

Regulations made under s. 16.

**CIVIL AVIATION (GREENHOUSE GAS EMISSIONS)
REGULATIONS 2010**

Repealed by LN. 2012/211 as from 1.1.2013

(LN. 2010/147)

Commencement **9.9.2010**

Amending enactments	Relevant current provisions	Commencement date
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EU Legislation/International Agreements involved:

2009-05

Repealed
Subsidiary
2010/147

Civil Aviation

CIVIL AVIATION (GREENHOUSE GAS EMISSIONS) REGULATIONS 2010

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In exercise of the powers conferred on it by section 16 of the Civil Aviation Act 2009 and of all other enabling powers, and for the purpose of transposing into the law of Gibraltar Directive 2008/101/EC of the European Parliament and of the Council of 19 November 2008 amending Directive 2003/87/EC so as to include aviation activities in the scheme for greenhouse gas emission allowance trading within the Community, the Government has made the following Regulations—

Title and commencement.

1. These Regulations may be cited as the Civil Aviation (Greenhouse Gas Emissions) Regulations 2010 and come into operation on the date of publication.

Interpretation.

2.(1) In these Regulations—

“aircraft operator” has the meaning given by regulation 3;

“available allowances” means the percentage of allowances that may be properly allocated and issued or auctioned in accordance with the EU ETS Directive;

“aviation activity” means the category of aviation activity listed in Annex 1 to the EU ETS Directive, but with the reference to 1 January 2012 omitted;

“CER” means certified emission reductions;

“Commission” means the European Commission;

“Commission List” means the list of operators specified in Commission Regulation (EC) No 748/2009 on the list of aircraft operators which performed an aviation activity listed in Annex 1 to Directive 2003/87/EC on or after 1 January 2006 specifying the administering Member State for each aircraft operator, as amended from time to time;

“emissions” means the release from an aircraft performing an aviation activity of the gases specified in respect of that activity in Annex I of the EU ETS Directive;

“ERU” means emission reduction units;

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“EU ETS Directive” means Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emissions allowance trading within the Community and amending Council Directive 96/61/EC, as amended from time to time;

“Gibraltar operator” means a person who—

- (a) meets either of the criteria set out in Article 18a (1) of the EU ETS Directive in Gibraltar and is identified in the third column of the Commission List by a reference to “Gibraltar (UK)”;
- (b) is the subject of a direction given by the Director, which has not been revoked, that the person is to be treated for the purposes of these Regulations as a Gibraltar operator ; and
- (c) has been notified of that direction by the Director;

“regulator” means the Environmental Agency Limited or such other person as the Minister may, from time to time, appoint by notice in the Gazette.

(2) A reference to an Annex to the EU ETS Directive means that Annex as amended from time to time.

(3) Other terms used in these Regulations shall be construed consistently with equivalent terms defined or used in the EU ETS Directive.

Aircraft operator.

3. A person is an aircraft operator in relation to any calendar year from 1 January 2010 where in respect of that year that person—

- (a) is a Gibraltar operator; and
- (b) performs an aviation activity.

Monitoring and reporting of emissions.

4.(1) A person who is or becomes an aircraft operator and wishes to apply for allowances to be issued to it under Article 3e of the EU ETS Directive must, within 8 weeks of being notified that it is a Gibraltar operator, submit to the regulator for approval a monitoring plan setting out measures to monitor and report emissions and tonne-kilometre data for the purpose of an application under regulation 6.

(2) A monitoring plan submitted under sub-regulation (1) must accord with any guidelines adopted by the Commission pursuant to Article 14 of the EU ETS Directive.

(3) The regulator may approve a monitoring plan as submitted to it pursuant to sub-regulation (1) or may approve it with modifications.

(4) Each aircraft operator must report to the regulator the emissions from its aircraft and its tonne-kilometre data during each calendar year from 1 January 2010 in accordance with the approved monitoring plan and any guidelines adopted by the Commission pursuant to Article 14 of the EU ETS Directive.

(5) It shall be the duty of the regulator to ensure that emissions are monitored in accordance with approved monitoring plans and any guidelines adopted by the Commission pursuant to Article 14 of the EU ETS Directive.

Verification.

5.(1) Each aircraft operator must include with its report to the regulator under regulation 4(4) a verification of that report that has been undertaken in accordance with the criteria set out in Annex V to the EU ETS Directive and any detailed provisions adopted by the Commission pursuant to Article 15 of that Directive.

(2) Where an aircraft operator fails to comply with sub-regulation (1), the regulator must determine the emissions from that operator's aircraft and its tonne-kilometre data on the basis of the best information available to it and give notice to that operator of its determination.

Allocation and issue of allowances to aircraft operators.

6.(1) For each period referred to in Article 3c of the EU ETS Directive, each aircraft operator may apply to the regulator for an allocation of allowances.

(2) Any application made pursuant to sub-regulation (1) must include verified tonne-kilometre data for the aviation activities listed in Annex 1 to the EU ETS Directive performed by that operator for the monitoring year.

(3) Any application under sub-regulation (1) must be made at least 18 months before the start of the period to which it relates or, in the case of the period referred to in Article 3c (1) of the EU ETS Directive, by 31 March 2011.

(4) The regulator must submit applications received under this regulation to the Commission.

(5) Allowances issued pursuant to an application made in accordance with this regulation must be issued free of charge.

(6) By 28 February 2012 and by 28 February of each subsequent year, the regulator must issue, to each aircraft operator who has made a valid application under this regulation, the number of allowances allocated by the regulator to that aircraft operator for that year under this regulation.

(7) The regulator must allocate allowances in accordance with a calculation that multiplies the tonne-kilometre data included in the application by the benchmark set out by the Commission pursuant to Article 3e (3) of the EU ETS Directive.

(8) The regulator must ensure that the allocation for each aircraft operator for each year is determined by dividing its allocation of allowances under sub-regulation (7) by the number of full years remaining in the period for which that aircraft operator is performing an aviation activity listed in Annex 1 to the EU ETS Directive.

(9) For the purposes of sub-regulation (2), the monitoring year shall be the calendar year ending 24 months before the start of the period to which it relates in accordance with Annexes IV and V to the EU ETS Directive or, in relation to the period from 1 January 2012 to 31 December 2012, the calendar year 2010.

Auctioning of allowances.

7. For each period referred to Article 3c of the EU ETS Directive the regulator must auction available allowances, as well as unallocated allowances in the special reserve referred to in regulation 8, in accordance with detailed provisions adopted pursuant to Article 3d of that Directive.

Special reserve.

8.(1) In each period referred to in Article 3c (2) of the EU ETS Directive, 3% of the total quantity of allowances to be allocated by the regulator must be set aside by the regulator in a special reserve for aircraft operators to which this regulation applies.

(2) For each period referred to in Article 3c (2) of the EU ETS Directive, each aircraft operator to which this regulation applies may apply to the

regulator for an allocation of available allowances from the special reserve referred to in sub-regulation (1).

(3) Any application made under sub-regulation (2) must—

- (a) include verified tonne-kilometre data in accordance with Annexes IV and V to the EU ETS Directive for the aviation activities listed in Annex 1 to that Directive performed by that operator in the second calendar year of the period referred to in article 3c (2) of the EU ETS Directive to which the application relates,
- (b) provide evidence that the criteria for eligibility under sub-regulation (7) are fulfilled; and
- (c) in the case of an aircraft operator falling within sub-regulation (7)(b), state-
 - (i) the percentage increase in tonne-kilometres performed by that operator between the monitoring year for which tonne-kilometre data was submitted under regulation 6(2) in respect of a period referred to in Article 3c (2) of the EU ETS Directive and the second calendar year of that period;
 - (ii) the absolute growth in tonnes-kilometres performed by that aircraft operator between the monitoring year for which tonne-kilometre was submitted under regulation 6(2) in respect of a period referred to in Article 3c (2) of the EU ETS Directive and the second calendar year of that period; and
 - (iii) the absolute growth in tonnes-kilometres performed by that aircraft operator between the monitoring year for which tonne-kilometre was submitted under regulation 6(2) in respect of a period referred to in Article 3c (2) of the EU ETS Directive and the second calendar year of that period which exceeds the percentage specified in sub-regulation (7)(b).

(4) Any application under sub-regulation (2) must be made by 30 June in the third year of the period referred to in Article 3c (2) of the EU ETS Directive to which it relates.

(5) The regulator shall ensure that applications received under this regulation are submitted to the Commission no later than six months after the expiry of the deadline for making such applications.

(6) Allowances issued pursuant to an application made in accordance with this regulation must be issued free of charge.

(7) This regulation applies to an aircraft operator—

- (a) who starts performing an aviation activity falling within Annex 1 to the EU ETS Directive after the monitoring year for which tonne-kilometre was submitted under regulation 6(2) in respect of a period referred to in Article 3c (2) of that Directive, 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 6(2) in respect of a period referred to in Article 3c (2) of the EU ETS Directive and the second calendar year of that period,

and whose activity under paragraph (a), or additional activity under paragraph (b), is not in whole or in part a continuation of an aviation activity previously performed by any other aircraft operator as defined in Article 3(o) of the EU ETS Directive.

(8) Subject to sub-regulation (10) the regulator must allocate allowances from the special reserve in accordance with a calculation that—

- (a) in the case of an aircraft operator within sub-regulation (7)(a), multiplies the tonne-kilometre data included in the application by the benchmark set out by the Commission pursuant to Article 3f (5) of the EU ETS Directive; and
- (b) in the case of an aircraft operator within sub-regulation (7)(b), multiplies the absolute growth in tonne-kilometre exceeding the percentage specified in that sub-regulation included in the application by the benchmark set out by the Commission pursuant to Article 3f (5) of the EU ETS Directive.

(9) The regulator must ensure that the allocation for each aircraft operator for each year is determined by dividing its allocation of allowances under sub-regulation (8) by the number of full years remaining in the period referred to in Article 3c (2) to which the allocation relates.

(10) The regulator must not, in the case of an aircraft operator within sub-regulation (7)(b), allocate to that aircraft operator more than 1,000,000 allowances.

(11) By 28 February 2012 and by 28 February of each subsequent year, the regulator must issue, to each aircraft operator who has made a valid application under this regulation, the number of allowances allocated by the regulator to that aircraft operator for that year under this regulation.

Transfer, surrender and cancellation of allowances.

9.(1) Subject to sub-regulation (2) an aircraft operator may transfer an allowance to—

- (a) any person within the European Community; or
- (b) any person in a third country where such allowances are recognised in accordance with Article 25 of the EU ETS Directive without restrictions, other than those contained in, or adopted pursuant to, the EU ETS Directive.

(2) An aircraft operator who fails to include a verification as required by regulation 5(1) must not make any allowance transfer until such a verification is provided to the regulator.

(3) An aircraft operator that transfers an allowance under sub-regulation (1) must forthwith notify the regulator.

(4) By 30 April each year each aircraft operator must surrender to the regulator a number of allowances equal to the total emissions during the preceding calendar year from aviation activities listed in Annex 1 to the EU ETS Directive for which it is the aircraft operator as verified in accordance with regulation 5 or as determined by the regulator in accordance with that regulation, as the case may be.

(5) During the period referred to in Article 3c (1) of the EU ETS Directive, aircraft operators may use CERs and ERUs up to 15% of the number of allowances they are required to surrender under sub-regulation (4).

(6) Allowances issued by any competent authority for the United Kingdom or for any other Member State must be recognised as valid for the purpose of surrender under sub-regulation (4).

(7) Allowances that are surrendered pursuant to sub-regulation (4) or which are cancelled by the regulator following a request made by the person holding them shall cease to have effect.

(8) Four months after the beginning of each five year period commencing 1 January 2013 allowances that are no longer valid but have not been surrendered or cancelled in accordance with this regulation shall cease to have effect.

Project activities.

10. No person may issue an ERU or CER for reductions or limitations of greenhouse gas emissions from aviation activities.

Information.

11.(1) The Minister and the Director may, by notice served on the regulator, require the regulator to furnish such information about the discharge of its functions under these Regulations as the Minister or Director may require.

(2) The regulator may, by notice served on any person, require that person to furnish such information as may be specified in the notice, in such form and within such period as may be so specified.

(3) A person who refuses or, without reasonable excuse, fails to do anything duly required of that person by a notice under sub-regulation (2) is guilty of an offence.

(4) Within 3 months from the date the Commission adopts a Decision pursuant to Article 3e (3) of the EU ETS Directive, the regulator must publish in the Gazette—

- (a) the total allocation of allowances for the relevant period to each aircraft operator whose application is submitted to the Commission in accordance with regulation 6(4), and
- (b) the allocation of allowances to each aircraft operator for each year of that period.

(5) Within 3 months from the date the Commission adopts a Decision pursuant to Article 3f (5) of the EU ETS Directive, the regulator must publish in the Gazette—

- (a) the allocation of allowances from the special reserve to each aircraft operator whose application is submitted to the Commission in accordance with regulation 8(5), and
- (b) the allocation of allowances to each aircraft operator for each year.

(6) The regulator must make available to the public at all reasonable times decisions made as to the allocation of allowances and the reports of emissions required under these Regulations held by the regulator, subject to the restrictions laid down in Article 3(3) and Article 4 of Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information.

(7) As soon as possible after 30 April each year the regulator must publish in the Gazette a list of the names of aircraft operators who are in breach of regulation 9(4).

Penalties.

12.(1) It is an offence for a person to contravene regulations 4(1), 4(4), 5(1), 9(2), 9(3), 9(4), 10 or 14.

(2) It is an offence for a person to make a statement which that person knows to be false or misleading in a material particular, or recklessly to make a statement which is false or misleading in a material particular, where the statement is made in purported compliance with regulation 11.

(3) A person guilty of an offence under sub-regulation (1) or (2) or under regulation 11(3) or 13(2) shall be liable—

- (a) on summary conviction, to a fine not exceeding level 4 on the standard scale or to imprisonment for a term not exceeding three months or to both;
- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both.

(4) Where an offence under these Regulations has been committed by a body corporate and is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of any—

- (a) director,
- (b) manager,

- (c) secretary,
- (d) other similar officer of the body corporate, or
- (e) any person who was purporting to act in any such capacity,

that person as well as the body corporate shall be guilty of that offence and liable to be proceeded against and punished accordingly.

(5) Where the affairs of a body corporate are managed by its members, sub-regulation (4) shall apply in relation to the acts and defaults of a member in connection with that member's functions of management as if that member were a director of the body corporate.

(6) Where a limited partnership is guilty of an offence under these Regulations and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, that partner as well as the partnership shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(7) An aircraft operator who fails to surrender sufficient allowances by 30 April of each year to cover its emissions during the preceding year shall pay to the regulator an excess emissions penalty. The excess emissions penalty payable by an aircraft operator may be recovered by the regulator as a civil debt.

(8) The excess emissions penalty referred to in sub-regulation (7) shall be EUR 100 for each tonne of carbon dioxide equivalent emitted for which the aircraft operator has not surrendered allowances.

(9) In relation to sub-regulation (8), the reference to an amount in EUR shall be taken to be a reference to the Gibraltar pound equivalent of that number of EUR, converted by reference to the rate of conversion published in the C series of the Official Journal of the European Communities immediately prior to the date upon which the liability for the penalty arose.

(10) Payment of an excess emissions penalty 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 year.

Power to prevent aircraft flying.

13.(1) If it appears to the regulator that an aircraft is intended or likely to be flown when it is the subject of an operating ban pursuant to a decision made under Article 16 of the EU ETS Directive the regulator must request the Director or an authorised person to direct the aircraft operator or the commander of the aircraft that he is not to permit the aircraft to make the particular flight until the direction is revoked, and the Director or that authorised person must take such steps as are necessary to detain the aircraft.

(3) Any person who, without reasonable excuse, fails to comply with a direction given under this regulation is guilty of an offence.

Obstruction of persons.

14. A person shall not intentionally obstruct or impede any person acting in the exercise of powers under regulation 13.

Fees and costs.

15.(1) Each aircraft operator shall pay a fee with its application for approval of a monitoring plan under regulation 4 of £750.

(2) The cost to the regulator of making a determination under regulation 5(2) may be recovered as a civil debt from the aircraft operator in question.