before the time of such imposition, affirmation or variation), provide by order for the payment of the amount of the fine to the Agency and such payment may be enforced by the Agency, as if it were due to it on foot of a decree or order made by the court in civil proceedings.

(6) An offence under Regulation 7, 10, 12, 16(3) or 18, as the case may be, may be

prosecuted summarily by the Agency.

(7) Notwithstanding the provisions of section 10(4) of the Petty Sessions (Ireland) Act 1851, summary proceedings for an offence under these Regulations may be commenced—

(a) at any time within 12 months from the date on which the offence was committed,
or

(b) at any time within 6 months from the date on which evidence sufficient, in the opinion of the person by whom the proceedings are initiated, to justify the proceedings, comes to such person's knowledge,

whichever is the later: provided that no such proceedings shall be initiated later than 5 years from the date on which the offence concerned was committed.

(8) For the purposes of this Regulation, a certificate signed by or on behalf of the person initiating the proceedings as to the date on which evidence relating to the offence came to his or her knowledge shall be prima facie evidence thereof and in any legal proceedings a document purporting to be a certificate issued for the purposes of this paragraph and to be so signed shall be deemed to be so signed and shall be admitted as evidence without proof of the signature of the person purporting to sign the certificate, unless the contrary is shown.

(9) Where a person is convicted of an offence under these Regulations, the court shall, unless it is satisfied that there are special and substantial reasons for not so doing, order the person to pay to the Agency the costs and expenses, measured by the court, incurred by the Agency in relation to the investigation, detection and prosecution of the offence, including costs and expenses incurred in the taking of samples, the carrying out of tests, examinations and analyses and in respect of the remuneration and other expenses of directors, employees, consultants and advisers.

(10) The Agency shall publish the names of aircraft operators who are in breach of the requirements to surrender allowances as required by Regulation 16(3), and the details of such breach.

(11) An aircraft operator who fails to surrender allowances as required by Regulation 16(3), not later than 30 April of each year and commencing after 1 January 2013, to cover its emissions during the preceding year shall be liable for payment to the Agency of an excess emissions penalty in the amount of €100 for each tonne of carbon dioxide equivalent emitted for which the aircraft operator has not surrendered allowances.

(12) Payment of the excess emissions penalty specified in this Regulation shall not release the aircraft operator from the obligation to surrender an amount of allowances equal to those excess emissions when surrendering allowances in relation to the following calendar year.

(13) An excess emissions penalty under this Regulation may be recovered by the Agency, as a simple contract debt in a court of competent jurisdiction.

(14) In the event that an aircraft operator fails to comply with the requirements of these Regulations and where other enforcement measures have failed to ensure compliance, the Agency may, with the approval of the Minister, request the Commission to decide on the

imposition of an operating ban on an aircraft operator and shall submit a report to the Commission in accordance with paragraph (15).

(15) The report referred to in paragraph (14) shall include—

- (a) evidence that the aircraft operator has not complied with its obligations under these Regulations,
- (b) details of the enforcement action which has been taken by the Agency,
- (c) a justification for the imposition of an operating ban at Community level, and
- (d) a recommendation for the scope of an operating ban at Community level and any conditions that should be applied.

(16) The Agency shall enforce, within its territory, any decisions adopted by the Commission pursuant to Article 16(10) of the Directive.

Access to information

24. The Agency shall make available to the public, decisions relating to the allocation of allowances and the reports of emissions submitted to it by aircraft operators, in accordance with the Commission's Monitoring and Reporting Guidelines and the provisions of the European Communities (Access to Information on the Environment) Regulations 2007 (S.I. No. 133 of 2007).

Registry

25. (1) The Agency shall, in accordance with any detailed provisions for a standardised and secured system of registries adopted by the Commission pursuant to Article 19 of the Directive, establish and maintain, or cause to be established and maintained, a registry in order to ensure the accurate accounting of—

- (a) the issue, holding, transfer and cancellation of allowances, and
- (b) the holding, transfer and cancellation of emission reduction units and certified emission reduction units, and may do so in a consolidated manner with the registry of one or more Member States of the European Communities.

(2) Any person may hold allowances.

(3) The registry shall be accessible to the public and shall contain separate accounts to record the allowances held by each person to whom and from whom allowances are issued or transferred.

Central Administrator — Irregularities on Transactions in the Registry

26. Where irregularities are identified by or to the Agency, it shall not register, or allow to be registered as appropriate, the transactions in question or any further transactions relating to the allowances concerned until the irregularities have been resolved.

Assistance to be provided by the Irish Aviation Authority

27. For the purposes of the administration and implementation of the Directive, the Agency may request the Irish Aviation Authority to furnish to it information in relation to aviation activities, either generally or in respect of a specific aircraft operator, and the Authority shall comply with such a request.

Authorised Officer

28. (1) The Agency may appoint in writing one or more of its officers, as it considers appropriate, to be an authorised officer or authorised officers for the purposes of ensuring compliance with these Regulations.

(2) Every authorised officer appointed under this Regulation shall be furnished with a warrant of his or her appointment and shall if requested by any person thereby affected, produce such warrant of appointment to that person for inspection.

(3) An appointment under this Regulation shall cease—

(a) if the Agency revokes the appointment,

(b) in the case of an appointment that is for a fixed period, on the expiry of the period,
or

(c) if the person appointed ceases to be an officer of the Agency.

(4) An authorised officer may, for the purposes of these Regulations—

(a) subject to paragraph (7) enter on any premises at all reasonable times for any purpose connected with these Regulations,

(b) at such premises inspect and take copies of, any books, records, other documents (including documents stored in non-legible form) or extracts therefrom, which he or she finds in the course of his or her inspection,

(c) remove such photographs, books, records or documents from such premises and detain them for such period as he or she reasonably considers to be necessary for the purposes of his or her functions under these Regulations,

(d) require the aircraft operator or his or her agent or employee or any person at the premises or person in charge of the premises and any person employed there to give to him or her such assistance and information and to produce to him or her such books, documents or other records (and in the case of documents or records stored in non-legible form, produce to him or her a legible reproduction thereof) that are in that person's power or procurement, as he or she may reasonably require for the purposes of his or her functions under these Regulations,

(e) direct that any matter or thing not be moved from the premises without his or her consent, or

(f) secure for later inspection any premises or part of any premises for such period as he or she considers reasonably necessary for the purposes of his or her functions under these Regulations.

(5) When performing a function under these Regulations, an authorised officer may, subject to any warrant under paragraph (6), be accompanied by such number of authorised officers or members of the Garda Síochána as he or she considers appropriate.

(6) An authorised officer shall not enter a dwelling other than—

(a) with the consent of the occupier, or

(b) in accordance with a warrant issued under paragraph (7).

(7) Upon the sworn information of an authorised officer, a judge of the District Court may, if satisfied that there are reasonable grounds for believing that books, records or other documents (including documents in non-legible form referred to in paragraph (4)(d)) are being kept or stored in any dwelling, issue a warrant authorising a named authorised officer accompanied by such other authorised officers or members of the Garda Síochána as may be necessary, at any time or times, not later than one month from the date of issue of the warrant, to enter the dwelling and perform the functions of an authorised officer under subparagraphs (a) to (f) of paragraph (4).

(8) Any person who obstructs or interferes with an authorised officer or a member of the Garda Síochána in the course of exercising a power conferred on him or her by these Regulations or a warrant under paragraph (7), or impedes the exercise by the officer or member, as the case may be, of such power, or fails or refuses to comply with a request or requirement of, or to answer a question asked by, the officer or member pursuant to this Regulation, or in purported compliance with such request or requirement or in answer to such question gives information to the officer or member that he or she knows to be false or misleading in any material respect, is guilty of an offence.

(9) Where an authorised officer believes, upon reasonable grounds, that a person has committed an offence under these Regulations he or she may require that person to provide him or her with his or her name and the address at which he or she ordinarily resides.

(10) A person who falsely represents himself or herself to be an authorised officer is guilty of an offence.

(11) A statement or admission made by a person pursuant to a request or requirement or in answer to a question under this Regulation shall not be admissible as evidence in proceedings brought against that person for an offence (other than an offence under paragraph (8)).

(12) In this Regulation—

“premises” means as respects entry pursuant to paragraph (4), any place and shall include any building, ship or other vessel, aircraft, railway wagon and includes a lorry or container used to transport vehicles, or a lorry found on the lands,

“record” includes, in addition to a record in writing—

(a) a disc, tape, sound-track or other device in which information, sounds or signals are embodied so as to be capable (with or without the aid of some other instrument) of being reproduced in legible or audible form,

(b) a film, tape or other device in which visual images are embodied so as to be capable (with or without the aid of some other instrument) of being reproduced in visual form,

(c) a photograph, and

any reference to a copy of a record includes—

(i) in the case of a record to which paragraph (a) applies, a transcript of the sounds or signals embodied therein,

(ii) in the case of a record to which paragraph (b) applies, a still reproduction of the images embodied therein, and

(iii) in the case of a record to which paragraphs (a) and (b) apply, such a transcript together with such a still reproduction.

Reporting to the Commission

29. The Agency shall submit to the Commission an annual report on the application of these Regulations, providing information on the allocation of allowances, the use of emission reduction units and certified emission reduction units in the Community scheme, the operation of the registry, the application of the Commission's Monitoring and Reporting Guidelines, the verification of reports on emissions, compliance with these Regulations, measures taken to implement decisions referred to in Regulation 23(16) and the fiscal treatment of allowances, if any.

Revocation

30. The European Communities (Greenhouse Gas Emissions Trading) (Aviation) Regulations 2009 (S.I. No. 274 of 2009) are revoked.

Regulation 3

SCHEDULE 1 CATEGORIES OF ACTIVITIES

Activities	Greenhouse gases
AviationFlights which depart from or arrive in an aerodrome situated in the territory of a Member State to which the Treaty applies.The detailed interpretation of these aviation activities, including the exemptions, are set out in the Commission's Interpretation of Aviation Activities.This activity shall not include:(a)flights performed exclusively for the transport, on official mission, of a reigning Monarch and his or her immediate family, Heads of State, Heads of Government and Government	Carbon dioxide(CO ₂)

Ministers, of a country other than a Member State, where this is substantiated by an appropriate status indicator in the flight plan;(b)military flights performed by military aircraft and customs and police flights;(c)flights related to search and rescue, firefighting flights, humanitarian flights and emergency medical service flights authorised by the appropriate competent authority;(d)any flights performed exclusively under visual flight rules as defined in Annex 2 to the Chicago Convention;(e)flights terminating at the aerodrome from which the aircraft has taken off and during which no intermediate landing has been made;(f)training flights performed exclusively for the purpose of obtaining a licence, or a rating in the case of cockpit flight crew where this is substantiated by an appropriate remark in the flight plan provided that the flight does not serve for the transport of passengers and/or cargo or for the positioning or ferrying of the aircraft;(g)flights performed exclusively for the purpose of scientific research or for the purpose of checking, testing or certifying aircraft or equipment whether airborne or ground-based;(h)flights performed by aircraft with a certified maximum take-off mass of less than 5700 kg;(i)flights performed in the framework of public service obligations imposed in accordance with Regulation (EEC) No. 2408/92¹³ on routes within outermost regions, as specified in Article 299(2) of the Treaty, or on routes where the capacity offered does not exceed 30000 seats per year; and(j)flights which, but for this point, would fall within this activity, performed by a commercial air transport operator operating either:— fewer than 243 flights per period for three consecutive four-month periods; or— flights with total annual emissions lower than 10000 tonnes per year. Flights performed exclusively for the transport, on official mission, of a reigning Monarch and his or her immediate family, Heads of State, Heads of Government and Government Ministers, of a Member State may not be excluded under this point.

13 O.J. No. L240 24.8.1992 p.8

Regulation 2

SCHEDULE 2 GREENHOUSE GASES

Carbon dioxide (CO₂)

Methane (CH₄)

Nitrous Oxide (N₂O)

Hydrofluorocarbons (HFCs)

Perfluorocarbons (PFCs)

Sulphur Hexafluoride (SF₆)

Regulation 7

SCHEDULE 3 PRINCIPLES FOR MONITORING AND REPORTING REFERRED TO IN
REGULATIONS 7, 8, 10, 11, 12, 13 and 14

Monitoring and reporting of emissions from aviation activities

Monitoring of carbon dioxide emissions

Emissions shall be monitored by calculation. Emissions shall be calculated using the formula:

Fuel consumption emission factor

Fuel consumption shall include fuel consumed by the auxiliary power unit. Actual fuel consumption for each flight shall be used wherever possible and shall be calculated using the formula:

Amount of fuel contained in aircraft tanks once fuel uplift for the flight is complete —
amount of fuel contained in aircraft tanks once fuel uplift for subsequent flight is complete +
fuel uplift for that subsequent flight.

If actual fuel consumption data are not available, a standardised tiered method shall be used to estimate fuel consumption data based on best available information.

Default IPCC emission factors, taken from the 2006 IPCC Inventory Guidelines or subsequent updates of these Guidelines, shall be used unless activity-specific emission factors identified by independent accredited laboratories using accepted analytical methods are more accurate. The emission factor for biomass shall be zero.

A separate calculation shall be made for each flight and for each fuel.

Reporting of emissions

Each aircraft operator shall include the following information in its report under Regulation

12:

A. Data identifying the aircraft operator, including:

- name of the aircraft operator,
- its administering Member State,
- its address, including postcode and country and, where different, its contact address in the administering Member State,
- the aircraft registration numbers and types of aircraft used in the period covered by the report to perform the aviation activities listed in Schedule 1 for which it is the aircraft operator,
- the number and issuing authority of the air operator certificate and operating licence under which the aviation activities listed in Schedule 1 for which it is the aircraft operator were performed,
- address, telephone, fax and e-mail details for a contact person, and
- name of the aircraft owner.

B. For each type of fuel for which emissions are calculated:

- fuel consumption,
- emission factor,
- total aggregated emissions from all flights performed during the period covered by the report which fall within the aviation activities listed in Schedule 1 for which it is the aircraft operator,
- aggregated emissions from:
 - all flights performed during the period covered by the report which fall within the aviation activities listed in Schedule 1 for which it is the aircraft operator and which departed from an aerodrome situated in the territory of a Member State and arrived at an aerodrome situated in the territory of the same Member State,
 - all other flights performed during the period covered by the report which fall within the aviation activities listed in Schedule 1 for which it is the aircraft operator,
 - aggregated emissions from all flights performed during the period covered by the report which fall within the aviation activities listed in Schedule 1 for which it is the aircraft operator and which:
 - departed from each Member State, and
 - arrived in each Member State from a third country,
 - uncertainty.

Monitoring of tonne-kilometre data for the purpose of Regulations 11, 13 and 14

For the purpose of applying for an allocation of allowances in accordance with Regulation 13 or 14, the amount of aviation activity shall be calculated in tonne-kilometres using the following formula:

tonne-kilometres = distance payload

where:

“distance” means the great circle distance between the aerodrome of departure and the aerodrome of arrival plus an additional fixed factor of 95 km; and

“payload” means the total mass of freight, mail and passengers carried.

For the purposes of calculating the payload:

— the number of passengers shall be the number of persons on-board excluding crew members,

— an aircraft operator may choose to apply either the actual or standard mass for passengers and checked baggage contained in its mass and balance documentation for the relevant flights or a default value of 100 kg for each passenger and his or her checked baggage.

Reporting of tonne-kilometre data for the purpose of Regulations 13 and 14

Each aircraft operator shall include the following information in its application under Regulation 13 or 14:

A. Data identifying the aircraft operator, including:

— name of the aircraft operator,

— its administering Member State,

— its address, including postcode and country and, where different, its contact address in the administering Member State,

— the aircraft registration numbers and types of aircraft used during the year covered by the application to perform the aviation activities listed in Schedule 1 for which it is the aircraft operator,

— the number and issuing authority of the air operator certificate and operating licence under which the aviation activities listed in Schedule 1 for which it is the aircraft operator were performed,

— address, telephone, fax and e-mail details for a contact person, and

— name of the aircraft owner.

B. Tonne-kilometre data:

— number of flights by aerodrome pair,

- number of passenger-kilometres by aerodrome pair,
- number of tonne-kilometres by aerodrome pair,
- chosen method for calculation of mass for passengers and checked baggage,
- total number of tonne-kilometres for all flights performed during the year to which the report relates falling within the aviation activities listed in Schedule 1 for which it is the aircraft operator.

Regulation 12

SCHEDULE 4 CRITERIA FOR VERIFICATION REFERRED TO IN REGULATIONS 12, 13 and 14

Verification of emissions from aviation activities

General Principles

1. Emissions from aviation activities listed in Schedule 1 shall be subject to verification.
2. The verification process shall include consideration of the report submitted pursuant to Regulation 12 and of monitoring during the preceding year. It shall address the reliability, credibility and accuracy of monitoring systems and the reported data and information relating to emissions, in particular—
 - a. the reported activity data and related measurements and calculations;
 - b. the choice and the employment of emission factors;
 - c. the calculations leading to the determination of the overall emissions; and
 - d. if measurement is used, the appropriateness of the choice and the employment of measuring methods.
3. Reported emissions may only be validated if reliable and credible data and information allow the emissions to be determined with a high degree of certainty. A high degree of certainty requires the aircraft operator to show that—
 - a. the reported data is free of inconsistencies;
 - b. the collection of the data has been carried out in accordance with the applicable scientific standards; and
 - c. the relevant records of the aircraft used to perform the aviation activities covered by the report are complete and consistent.
4. The verifier shall be given access to all sites and information in relation to the subject of the verification.
5. The verifier shall take into account whether the aircraft operator is registered

under the Community eco-management and audit scheme (EMAS).

Methodology

Strategic analysis

6. The verification shall be based on a strategic analysis of all the aviation activities covered by the report carried out by the aircraft operator. This requires the verifier to have an overview of all the activities and their significance for emissions.

Process analysis

7. The verification of the information submitted shall, where appropriate, be carried out on the sites used by the aircraft operator to perform the aviation activities covered by the report. The verifier shall use spot-checks to determine the reliability of the reported data and information.

Risk analysis

8. The verifier shall submit all the sources of emissions of the aircraft for which the aircraft operator is responsible to an evaluation with regard to the reliability of the data of each source contributing to the overall emissions of the aircraft.

9. On the basis of this analysis the verifier shall explicitly identify those sources with a high risk of error and other aspects of the monitoring and reporting procedure which are likely to contribute to errors in the determination of the overall emissions. This especially involves the choice of the emission factors and the calculations necessary to determine the level of the emissions from individual sources. Particular attention shall be given to those sources with a high risk of error and the abovementioned aspects of the monitoring procedure.

10. The verifier shall take into consideration any effective risk control methods applied by the aircraft operator with a view to minimising the degree of uncertainty.

Report

11. The verifier shall prepare a report on the validation process stating whether the report pursuant to Regulation 12 is satisfactory. This report shall specify all issues relevant to the work carried out. A statement that the report pursuant to Regulation 12 is satisfactory may be made if, in the opinion of the verifier, the total emissions are not materially misstated.

Minimum competency requirements for the verifier

12. The verifier shall be independent of the aircraft operator, carry out his or her activities in a sound and objective professional manner, and understand—

- a. the provisions of this Directive, as well as relevant standards and guidance adopted by the Commission pursuant to Article 14(1) of the Directive;
- b. the legislative, regulatory, and administrative requirements relevant to the activities being

verified; and

c. the generation of all information related to each source of emissions of the aircraft for which the aircraft operator is responsible, in particular, relating to the collection, measurement, calculation and reporting of data.

13. The general principles and methodology set out in this Schedule shall apply to the verification of reports of emissions from flights falling within an aviation activity listed in Schedule 1.

Additional provisions for the verification of aviation emission reports

14. The verifier shall in particular ascertain that—

a. all flights falling within an aviation activity listed in Schedule 1 have been taken into account. In this task the verifier shall be assisted by timetable data and other data on the aircraft operator's traffic including data from Eurocontrol requested by that operator;

b. there is overall consistency between aggregated fuel consumption data and data on fuel purchased or otherwise supplied to the aircraft performing the aviation activity.

Additional provisions for the verification of tonne-kilometre data submitted for the purposes of Regulations 13 and 14

15. The general principles and methodology for verifying emissions reports under Regulation 12 as set out in this Schedule, where applicable, also apply correspondingly to the verification of aviation tonne-kilometre data.

16. The verifier shall in particular ascertain that only flights actually performed and falling within an aviation activity listed in Schedule 1 for which the aircraft operator is responsible have been taken into account in that operator's application under Regulations 13 and 14. In this task the verifier shall be assisted by data on the aircraft operator's traffic including data from Eurocontrol requested by that operator. In addition, the verifier shall ascertain that the payload reported by the aircraft operator corresponds to records on payloads kept by that operator for safety purposes.



GIVEN under my Official Seal,

4 June 2010.

JOHN GORMLEY,

Minister for the Environment, Heritage and Local Government.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

These Regulations provide for the transposition of EU Directive 2008/101/EC which extends the EU Emissions Trading Scheme to aviation activities. The Aviation Directive (2008/101/EC) amends the EU Emissions Trading Scheme (ETS) Directive 2003/87/EC. All flights arriving at and departing from EU airports will be included in the EU ETS from 2012 onwards; there are some exemptions and these are identified in Schedule 1 to these Regulations.

These Regulations incorporate the provisions of the first phase of transposition of the Directive — the European Communities (Greenhouse Gas Emissions Trading) (Aviation) Regulations 2009 (S.I. No. 274 of 2009). Those Regulations are also being revoked by these Regulations.

The purpose of these Regulations is to establish the procedures in Ireland for participation by aircraft operators in the EU ETS as extended to cover the aviation sector. The procedures include:

- designation of the Environmental Protection Agency as the competent authority for the purposes of the Aviation Directive;
- submission of monitoring plans to the Environmental Protection Agency;
- monitoring, reporting and verification obligations for aircraft operators;
- allocation of allowances;
- operation of a special reserve for certain aircraft operators;
- surrendering of allowances by aircraft operators;
- accounting for the issue, holding, transfer and cancellation of allowances by providing a registry for this purpose;
- allowing access to information held by the Environmental Protection Agency; and
- enforcement provisions.

1 O.J. No. L275 25.10.2003 p. 32

2 O.J. No. L338 13.11.2004 p. 18

3 O.J. No. L8 13.1.2009 p. 3

4 O.J. No. L149 12.6.2009 p. 69

5 O.J. No. L275 25.10.2003 p. 32

6 O.J. No. L229 31.8.2007 p. 1

7 O.J. No. L24 28.1.2009 p. 18

8 O.J. No. L103 23.4.2009 p.10

9 O.J. No. L257 10.10.1996 p. 26

10 O.J. No. L338 13.11.2004 p. 18

11 O.J. No. L8 13.1.2009 p. 3

12 O.J. No. L240 24.8.1992 p. 1

13 O.J. No. L240 24.8.1992 p.8

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