
**GREENHOUSE GAS EMISSIONS TRADING SCHEME
REGULATIONS 2012**

This version is out of date

**Subsidiary
2012/211**

Subsidiary Legislation made under s. 18 of the Environment Act 2005 and section 23(g) as read with section 27 of the Interpretation and General Clauses Act.

**GREENHOUSE GAS EMISSIONS TRADING SCHEME
REGULATIONS 2012**

(LN. 2012/211)

Commencement **1.1.2013**

| Amending enactments | Relevant current provisions | Commencement date |
|---------------------|---|-------------------|
| LN. 2014/141 | rr. 3(1), 35A, Schs. 8, 10 & 12 | 31.7.2014 |
| 2015/168 | Sch. 9 | 1.11.2015 |
| 2018/007 | r. 3(1), Sch. 1 | 11.1.2018 |
| 2018/289 | rr. 75A-75D | 31.12.2018 |
| 2020/075 | rr. 3(1), 7(9)-(10), 28(3), 37(4)(b), (5), (a)-(b), (5A)-(5D), 46(2A), (4)-(7), (9)-(10), 70(15), 74A | 13.2.2020 |
| 2020/075 | r. 79 | 1.5.2020 |

Transposing:

Directive 2003/87/EC
 Directive 2004/101/EC
 Directive 2008/101/EC
 Directive 2009/29/EC
 Directive (EU) 2018/410

EU Legislation/International Agreements involved:

Council and Decision No 280/2004/EC
 Commission Regulations (EC) No 2216/2004
 Commission Regulation (EU) No 920/2010
 Commission Regulation (EU) No 1193/2011
 Commission Regulation (EU) No 600/2012
 Commission Regulation (EU) No 601/2012
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In exercise of the powers conferred upon it by section 18 of the Environment Act 2005 and section 23(g) as read with section 27 of the Interpretation and General Clauses Act, and for the purpose of implementing; (1) Commission Regulation (EU) No 600/2012 of 21 June 2012 on the verification of greenhouse gas emission reports and tonne-kilometre reports and the accreditation of verifiers pursuant to Directive 2003/87/EC of the European Parliament and of the Council; (2) Commission Regulation (EU) No 601/2012 of 21 June 2012 on the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87/EC of the European Parliament and of the Council; (3) Commission Regulation (EU) No 920/2010 of 7 October 2010 establishing a Union Registry for the periods ending 31 December 2012 of the Union emissions trading scheme pursuant to Directive 2003/87/EC of the European Parliament and of the Council and Decision No 280/2004/EC of the European Parliament and of the Council; (4) Commission Regulation (EU) No 1193/2011 of 18 November 2011 establishing a Union Registry for the trading period commencing on 1 January 2013, and subsequent trading periods, of the Union emissions trading scheme pursuant to Directive 2003/87/EC of the European Parliament and of the Council and Decision No 280/2004/EC of the European Parliament and of the Council and amending Commission Regulations (EC) No 2216/2004 and (EU) No 920/2010; and transposing into the law of Gibraltar (5) Directive 2004/101/EC of the European Parliament and of the Council of 27 October 2004 amending Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community, in respect of the Kyoto Protocol's project mechanisms; and (6) Directive 2009/29/EC of the European Parliament and of the Council of 23 April 2009 amending Directive 2003/87/EC so as to improve and extend the greenhouse gas emission allowance trading scheme of the Community; and giving effect to (7) Commission Decision of 27 April 2011 determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87/EC of the European Parliament and of the Council; the Government has made the following Regulations—

**PART 1
GENERAL**

Title and commencement.

1. These Regulations may be cited as the Greenhouse Gas Emissions Trading Scheme Regulations 2012 and come into operation on 1 January 2013.

Scope.

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2.(1) These Regulations shall apply to emissions from the activities listed in Annex I to the Directive and to the greenhouse gases listed in Annex II to the Directive.

(2) These Regulations shall apply without prejudice to any requirements under the Pollution Prevention and Control Act 2001.

Interpretation.

3.(1) In these Regulations—

“2004 Rules” means the Greenhouse Gas Emissions Trading Scheme Rules 2004;

“the 2010 Regulations” means the Civil Aviation (Greenhouse Gas Emissions) Regulations 2010;

“allocation”, in relation to an allowance, means allocation free of charge in accordance with Chapter 1 or 2 of the Directive;

“allowance”—

- (a) in this regulation 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 and shall be transferable in accordance with the provisions of these Regulations; but
- (b) otherwise (and subject to regulations 46(7) and 72(1)) means an allowance other than an aviation allowance;

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

“Annex I to the Directive” means Annex I to the Directive, which is reproduced for information purposes in Part A of Schedule 1;

“Annex II to the Directive” means Annex II to the Directive, which is reproduced for information purposes in Part B of Schedule 1;

“annual reportable emissions” means the reportable emissions arising during any scheme year;

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“authority” means—

- (a) in relation to an installation, the Minister;
- (b) in relation to a Gibraltar administered operator, the authority defined in regulation 17; and
- (c) in relation to a banned non-Gibraltar operator, the Minister;

“aviation activity” means an aviation activity listed in Annex I to the Directive;

“aviation allowance” means any allowance allocated in accordance with Article 3e or 3f of the Directive or auctioned in accordance with Article 3d of the Directive;

“aviation emissions” means emissions, arising from an aviation activity, of gases specified in respect of that activity by Annex I to the Directive;

“aviation emissions plan” means an emissions plan as defined by regulation 17;

“banned non-Gibraltar operator” means a person on whom an operating ban has been imposed under Article 16(10) of the Directive and who is not a Gibraltar administered operator;

“bioliquids” has the meaning given in Article 2(h) of the Renewable Energy Directive;

“cease operation”, in relation to an installation, has the meaning given in subregulation (3);

“combustion” means any oxidation of fuels, regardless of the way in which the heat, electrical or mechanical energy produced by this process is used, and any other directly associated activities, including waste gas scrubbing;

“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;

“current operator” has the meaning given by regulation 11(1);

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“the 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 the same may be amended from time to time;

“duly made”, in relation to an application, means made in accordance with the requirements of these Regulations;

“electricity generator” means an installation that, on or after 1 January 2005, has produced electricity for sale to third parties, and in which no activity listed in Annex I is carried out other than the combustion of fuels;

“emissions” means the release of greenhouse gases into the atmosphere from sources in an installation or the release from an aircraft performing an aviation activity listed in Annex I to the Directive of the gases specified in respect of that activity;

“excluded installation” means an installation the exclusion of which is deemed to be approved by the European Commission under the first subparagraph of Article 27(2) of the Directive;

“excluded installation emissions permit” means a permit—

- (a) granted following an application under regulation 9(2); or
- (b) which results from a variation under paragraph 2 of Schedule 5;

“fee” means such amount as is prescribed in respect of such matter as is set out in Schedule 11;

“the Free Allocation Decision” means Commission Decision 2011/278/EU of 27 April 2011 determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87/EC, as the same may be amended from time to time;

“the Free Allocation Regulation” means Commission Delegated Regulation (EU) 2019/331 of 19 December 2018 determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87/EC of the European Parliament and of the Council, as amended from time to time;

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“Gibraltar administered operator” has the meaning given by regulation 17;

“Gibraltar aircraft operator” has the meaning given by regulation 22;

“the Gibraltar Registry” means the registry operated for the purposes specified in Article 3(1) of the Registries Regulation 2010 immediately before the coming into force of these Regulations;

“greenhouse gas emissions permit” means a permit granted under—

- (a) regulation 9(2); or
- (b) rule 8 of the 2004 Rules;

“greenhouse gases” means the gases listed in Annex II to the Directive and other gaseous constituents of the atmosphere, both natural and anthropogenic, that absorb and re-emit infrared radiation;

“installation” means a stationary technical unit where one or more activities listed in Annex I to the Directive are carried out and any other directly associated activities which have a technical connection with the activities carried out on that site and which could have an effect on emissions and pollution, and any reference to an “installation” includes a reference to a part of an installation;

“KP registry administrator” has the meaning given by regulation 71(1);

“Kyoto Protocol” means the Kyoto Protocol to the UNFCCC signed at Kyoto on 11th December 1997 as amended from time to time;

“Minister” means the Minister with responsibility for the environment;

“monitoring and reporting conditions” has the meaning given by paragraph 3(7) of Schedule 5;

“monitoring and reporting requirements” has the meaning given by paragraph 2(3) of Schedule 4;

“the Monitoring and Reporting Regulation” means Commission Regulation (EU) No. 601/2012 of 21 June 2012 on the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87/EC of the European Parliament and of the Council, as the same may be amended from time to time;

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“new operator” has the meaning given by regulation 11(1);

“notice of surrender” has the meaning given in regulation 12(7);

“operator”, in relation to an installation, has the meaning given in subregulation (2) and “operate” has the corresponding meaning;

“partial transfer” has the meaning given by regulation 11(2);

“permit” (except in paragraph 1(2) of Schedule 4 and paragraph 7(12) of Schedule 6) means—

- (a) a greenhouse gas emissions permit; or
- (b) an excluded installation emissions permit;

“project activity” means a project activity approved by one or more Annex 1 Parties in accordance with Article 6 or Article 12 of the Kyoto Protocol and the decisions adopted pursuant to the UNFCCC or the Kyoto Protocol;

“the Registries Regulation 2010” means Commission Regulation (EU) No 920/2010 of 7 October 2010 for a standardised and secured system of registries pursuant to Directive 2003/87/EC of the European Parliament and of the Council and Decision No 280/2004/EC of the European Parliament and of the Council(b), as the same may be amended from time to time;

“the Registries Regulation 2011 means Commission Regulation (EU) No 1193/2011 of 18 November 2011 establishing a Union Registry for the trading period commencing on 1 January 2013, and subsequent trading periods, of the Union emissions trading scheme pursuant to Directive 2003/87/EC of the European Parliament and of the Council and Decision No 280/2004/EC of the European Parliament and of the Council and amending Commission Regulations (EC) No 2216/2004 and (EU) No 920/2010(c), as the same may be amended from time to time;

“registry administrator” has the meaning given by regulation 7(1);

“registry account” means an operator holding account in the Union Registry (and “blocked”, “excluded” and “open” status, in relation to such an account, have the meanings given by Article 9 of the Registries Regulation 2011);

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“regulated activity” means an activity (other than an aviation activity) that—

- (a) is listed in Annex 1 to the Directive, and
- (b) results in specified emissions;

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

“the Renewable Energy Directive” means Directive 2009/28/EC of the European Parliament and of the Council on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC, as the same may be amended from time to time;

“reportable emissions” means—

- (a) in relation to an installation, the total specified emissions (expressed in tonnes of carbon dioxide equivalent) which arise from the regulated activities carried out in that installation; or
- (b) in relation to a Gibraltar aircraft operator, the total aviation emissions of that aircraft operator (expressed in tonnes of carbon dioxide equivalent);

“revocation notice” has the meaning given by regulation 13(1);

“scheme year” means the year beginning with 1st January 2013 or any subsequent calendar year;

“specified emissions”, in relation to an activity listed in Annex I to the Directive, means the emissions specified in that Annex in relation to the activity;

“sub-installation” has the meaning given by Article 3(b), (c), (d) and (h) and Article 6 of the Free Allocation Decision;

“surrender requirements” has the meaning given by paragraph 2(4) of Schedule 4;

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

“trading period” means one of the following 8-year periods—

- (a) 2013 to 2020; and
- (b) subsequent consecutive periods of 8 calendar years;

“UNFCCC” means the United Nations Framework Convention on Climate Change signed in New York on 9 May 1992;

“Union Registry” means the registry established by Article 4 of the Registries Regulation 2011;

“variation”, in relation to a permit or a plan, means an amendment of its provisions, and “vary” has the corresponding meaning;

“the Verification Regulation 2018” means Commission Implementing Regulation (EU) 2018/2067 of 19 December 2018 on the verification of data and on the accreditation of verifiers pursuant to Directive 2003/87/EC of the European Parliament and of the Council, as amended from time to time;

“working day” means any day other than—

- (a) a Saturday, Sunday, Good Friday, or Christmas Day; or
- (b) a day which is a bank or public holiday under the Banking and Financial Dealings Act or the Interpretation and General Clauses Act;

“written procedures” means the written procedures required by Article 11(1) of the Monitoring and Reporting Regulation.

(2) The “operator”, in relation to an installation, means the person who has control over its operation; but where—

- (a) an installation has not been put into operation, the operator is the person who will have control over the operation of the installation when it is put into operation;
- (b) an installation has ceased operation, the operator is the person who holds the permit relating to the installation; and

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- (c) the holder of a permit has ceased to have control of the installation to which it relates, the operator is that permit holder.

(3) An installation ceases operation where-

- (a) the conditions in paragraph 7(1)(b) or (c) of Schedule 6 apply in relation to that installation; or
- (b) the installation is a relevant installation, and has permanently ceased the carrying out of regulated activities for the purposes of paragraph 7(1) of that Schedule.

(4) For the purposes of subregulation (3), a relevant installation is any installation other than—

- (a) an excluded installation; or
- (b) an installation that, by virtue of Article 10a(3) of the Directive, is not eligible for an allocation.

(5) References in these Regulations to a notice taking effect (or ceasing to have effect) on a particular date are to be read as references to the notice or provision taking effect (or ceasing to have effect) as from that date.

Application to the Crown etc.

4.(1) Subject to the provisions of this regulation, these Regulations bind the Crown.

(2) No contravention by the Crown of any provision of these Regulations shall make the Crown criminally liable but the Supreme Court may, on the application of the regulator, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(3) Notwithstanding subregulation (2), the provisions of these Regulations apply to persons in the service of the Crown as they apply to other persons.

Notices etc.

5. Schedule 2 (notices etc.) has effect.

Applications etc.

6. Schedule 3 (applications etc.) has effect.

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Commission Regulations: designations.

7.(1) The regulator is designated the administrator in Gibraltar for the purposes of Article 7(1) of the Registries Regulation 2011, and in these Regulations is referred to in that capacity as the “registry administrator”.

(2) Subject to subregulation (3), the regulator is the competent authority for Gibraltar for the purposes of the Registries Regulation 2010.

(3) The Minister is the competent authority so designated for the purposes of—

- (a) Article 26(2);
- (b) Article 27(6),
- (c) Article 28(1); and
- (d) Article 64a(1),

of the Registries Regulation 2010.

(4) Subject to subregulation (5), the regulator is the competent authority for Gibraltar for the purposes of the Registries Regulation 2011 (other than Articles 23(3) and 31(6)).

(5) The Minister is the competent authority so designated for the purposes of—

- (a) Article 17;
- (b) Article 29(2);
- (c) Article 30(1);
- (d) Article 31(7); and
- (e) Article 71(1),

of the Registries Regulation 2011.

(6) Subject to subregulation (7), the regulator is the competent authority for Gibraltar for the purposes of the Monitoring and Reporting Regulation.

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(7) The Minister is the competent authority so designated for the purposes of Article 68(3) of the Monitoring and Reporting Regulation.

(8) Subject to subregulation (9), the regulator is the competent authority for Gibraltar so designated for the purposes of the Verification Regulation.

(9) The regulator is designated as the focal point authorised by Gibraltar for the purpose of Article 70(2) of the Verification Regulation 2018.

(10) The regulator is the competent authority designated by Gibraltar for the purposes of the Free Allocation Regulation.

**PART 2
STATIONARY INSTALLATIONS**

Chapter 1
Permits

Requirement for permit to carry out regulated activities.

8. No person may carry out a regulated activity at an installation except to the extent authorised by a permit held by the operator of the installation.

Applications for and grant of permits.

9.(1) The operator of an installation (other than an excluded installation) may apply to the regulator for a greenhouse gas emissions permit to carry out a regulated activity at the installation.

(2) The operator of an excluded installation may apply to the regulator for an excluded installation emissions permit to carry out a regulated activity at the installation.

(3) However, an application may not be made—

- (a) under subregulation (1) or (2) where a permit has already been granted in respect of the installation and continues to have effect; or
- (b) under subregulation (2) where an excluded installation emissions permit has been granted in respect of the installation and has been surrendered or revoked.

(4) Following an application under subregulation (1) or (2), the permit must be granted if the regulator is satisfied that—

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- (a) the application is duly made; and
- (b) at the time that the permit is granted (or, if later, has effect) the applicant will be capable of monitoring and reporting emissions from the installation in accordance with—
 - (i) the monitoring and reporting requirements of the greenhouse gas emissions permit, or
 - (ii) the monitoring and reporting conditions of the excluded installations permit,

but must otherwise be refused.

(5) A permit may be granted under this regulation in respect of more than one installation on the same site, provided that they are operated by the same operator.

(6) Paragraph 1 of Schedule 4 makes further provision about applications for permits.

(7) Paragraph 2 of Schedule 4 makes provision about the contents of greenhouse gas emissions permits, and paragraph 3 of Schedule 5 makes provision about the contents of excluded installation emissions permits.

Review, variation and consolidation of permits.

10.(1) The regulator must review a permit before the end of the period of 5 years beginning with the date on which the permit was granted, and afterwards at intervals not exceeding 5 years.

(2) The regulator may, by giving notice to the operator, vary a permit at any time and may in particular make any variation of the permit that the regulator considers necessary in consequence of—

- (a) a review made under subregulation (1); or
- (b) any notification or report made by the operator under Article 69 of the Monitoring and Reporting Regulation; or
- (c) any notification as mentioned in paragraph 2(7)(b) of Schedule 4 (notification of planned changes in operation etc).

(3) The regulator may by giving notice to the operator vary a permit where the operator—

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- (a) applies to the regulator for such a variation pursuant to a condition of the permit; or
 - (b) has failed to comply with a requirement of the permit to apply for such a variation.
- (4) The regulator may by giving notice to the operator vary a permit in order to comply with regulator's duty under—
- (a) regulation 79(3); or
 - (b) any of the following provisions of Schedule 5—
 - (i) paragraph 2(1);
 - (ii) paragraph 3(3);
 - (iii) paragraph 6(5) or (6);
 - (iv) paragraph 7(4)(b), (6)(b) or (7)(b);
 - (v) paragraph 8(6).
- (5) A notice given under subregulation (2), (3)(b) or (4) may specify a period within which a fee for the variation of the permit must be paid.
- (6) The regulator may by giving notice to the operator replace a permit with a consolidated permit applying to the same regulated activities, and containing the same or equivalent conditions, in the following circumstances—
- (a) where the permit has been varied; or
 - (b) where there is more than one permit applying to installations on the same site operated by the same operator.

Transfer of permits.

11.(1) Subject to subregulation (6), the holder of a permit (“the current operator”) and another person may jointly apply to the regulator for the permit to be transferred to that other person (“the new operator”).

(2) An application may also be made under paragraph (1) for the partial transfer of a permit; and for that purpose a “partial transfer” is a transfer in respect of—

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- (a) some only of the installations to which the permit relates; or
- (b) some only of the parts of an installation to which the permit relates.

(3) Paragraph 3 of Schedule 4 makes further provision about the transfer, or partial transfer, of a permit.

(4) Subject to paragraph 3(2)(b) of Schedule 4, an application under subregulation (1) must be granted if the regulator is satisfied that—

- (a) the application is duly made, and
- (b) the new operator will (from the relevant date) be the operator of the installation and will be capable of monitoring and reporting emissions from the installation in accordance with—
 - (i) the monitoring and reporting requirements of the greenhouse gas emissions permit, or
 - (ii) the monitoring and reporting conditions of the excluded installations emissions permit,

but must otherwise be refused.

(5) For the purposes of subregulation (4), the relevant date is the date mentioned in paragraph 3(6), (8) or (10) of Schedule 4 as the case may be.

(6) An application for the transfer (or partial transfer) of a permit may not be made in respect of any installation (or part of an installation) that has ceased operation.

Surrender of permits.

12.(1) Subject to subregulation (4), if an installation has ceased operation the operator must apply to the regulator to surrender the permit authorising regulated activities at the installation.

(2) Such an application must be made within the period specified by subregulation (3), or such longer period as may be agreed with the regulator.

(3) The period specified is, in the case of an installation that has ceased operation by virtue of meeting the condition in—

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- (a) paragraph 7(1)(b) or (c) of Schedule 6, 1 month beginning with the date on which the installation ceased operation;
 - (b) paragraph 7(1)(d) of Schedule 6, 1 month following the end of the relevant period (as defined by paragraph 7(5) of that Schedule).
- (4) The application need not be made where—
- (a) the permit authorises regulated activities at more than one installation, some of which have not ceased operation; and
 - (b) by the end of the period mentioned in subregulation (2), the operator has applied to vary that permit so that it no longer applies to any of those installations that have ceased operation.
- (5) Where the carrying out of regulated activities at an installation mentioned in subregulation (6) has been suspended, but the installation has not ceased operation, the operator may at any time make an application under subregulation (1) but is not obliged to do so.
- (6) Those installations are—
- (a) an excluded installation; or
 - (b) an installation that, by virtue of Article 10a(3) of the Directive, is not eligible for an allocation.
- (7) If the application under subregulation (1) is granted, the notice of determination given to the operator (“notice of surrender”) takes effect on the date specified in the notice.
- (8) Paragraph 4 of Schedule 4 makes further provision about the surrender of permits.

Revocation of permits.

13.(1) The regulator—

- (a) may at any time revoke a permit by serving on the operator a notice to that effect (a “revocation notice”), and in particular may do so if the operator has failed to pay a fee for the subsistence of the permit; and

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- (b) must do so where the operator fails to comply with an obligation to surrender the permit under regulation 13(1) to (3).

(2) A revocation notice takes effect—

- (a) 28 days after the date on which is served, or
- (b) if a later date is specified in the notice, on that date.

(3) Paragraph 5 of Schedule 4 makes further provision about the revocation of permits.

Chapter 2

Excluded installations: further provision

Excluded installations.

14.(1) Schedule 5 makes further provision about excluded installations.

(2) Subject to subregulations (3) and (4), these Regulations apply to an excluded installation as they apply to an installation that is not an excluded installation.

(3) The following provisions do not so apply—

- (a) regulation 11(3);
- (b) Part 4;
- (c) paragraph 2 of Schedule 4.

(4) The following provisions so apply—

- (a) paragraph 4 of Schedule 4, but as if—
 - (i) any reference in that paragraph to the monitoring and reporting requirements of the greenhouse gas emissions permit were a reference to the monitoring and reporting conditions of the excluded installation emissions permit; and
 - (ii) subparagraph (1)(c) and subparagraphs (2)(b)(ii), (3), (4) and (6) to (8) were omitted;
- (b) Paragraph 5 of Schedule 4, but as if—

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- (i) any reference in that paragraph to the monitoring and reporting requirements of the greenhouse gas emissions permit were a reference the monitoring and reporting conditions of the excluded installation emissions permit; and
- (ii) subparagraph (1)(c) and subparagraphs (3)(b)(ii), (4), (5) and (7) to (9) were omitted.

Chapter 3
Coordination

15. Where an installation undertakes activities which are included in Schedule 1 of the Pollution Prevention and Control Act, the regulator—

- (a) shall ensure that the conditions of and the procedure for the issue of a greenhouse gas emissions permit are coordinated with those for a permit under that Act; and
- (b) may integrate the requirements of Articles 5, 6 and 7 of the Directive, as set out in Chapter 1 and Schedule 4.

**PART 3
AVIATION**

Chapter 1
General

Scope of Part.

16. This Part shall apply to the allocation and issue of aviation allowances in respect of the aviation activities listed in Annex I.

Interpretation of Part.

17. In this Part (and in Schedules 7 to 10)—

“authority”, in relation to a Gibraltar administered operator (“P”) means the Minister;

“benchmarking plan” has the meaning given by paragraph 2 of Schedule 7;

“benchmarking year”, in relation to a trading period, means the calendar year ending 24 months before the beginning of the period;

“Commission list” means the list of operators set out in Commission Regulation (EC) No 748/2009 on the list of aircraft operators which performed an aviation activity listed in Annex I to Directive 2003/87/EC on or after 1 January 2006

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specifying the administering Member State for each aircraft operator, as the same may be amended from time to time;

“Director” has the meaning given in section 2 of the Civil Aviation Act 2009;

“emissions plan” means a plan issued under—

- (a) regulation 27(1)(a); or
- (b) regulation 4 of the 2010 Regulations;

“Gibraltar administered 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 administered operator ; and
- (c) has been notified of that direction by the Director;

“Member State” includes an EEA State;

“monitoring and reporting condition” means a condition included in an emission plan;

“registered office” (except in Schedule 2) means the registered office in Gibraltar;

“tonne-kilometre” and “tonne-kilometre data” have the same meaning as in the Monitoring and Reporting Regulation;

“unlisted operator” means a person who is—

- (a) not identified in the Commission list, and
- (b) the operator or owner of an aircraft used to perform an aviation activity.

Director: assistance etc.

18. The Director must provide such assistance and advice as the regulator may require in connection with any of the regulator’s functions under this Part (including Schedules 7 to 10) or under regulation 37.

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Gibraltar administered operators and Gibraltar aircraft operators

Gibraltar administered operators: power to designate.

19.(1) This subregulation applies where the Minister is satisfied that, under Article 18a(1) of the Directive, an unlisted operator (“P”) is to be regarded as being a Gibraltar administered operator.

(2) Where subregulation (1) applies the Minister must—

- (a) designate P as an operator to whom these Regulations apply; and
- (b) give notice to P of that designation.

(3) From the date of service of the notice under subregulation (2), P is to be treated as a Gibraltar administered operator for the purposes of these Regulations.

(4) Before making a designation under subregulation (2), the Minister must consult—

- (a) P;
- (b) the regulator;
- (c) the Director; and
- (d) such other persons as the Minister considers appropriate.

(5) A designation under subregulation (2)—

- (a) must (subject to subregulation (6)) be revoked by the Minister if subregulation (1) no longer applies in relation to P, and
- (b) ceases to have effect once that P is identified in the Commission list,

but this is without prejudice to any specification of P in that list as an operator to be administered by Gibraltar.

(6) A designation may not be revoked solely because P has ceased to perform an aviation activity.

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(7) Subregulations (2)(b), (3) and (4) apply to the revocation of a designation as they apply to the designation itself, except that the reference in subregulation (3) to being treated as a Gibraltar administered operator is to be read (subject to the proviso in subregulation (5)) as a reference to no longer being so treated.

Application to be designated as a Gibraltar administered operator.

20.(1) An unlisted operator (“Q”) may apply to the Minister to be designated as a Gibraltar administered operator.

(2) Where such an application is made the Minister must, after consulting the relevant persons—

- (a) designate Q in accordance with regulation 19(1) and (2); or
- (b) refuse the application.

(3) For the purposes of subregulation (2) the relevant persons are—

- (a) the regulator;
- (b) such other persons as the Minister considers appropriate.

(4) An application under this regulation must be accompanied by evidence that Gibraltar would be regarded as the jurisdiction which should designate Q.

Transfers of operators between Gibraltar and Member States.

21.(1) This regulation applies where a person (a “transferred operator”)—

- (a) was a non-Gibraltar operator at the beginning of a scheme year but, in the course of that year, ceased to be a non-Gibraltar operator and became a Gibraltar administered operator; or
- (b) was a Gibraltar administered operator at the beginning of a scheme year but, in the course of that year, ceased to be a Gibraltar administered operator and became a non-Gibraltar operator.

(2) For those purposes, “non-Gibraltar operator” means a person who is—

- (a) identified in the Commission list, and

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(b) not specified in that list by a reference to “Gibraltar (UK)” in the third column thereof.

(3) Subject to subregulations (4) and (5), the regulator in performing any of its functions under these Regulations may (if it appears to it appropriate to do so) decide to treat the transferred operator—

(a) as a person who, for the whole of that scheme year, is not a Gibraltar administered operator; or

(b) as a person who is a Gibraltar administered operator for the whole of that scheme year.

(4) The regulator may not so treat a transferred operator unless it—

(a) has consulted the other State and the operator, and

(b) given both of them notice of that decision.

(5) The regulator may not treat the transferred operator as a Gibraltar administered operator under subregulation (3)(b) for the purposes of imposing a civil penalty in respect of any failure to comply with these Regulations that occurred—

(a) while the operator was still a non-Gibraltar operator; or

(b) after the operator became a non-Gibraltar operator.

Gibraltar aircraft operators.

22.(1) A person (“P”) is a Gibraltar aircraft operator in relation to a scheme year where, in respect of that year, P—

(a) is a Gibraltar administered operator; and

(b) performs an aviation activity (or is deemed to perform an aviation activity in accordance with subregulation (5)).

(2) Where the regulator cannot identify the person that performed an aviation activity the regulator may, where the owner of the aircraft at the time it was used to perform the activity (“the owner”) is a Gibraltar administered operator or an unlisted operator, serve a notice on the owner.

(3) A notice under subregulation (2) must—

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- (a) where this information is available to the regulator, specify the dates, times and locations of the activity;
- (b) be accompanied by such evidence relevant to the activity as the regulator considers appropriate; and
- (c) require the owner to inform the regulator of the identity of the person who performed the activity, by the deadline specified in the notice.

(4) The regulator may extend the deadline specified in a notice under subregulation (2).

(5) Where the owner does not comply with a notice served under subregulation (2) by the deadline as so specified or extended, the owner is, on the expiry of that deadline, deemed to be the person that performed the aviation activity.

Chapter 3

Free Allocation of aviation allowances

Free allocation of aviation allowances.

23. The following Schedules have effect—

- (a) Schedule 7 (allocation of aviation allowances);
- (b) Schedule 8 (allocation of aviation allowances from the special reserve).

Chapter 4

Monitoring and reporting aviation emissions

References.

24. In this Chapter, any reference to a numbered Article is to that Article of the Monitoring and Reporting Regulation.

Application for an emissions plan by a Gibraltar administered operator.

25.(1) Subject to subregulations (3), (4) and (6), a Gibraltar administered operator (“A”) must apply to the regulator for a monitoring plan in accordance with Article 51(1).

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(2) That application must contain a plan to monitor A's aviation emissions (together with supporting documents) submitted under Article 12(1).

(3) If A has previously been issued with an emissions plan—

- (a) an application under subregulation (1) may not be made without the agreement of the regulator; and
- (b) any plan issued under regulation 27(1)(a) replaces the plan that has previously been issued.

(4) Where an application is made by virtue of the second or third subparagraphs of Article 51(1), the application must explain, to the satisfaction of the regulator, why it could not have been made earlier.

(5) Without prejudice to subregulation (1), a Gibraltar administered operator who has not previously been issued with an emissions plan may make an application in accordance with subregulation (2) at any time.

(6) If A is a transferred operator (within regulation 21(1)(a)), and has previously applied to a Member State for a monitoring plan in accordance with Article 51(1)—

- (a) this regulation applies to A as it applies to a Gibraltar administered operator who is not a transferred operator; but
- (b) the application to the regulator may be made within 8 weeks beginning with the date on which A became a Gibraltar administered operator.

Requirement to notify the regulator if an emissions plan is not applied for.

26.(1) Without prejudice to regulation 25(1), a person ("B") who becomes a Gibraltar administered operator after 31 December 2012 must by the relevant date—

- (a) apply to the regulator in accordance with regulation 25; or
- (b) notify the regulator in accordance with subregulation (2).

(2) The notification must state that B does not expect to commence an aviation activity within the four-month period beginning with the relevant date.

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(3) For the purposes of this regulation, “the relevant date” is the last day of the period of 12 weeks beginning with the date on which B became a Gibraltar administered operator.

Issue of an emissions plan.

27.(1) Where a Gibraltar administered operator (“A”) has made an application under regulation 25 the regulator must, by the notice of determination of the application—

- (a) issue to A a plan setting out how A’s aviation emissions must be monitored; or
- (b) where subregulation (2) applies, refuse the application.

(2) This subsection applies where—

- (a) the regulator is not satisfied that the plan proposed in the application complies with the Monitoring and Reporting Regulation; and
- (b) A has not agreed to amendments of the plan that so satisfy the regulator.

(3) A plan issued under subregulation (1)(a) must contain—

- (a) the provisions of the plan as proposed in the application, or with amendments as mentioned in subregulation (2)(b); and
- (b) any conditions included pursuant to regulation 29(1).

(4) Where the application is refused—

- (a) the regulator must state in the notice under subregulation (1)(b) what changes must be made to the application if a plan is to be issued; and
- (b) A must (or, in the case of an application under regulation 25(5), may) resubmit the amended application within a period of 31 days beginning with date of that notice.

(5) This regulation applies to the resubmission of an application as it applies to the original application, but for that purpose the references to the period of 2 months in paragraph 2(1)(a) and (2)(b) of Schedule 3 are to be read as a reference to a period of 24 days.

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Monitoring and reporting emissions.

28.(1) Once a Gibraltar administered operator (“A”) has been issued with an emissions plan, A must monitor aviation emissions for each scheme year in which A is a Gibraltar aircraft operator.

(2) Monitoring under subregulation (1) must be carried out in accordance with—

- (a) the Monitoring and Reporting Regulation; and
- (b) A’s emissions plan (including the written procedures supplementing that plan).

(3) A must prepare a verified report of aviation emissions in accordance with the Monitoring and Reporting Regulation 2018 and the Verification Regulation for the whole of each such scheme year.

(4) The report prepared under subregulation (3) must be submitted to the regulator by 31 March in the year following that scheme year.

Emissions plan conditions.

29.(1) The regulator must ensure that the emissions plans of Gibraltar administered operators include any conditions that the regulator considers necessary to give proper effect to the Monitoring and Reporting Regulation and the Verification Regulation.

(2) A must comply with any condition included in A’s emissions plan.

Variation of an emissions plan.

30.(1) The regulator may, by giving notice to a Gibraltar administered operator (“A”), make any variation of A’s emissions plan that the regulator considers necessary in consequence of a report made by A under Article 69 of the Monitoring and Reporting Regulation.

(2) The regulator may, by giving notice to A, vary A’s emissions plan where—

- (a) A applies to the regulator for an amendment to the emissions plan pursuant to a condition of the plan; or

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(b) A has failed to comply with a requirement in the emissions plan to apply for such an amendment.

(3) The regulator may, by giving notice to a Gibraltar administered operator, vary an emissions plan in order to comply with the regulator's duty under regulation 29(1) or 80(4).

(4) A notice given under subregulation (1), (2)(b) or (3) may specify a period within which a fee for the variation of the emissions plan must be paid.

Variation of a benchmarking plan.

31. The regulator may, by giving notice to a Gibraltar administered operator ("B"), vary B's benchmarking plan where B applies to the regulator under paragraph 4(1) of Schedule 7 or paragraph 4(1) of Schedule 8.

Chapter 5

Sanctions (other than civil penalties)

Detention and sale of aircraft.

32.(1) Where a person ("P") is—

- (a) a Gibraltar administered operator who has not paid a civil penalty within 6 months of the date by which it is due; or
- (b) an aircraft operator who is the subject of an operating ban imposed under Article 16(10) of the Directive,

the regulator may detain a relevant aircraft.

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

- (a) a "civil penalty" is any penalty imposed—
 - (i) under Part 7; or
 - (ii) under the 2010 Regulations in respect of a failure to comply with those Regulations on or after 1 January 2012; and
- (b) a "relevant aircraft" is any aircraft of which the regulator has reason to believe that P is the operator.

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(3) Schedule 9 makes further provision about the detention of aircraft under this regulation, and about the sale of aircraft following such detention.

(4) For the purposes of subregulation (2), and of Schedules 9 and 10, the operator of an aircraft is the person having the management of the aircraft for the time being (and “operate” has the corresponding meaning).

Aircraft operating bans.

33. Schedule 10 has effect in relation to—

- (a) requests to the European Commission made by the Minister under Article 16(5) of the Directive for the imposition of an operating ban on a Gibraltar administered operator; and
- (b) the enforcement of any operating ban imposed under Article 16(10) of the Directive.

**PART 4
SURRENDER OF ALLOWANCES**

Surrender of allowances: operators of installations.

34. For each scheme year, the operator of an installation must surrender allowances in accordance with the surrender requirements of the permit for the installation.

Surrender of allowances: Gibraltar aircraft operators.

35.(1) For each scheme year a Gibraltar aircraft operator (“P”) must, by 30 April in the following year, surrender a number of allowances or aviation allowances equal to P’s annual reportable emissions in that scheme year.

(2) For the purposes of the requirement in subregulation (1) the amount of the annual reportable emissions in a recovery year is deemed to be increased by an amount equal to the amount of annual reportable emissions, arising in the non-compliance year, in respect of which P failed to comply with that requirement

(3) For the purposes of subregulation (2)—

- (a) a “non-compliance year” is any scheme year for which P fails to comply with the requirement in subregulation (1); and

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- (b) the “recovery year” is—
 - (i) the scheme year following that non-compliance year; or
 - (ii) where the non-compliance results from an error in the verified emissions report submitted by P, the scheme year in which the error is discovered.

Project Activities.

35A. Schedule 12 shall have effect.

**PART 5
ENFORCEMENT ETC.**

Enforcement notices.

36.(1) Where the regulator considers that a person (“P”) has contravened, is contravening, or is likely to contravene a relevant provision, the regulator may serve a notice (“enforcement notice”) on P.

(2) For the purpose of subregulation (1), a “relevant provision” is any provision of—

- (a) these Regulations;
- (b) the Monitoring and Reporting Regulation;
- (c) a permit; or
- (d) an aviation emissions plan.

(3) An enforcement notice must—

- (a) state the regulator’s view under subregulation (1);
- (b) specify the matters constituting the contravention or making a contravention likely;
- (c) specify the steps that must be taken to remedy the contravention or to ensure that the likely contravention does not occur; and
- (d) specify the period within which those steps must be taken.

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(4) P must comply with the requirements of the notice within the period so specified.

(5) The regulator may withdraw an enforcement notice at any time by further notice served on P.

Power to determine reportable emissions.

37.(1) A power of the regulator to make a conservative estimate of emissions in accordance with Article 70 of the Monitoring and Reporting Regulation (a “determination of emissions”) may also be exercised where—

- (a) an operator fails to comply with the requirement to submit—
 - (i) a surrender report under paragraph 4(1)(a) and (b) of Schedule 4; or
 - (ii) a revocation report under paragraph 5(1)(a) and (b) of Schedule 4; or
- (b) an operator has failed to satisfy the regulator as required pursuant to paragraph 2(3)(c) of Schedule 4 or paragraph 3(8)(c) of Schedule 5;
- (c) a request has been made under regulation 46(5)(b); or
- (d) the regulator considers that such a determination is necessary for the purpose of imposing, or considering whether to impose, a penalty under Part 7.

(2) In the case referred to in subregulation (1)(b), in making the determination the regulator may substitute an emissions factor of greater than zero for the factor reported in respect of the bioliquids concerned.

(3) The regulator may make a determination of emissions where—

- (a) the operator has failed to submit a report as required pursuant to paragraph 3(8)(b) of Schedule 5; or
- (b) the regulator has reason to believe that the report submitted is incorrect.

(4) A determination of emissions—

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- (a) must be notified to the operator or Gibraltar aircraft operator concerned; and
 - (b) except where subregulation (5B) applies to that determination, is to be treated as determining all of the reportable emissions from the installation (or of the Gibraltar aircraft operator) for the period to which the determination relates.
- (5) A notice under paragraph (4) or under subregulation (5C)(a)–
- (a) except where it relates to an Article 27 installation, must be served on the registry administrator (and is in that case to be regarded as an instruction to the registry administrator for the purposes of Article 32(6) of the Registries Regulation 2011); and
 - (b) must, where required by Article 70(2) of the Monitoring and Reporting Regulation 2018, specify the corrections that are required to the verified report mentioned in regulation 28(3) or in paragraph 2(3)(b) of Schedule 4.
- (5A) Regulation (5B) applies where –
- (a) a determination of emissions has been notified to the operator or Gibraltar aircraft operator under subregulation (4); and
 - (b) the regulator is satisfied that there is a defect in the estimate of the reportable emissions in that determination.
- (5B) The regulator must withdraw the determination and make a further determination of emissions (the “rectified determination”).
- (5C) A rectified determination—
- (a) must be notified to the operator or Gibraltar aircraft operator concerned; and
 - (b) is to be treated as determining all of the reportable emissions from the installation (or of the Gibraltar aircraft operator) for the period to which the determination relates.
- (5D) Where—
- (a) any rectified determination is notified to the operator or Gibraltar aircraft operator concerned; and

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- (b) the regulator is satisfied that there is a defect in the estimate of the reportable emissions in that determination,

the regulator must withdraw the rectified determination and make one or more further rectified determinations.

(6) Where the regulator makes a determination of emissions under the Monitoring and Reporting Regulation, or by virtue of this regulation, the regulator may recover the cost of doing so from the operator or Gibraltar aircraft operator concerned.

PART 6 INFORMATION

Provision of information.

38.(1) The Minister may, by notice served on the regulator (“R”), require R to furnish such information about the discharge of R’s functions as the Minister may require.

(2) For the purposes mentioned in subregulation (4), the Minister, the registry administrator, the KP registry administrator, the regulator or the Director (a “relevant body”) may, by notice served on any person, require that person (“P”) to furnish such information as is specified in the notice, in such form and within such period following service of the notice or at such time as is so specified.

(3) The information which P may be required to furnish by a notice under subregulation (2) includes information, which, although it is not in P’s possession or would not otherwise come into P’s possession, is information which it is reasonable to require P to compile for the purpose of complying with the notice.

(4) The purposes referred to in subregulation (2) are—

- (a) the discharge of the relevant body’s functions; and
- (b) applying, seeking to apply, or assessing whether to seek to apply emission allowance trading to activities or greenhouse gases which are not listed in Annex I to the Directive, in accordance with Article 24 of the Directive.

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(5) Where the Minister is entitled to serve a notice on a person under subregulation (2) the regulator may serve that notice for the purpose of assisting the Minister.

(6) In this regulation, “functions” means functions under or by virtue of—

- (a) these Regulations;
- (b) the Monitoring and Reporting Regulation;
- (c) the Verification Regulation;
- (d) the Registries Regulation 2010; or
- (e) the Registries Regulation 2011.

Disclosure of information.

39.(1) Subject to subregulation (2) a relevant body (within the meaning of regulation 38(2)) must not disclose or publish any information provided under these Regulations except where—

- (a) disclosure or publication is—
 - (i) required in these Regulations or otherwise by law;
 - (ii) necessary for the performance of the relevant body’s function (as defined by regulation 38(6)); or
 - (iii) made with the consent of the person by or on behalf of whom the information was provided; or
- (b) disclosure is between one relevant body and another.

(2) The Minister may use any information held or obtained for the purposes of these Regulations, and may share such information with other government bodies, for the purpose of preparing and publishing energy and emissions statistics for Gibraltar, including the preparation and publication of the Gibraltar inventory.

(3) For the purpose of subregulation (2), “Gibraltar inventory” means the estimation of anthropogenic emissions of greenhouse gases by sources and removals of all greenhouse gases by sinks not controlled by the Montreal Protocol under Article 4(1)(a) of the United Nations Framework Convention on Climate Change.

**PART 7
CIVIL PENALTIES**

Interpretation of Part.

40. In this Part—

“additional penalty notice” means a notice served under regulation 42(3);

“carbon price”, in relation to a tonne of carbon dioxide equivalent, has the meaning given by regulation 41;

“penalty notice” means a notice served under regulation 42(1);

Carbon Price.

41.(1) In respect of the scheme year beginning with 1 January 2013, the carbon price is £6.70.

(2) For each subsequent scheme year, the Minister must determine a price as the carbon price for that year, based on the sterling equivalent of the average end of day settlement price (in Euro per tonne of carbon dioxide equivalent) of the December futures contract for that scheme year .

(3) For that purpose—

“average end of day settlement price” means the average over the 12 months ending with the relevant date;

“futures contract” means the futures contract as traded on the single largest carbon market exchange (as determined by volume of sales in the 12 months ending with the relevant date);

“sterling equivalent” means the sterling equivalent converted by reference to the Bank of England annual average spot exchange rate for the 12 months ending with the relevant date;

“the relevant date”, in relation to the year for which the carbon price is set, is 11 November in the preceding year.

(4) The Minister must publish a determination made under subregulation (2) 1 month before the beginning the scheme year in question.

Penalty notices.

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42.(1) Where the regulator is satisfied that a person (“P”) is liable to a civil penalty under this Part the regulator must (subject to regulation 43) serve a notice on P.

(2) The penalty notice must specify—

- (a) the regulation under which that liability arises;
- (b) the amount of the civil penalty;
- (c) where appropriate, how the amount of the civil penalty is calculated;
- (d) whether or not P is liable to a civil penalty in accordance with regulation 45(3)(b), 48(2)(b), 52(2)(b), 54(2)(b), 55(2)(b), 56(2)(b), 59(2)(b), 60(2)(b), or 61(2)(b) (an “additional daily penalty”); and
- (e) if P is not liable to an additional daily penalty, the date by which the penalty must be paid.

(3) Subject to regulation 43 and to subregulation (4), where the regulator is satisfied that P is liable to an additional daily penalty the regulator must, when the amount of that additional daily penalty can be determined, serve a notice on P specifying—

- (a) the total amount of the civil penalties due; and
- (b) the date by which that amount must be paid.

(4) In the case of an additional daily penalty under regulation 59(2)(b), a notice under subregulation (3) stating the amount of additional daily penalty that has accrued by the date of the notice may be served at such intervals as the regulator thinks fit.

(5) A civil penalty imposed by a penalty notice or an additional penalty notice must be paid to the regulator by the date specified in the notice.

(6) Any such civil penalty is recoverable by the regulator—

- (a) as a civil debt; and
- (b) where appropriate, in accordance with regulation 32 and Schedule 9.

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- (7) The regulator must, as soon as is reasonably practicable—
- (a) give notice to the authority of the service of any penalty notice or additional penalty notice; and
 - (b) pay any civil penalty paid into the Consolidated Fund.

Discretion in imposing civil penalties.

43.(1) Where the regulator considers it appropriate to do so, the regulator may (subject to subregulation (2))—

- (a) refrain from imposing a civil penalty;
- (b) reduce the amount of a penalty (including the amount of an additional daily penalty);
- (c) extend the time for payment specified in the penalty notice or additional penalty notice;
- (d) withdraw a penalty notice or an additional penalty notice;
- (e) modify the notice by substituting a lower penalty.

(2) The powers under subregulation (1) do not apply in relation to any penalty arising under regulation 46(1).

Carrying out a regulated activity without a permit.

44.(1) Where in any scheme year a regulated activity is carried out that is not authorised by a permit, contrary to regulation 8, the operator of the installation (“P”) is at the end of that year liable to the civil penalty in subregulation (2).

(2) For each such year, the civil penalty is $A+(B\times C)$, where—

A is the estimated amount of the costs avoided by P in that year as a result of carrying out a regulated activity without such authorisation;

B is the estimated amount of reportable emissions from the installation in the period during which a regulated activity was carried out without such authorisation;

C is the carbon price for that year.

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(3) In exercising powers under regulation 43 in relation to the penalty in subregulation (2), the regulator must ensure that the penalty imposed exceeds the amount of any economic benefit that P has obtained as a result of carrying out a regulated activity that is not authorised by a permit.

Failure to comply with a condition of a permit.

45.(1) An operator is liable to the civil penalties in subregulation (3) where the operator fails to comply (or comply on time) with a condition of a permit included pursuant to—

- (a) paragraph 2(1)(e)(ii) or (iv) of Schedule 4 (but excluding the condition mentioned in subregulation (4) below);
- (b) paragraph 3(1)(g), (h) or (i) of Schedule 5; or
- (c) rule 9 of the 2004 Rules, other than rules 9(3) and (4) (or such a condition as modified by virtue of regulation 79(6) or (7) of these Regulations).

(2) However, an operator is not liable to those civil penalties where the failure to comply gives rise to a penalty under regulation 49.

(3) The civil penalties are—

- (a) £3,750; and
- (b) £375 for each day that the operator fails to comply with the condition following service of a penalty notice, up to a maximum of £33,750.

(4) An operator is liable to a civil penalty of £5,000 where the operator fails to comply with a condition of a permit included pursuant to paragraph 2(7)(a) of Schedule 4.

Failure to surrender allowances.

46.(1) A person (“P”) is liable to the civil penalty in subregulation (2) where P fails to surrender sufficient allowances, contrary to regulation 34 or 35.

(2) The civil penalty (“excess emissions penalty”) is the sterling equivalent of 100 Euros for each allowance that P failed so to surrender.

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(2A) Any—

- (a) increase in the amount of allowances required by regulation 35;
- (b) increase in the amount of annual reportable emissions required by regulation 35; or
- (c) deemed increase in an installation's annual reportable emissions in a recovery year pursuant to paragraph 2(5) of Schedule 4,

must be disregarded for the purpose of calculating the excess emissions penalty.

(3) But subregulation (1) is subject to subregulations (4) to (6).

(4) Where subregulation (5) applies, P is not liable to the excess emissions penalty for a failure to surrender allowances in respect of those reportable emissions in a scheme year exceed P's verified annual reportable emissions for that year.

(5) This subregulation applies where—

- (a) the regulator becomes aware that P's annual reportable emissions in a scheme year exceed P's verified annual reportable emissions in respect of that year; and
- (b) P failed to surrender a number of allowances equal to the unreported emissions by 30th April in the following scheme year.

(6) Where subregulation (5) applies, P is liable to the civil penalty of the sterling equivalent of 20 Euros for each allowance that P failed to surrender in respect of the unreported emissions.

(7) In this regulation—

“allowance”, where P is a Gibraltar aircraft operator, includes an aviation allowance;

“unreported emissions” means the emissions mentioned in subregulation (4);

“sterling equivalent” means, subject to subregulation (8), the sterling equivalent converted by reference to the applicable rate of

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conversion and for that purpose the applicable rate is the first rate of conversion to be published in September of the year preceding the scheme year in which P is liable to the penalty in the C series of the Official Journal of the European Union, adjusted in accordance with subregulation (8).

“verified annual reportable emissions” means annual reportable emissions that are—

- (i) verified pursuant to regulation 28(3) or paragraph 2(3)(b) of Schedule 4;
- (ii) considered verified pursuant to regulation 28; or
- (iii) determined by the regulator pursuant to regulation 37;

(8) If the last Harmonised Index of Consumer Prices for the member States of the European Union (“HICP”) published by Eurostat before the end of April in the year in which P failed to surrender the allowances shows an average percentage price increase as compared with the last HICP published before the end of April 2012, the sterling equivalent is increased by the same percentage.

(9) Where—

- (a) a person was liable to a civil penalty under this regulation for a failure to surrender a number of allowances equal to the unreported emissions in any relevant year; and
- (b) a penalty notice has not been served in respect of that penalty, the provisions of subregulations (4) to (7) apply in respect of such emissions.

(10) In subregulation (9), “relevant year” means a scheme year during the years 2013 to 2018.

Exceeding an emissions target for an excluded installation.

47.(1) An operator of an excluded installation is liable to the civil penalty in subregulation (2) where in any scheme year the operator fails to comply with paragraph 5 of Schedule 5.

(2) The civil penalty is $(A-B) \times C$, where—

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A is the amount of annual reportable emissions arising in the scheme year;

B is the emissions target for that year;

C is the carbon price for that year.

Failure to pay a penalty for exceeding an emissions target for an excluded installation.

48.(1) An operator of an excluded installation is liable to the civil penalties in subregulation (2) where the operator fails to pay a penalty imposed under regulation 47 by the date specified in the penalty notice.

(2) The civil penalties are—

- (a) 10% of the penalty imposed under regulation 47; and
- (b) £150 for each day that the operator fails to pay that penalty following service of a penalty notice in respect of the penalty under paragraph (a), up to a maximum of £13,500.

Under-reporting of emissions from an excluded installation.

49.(1) An operator of an excluded installation is liable to the civil penalty in subregulation (2) where there are reportable emissions in a scheme year (“the unreported emissions”) that—

- (a) were not reported in the report submitted for that year under paragraph 3(8)(b)(i) of Schedule 5; but
- (b) have been determined by the regulator under regulation 37(3).

(2) The civil penalty is $A + (B \times C)$ where—

A is £3,750;

B is the amount of the unreported emissions;

C is the carbon price for that year.

Failure to notify when an excluded installation ceases to meet the criteria for being excluded.

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50.(1) An operator of an excluded installation (“P”) is liable to the civil penalties in subregulations (2) and (3) where P fails to comply (or comply on time) with a notification requirement under—

- (a) a condition of a permit included pursuant to paragraph 3(4) or (5) of Schedule 5; or
- (b) paragraph 4(1) or (2) of Schedule 5.

(2) For the first scheme year in which P failed to comply with the requirement to notify by 31 March in that year, the civil penalty is £2,500.

(3) For the first and each subsequent scheme year in which P has still failed to comply with the notification requirement by 31 October in that year, P is at the end of the following scheme year (“S”) liable to the civil penalty in subregulation (4).

(4) The civil penalty is $2 \times (A + B)$, where—

A is £2,500;

B is the avoided compliance costs.

(5) In subregulation (4) “avoided compliance costs” means $((W - X) \times Y) - Z$, where—

W is the amount of annual reportable emissions arising in S;

X is the number of allowances for S to which P would have been entitled in accordance with Article 10a of the Directive, if the installation had not been an excluded installation and had been carrying out regulated activities;

Y is the carbon price for S;

Z is any penalty due under regulation 47 in respect of S.

Failure to surrender a permit.

51. Where an operator fails to make an application to surrender a permit, contrary to regulation 12(1) and (2), the operator is liable to a civil penalty of £5,000.

Failure to submit or resubmit an application for an emissions plan.

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52.(1) A Gibraltar administered operator (“A”) is liable to the civil penalties in subregulation (2) where A fails to—

- (a) submit (or to submit on time) an application for an emissions plan, contrary to regulation 25(1);
- (b) satisfy the regulator, contrary to regulation 25(4); or
- (c) resubmit (or to resubmit on time) an application for an emissions plan, where required to do so by regulation 27(4).

(2) The civil penalties are—

- (a) £1,500; and
- (b) £150 for each day that the application or resubmission of an application is not provided, following the service of a penalty notice, up to a maximum of £13,500.

Failure to notify the regulator if an emissions plan is not applied for.

53.(1) A Gibraltar administered operator (“A”) is liable to the civil penalty in subregulation (2) where A fails to comply with the requirements of regulation 26(1).

(2) The civil penalty is £5,000.

Failure to comply with a condition of an emissions plan.

54.(1) A Gibraltar aircraft operator (“A”) is liable to the civil penalties in subregulation (2) where A fails to comply (or to comply on time) with a condition in an emissions plan, contrary to regulation 29(2).

(2) The civil penalties are—

- (a) £1,500; and
- (b) £150 for each day that A fails to comply with the condition following the service of a penalty notice, up to a maximum of £13,500.

Failure to monitor aviation emissions.

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55.(1) A Gibraltar aircraft operator (“A”) is liable to the civil penalties in subregulation (2) where A fails to monitor aviation emissions, contrary to regulation 28(1).

(2) The civil penalties are—

- (a) £1,500; and
- (b) £150 for each day that A fails to monitor aviation emissions following the service of a penalty notice, up to a maximum of £13,500.

Failure to report aviation emissions.

56.(1) An Gibraltar aircraft operator (“A”) is liable to the civil penalties in subregulation (2) where A fails to report (or to report on time) aviation emissions, contrary to regulation 28(4).

(2) The civil penalties are—

- (a) £3,750; and
- (b) £375 for each day that the report is not submitted, following the service of a penalty notice, up to a maximum of £33,750.

Failure to provide assistance and advice.

57. Where an aerodrome operator fails to provide reasonable assistance and advice, contrary to paragraph 7(1) of Schedule 9, the aerodrome operator is liable to a civil penalty of £50,000.

Failure to comply with a direction relating to an operating ban.

58. Where a person fails to comply with a direction, contrary to paragraph 2(4)(a) of Schedule 10, that person is liable to a civil penalty of £50,000.

Failure to return allowances.

59.(1) An operator or a Gibraltar administered operator (“P”) is liable to the civil penalties in subregulation (2) where P—

- (a) receives allowances to which P is not entitled; and
- (b) fails to return such allowances, contrary to—

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- (i) paragraph 11(4) of Schedule 6; or
- (ii) paragraph 10(4) of Schedule 7.

(2) The civil penalties are—

- (a) £20,000; and
- (b) £1,000 for each day that P fails to return the allowances following the service of a penalty notice.

Failure to comply with an enforcement notice.

60.(1) A person (“P”) is liable to the civil penalties in subregulation (2) where P fails to comply with the requirements of an enforcement notice, contrary to regulation 36(4).

(2) The civil penalties are—

- (a) £20,000; and
- (b) £1,000 for each day that P fails to comply with the requirements of the enforcement notice, following service of a penalty notice, up to a maximum of £30,000.

Failure to comply with an information notice.

61.(1) A person (“P”) is liable to the civil penalties in subregulation (2) where P fails to comply (or to comply on time) with the requirements of a notice served under regulation 38(2) (an “information notice”).

(2) The civil penalties are—

- (a) £1,500; and
- (b) £150 for each day that P fails to comply with the requirements of the information notice following service of a penalty notice, up to a maximum of £13,500.

Providing false or misleading information.

62.(1) A person (“P”) is liable to the civil penalty in subregulation (2) where P provides false or misleading information, or makes a statement which is false or misleading in a material particular, where the statement is made, or the information is provided—

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- (a) in any application made under these Regulations, or in response to a notice served under paragraph 1(12) of Schedule 3;
- (b) in a notice under regulation 26(1)(b);
- (c) in an aviation emissions report prepared under regulation 28(3);
- (d) in response to a notice served under regulation 38(2);
- (e) pursuant to a requirement mentioned in regulation 70(2) or (4);
- (f) in purported compliance with the conditions of a permit or an aviation emissions plan; or
- (g) pursuant to paragraph 6(2), 7(9), 8(4)(a), 8(5) or 11 of Schedule 6.

(2) The civil penalty is £1000.

Publication of names of persons subject to penalties under regulation 46(1).

63.(1) As soon as possible after—

- (a) the expiry of the period for appealing the imposition of a penalty by the regulator under regulation 46(1), or
- (b) if such an appeal is made, the determination or withdrawal of the appeal,

the regulator must (subject to subregulation (2)) publish the name of the person on whom that penalty was imposed.

(2) The name must not be published if, following such an appeal, the person is found not to be liable to any of the penalty imposed under regulation 46(1).

**PART 8
APPEALS**

Interpretation of Part.

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64. In this Part—

“court” means the Magistrates’ Court;

“decision” means—

- (a) a notice or deemed refusal under these Regulations; or
- (b) an action or decision of the registry administrator or the KP registry administrator;

“notice”, includes—

- (a) in the case of a notice determining an application for a permit or the transfer of the permit, the provisions of any permit attached to the notice; and
- (b) in the case of a notice determining an application for an aviation emissions plan, the conditions included in the plan issued by the notice.

Rights of appeal.

65.(1) Subject to subregulation (3), the following persons may appeal to the court—

- (a) a person who is aggrieved by a decision determining any application made by them under these Regulations;
- (b) a person who is aggrieved by a notice served on them under any provision mentioned in subregulation (2).

(2) Those provisions are—

- (a) regulation 10(2), (3)(b) or (4);
- (b) regulation 13(1);
- (c) regulation 22(2);
- (d) regulation 30(1), (2)(b) or (3);
- (e) regulation 36(1);
- (f) regulation 37(4);

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- (g) regulation 38(2);
- (h) regulation 42(1) or (3);
- (i) paragraph 8(1) or (4) of Schedule 5;
- (j) paragraph 6(7)(a) of Schedule 6, in relation to a decision to make a request under paragraph 6(5)(a) or (b) of that Schedule;
- (k) paragraph 7(11)(a) of Schedule 6, in relation to a decision to make a request under paragraph 7(9)(a) of that Schedule;
- (l) paragraph 7(11)(b) of Schedule 6;
- (m) paragraph 8(11)(a) of Schedule 6, in relation to a decision to make a request under paragraph 8(9)(a) or (b) of that Schedule;
- (n) paragraph 11(2) of Schedule 6;
- (o) paragraph 10(2) of Schedule 7.

(3) An appeal under subregulation (1) may not be made to the extent that the decision implements a direction given by the court under these Regulations.

Rights of appeal: registries.

66.(1) A person who is aggrieved by a decision of the registry administrator referred to in a provision of the Registries Regulation 2011 mentioned in subregulation (2) may exercise the right to object given by that provision by appealing to the court.

- (2) Those provisions are—
 - (a) Article 20(3);
 - (b) Article 22(6);
 - (c) Article 23(3);
 - (d) Article 30(5);
 - (e) Article 31(6).

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(3) A person who is aggrieved by a decision of the KP registry administrator referred to in a provision of the Registries Regulation 2010 mentioned in subregulation (4) may exercise the right to object given by that provision by appealing to the court.

(4) Those provisions are—

- (a) Article 18(3);
- (b) Article 20(4);
- (c) Article 21(1);
- (d) Article 27(5);
- (e) Article 28(5).

(5) On receiving notice under regulation 70(10), the account holder may appeal to the appeal body against the decision to set a registry account to blocked status.

Effect of an appeal.

67.(1) Subject to subregulations (2) to (4), the bringing of an appeal under regulation 65 suspends the effect of the decision pending the final determination or withdrawal of the appeal.

(2) The bringing of an appeal does not suspend the effect of—

- (a) a decision refusing an application;
- (b) a deemed refusal;
- (c) a notice under—
 - (i) regulation 10(2), (3)(b) or (4);
 - (ii) regulation 30(1), (2)(b) or (3);
 - (iii) regulation 36(1);
 - (iv) paragraph 8(1) or (4) of Schedule 5; or
 - (v) paragraphs 6(7)(a), 7(11)(a) or (b), or 8(11)(a) of Schedule 6.

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(3) Where (following an application for a permit or for the transfer of a permit) a permit has been granted or varied, the bringing of an appeal against the provisions of the permit or the terms of the variation does not suspend the effect of those provisions or terms.

(4) Where an aviation emissions plan has been issued following an application under regulation 25, the bringing of an appeal against the conditions included in the plan does not suspend the effect of those conditions.

(5) The bringing of an appeal against a determination of emissions under regulation 37(4) suspends the effect of the decision only for the purpose of assessing whether there has been compliance with regulation 34 or 35.

(6) The bringing of an appeal under regulation 66 does not suspend the effect of the decision pending the final determination or withdrawal of the appeal.

Determination of an appeal.

68.(1) In determining an appeal under regulation 65(1) the court may, subject to subregulation (3)–

- (a) affirm the decision;
- (b) quash the decision or vary any of its terms;
- (c) substitute a deemed refusal with its own decision; or
- (d) give directions to the regulator as to the exercise of the regulator's functions under these Regulations.

(2) In determining an appeal under regulation 66 the court may give directions to–

- (a) the registry administrator as to the exercise of its functions under the Registries Regulation 2011; or
- (b) the KP administrator as to the exercise of its functions under the Registries Regulation 2010.

(3) The court may not make a determination that would result in a decision which could not otherwise have been made under these Regulations or under the Registries Regulation 2010 or 2011.

**PART 9
THE UNION REGISTRY AND THE GIBRALTAR REGISTRY**

Interpretation of Part.

69.(1) In this regulation and regulation 70, a reference to a numbered Article is to that Article of the Registries Regulation 2011.

(2) In regulation 70-

“the allocation table” means the allocation table for Gibraltar notified to the European Commission by the United Kingdom under Article 49;

“the aviation allocation table” means the aviation allocation table for Gibraltar notified to the European Commission by the United Kingdom under Article 53(1);

The Union Registry.

70.(1) The registry administrator may require users of the Union Registry to comply with reasonable terms and conditions in relation to that registry.

(2) It is the duty of the account holder to comply with the requirement to enter emissions data in accordance with Article 32(2); however, an amount of zero must be entered by the account holder if the latter is-

- (a) an operator who carried out no regulated activity in the year to which the data would relate; or
- (b) a Gibraltar administered operator who carried out no aviation activity in that year.

(3) The verifier is responsible under Articles 32(4) and (5) for-

- (a) approving the annual verified emissions; and
- (b) marking the emissions as verified.

(4) The operator or the Gibraltar administered operator is responsible for complying with the requirement under Article 14(1) or 15(1) to provide information to the registry administrator and request the opening of a registry account.

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(5) In complying with the requirement mentioned in subregulation (4), the operator or the Gibraltar administered operator must provide such evidence of identity and address as may be required by the registry administrator.

(6) Where—

- (a) an operator fails to comply with regulation 34; or
- (b) a Gibraltar aircraft operator fails to comply with regulation 35,

the registry administrator must set the relevant registry account to blocked status until the compliance status figure for the installation or Gibraltar aircraft operator, calculated in accordance with Article 34, is greater than or equal to zero.

(7) This subregulation applies where—

- (a) an operator is required to submit a report to the regulator by the terms of a notice of surrender or a revocation notice; and
- (b) the operator—
 - (i) fails to submit the report to the regulator within the time specified in the report;
 - (ii) submits an incomplete report to the regulator within the time so specified; or
 - (iii) submits within the time so specified a report to the regulator that cannot be verified in whole or in part in accordance with the monitoring and reporting requirements for the installation.

(8) Where subregulation (7) applies, the registry administrator must set the relevant operator holding account to blocked status until—

- (a) the report has been prepared and verified in accordance with the requirements of paragraph 4(1)(b) or 5(1)(b) of Schedule 4 and has been submitted to the regulator; or
- (b) the regulator has notified, in accordance with regulation 37(4)(a), a determination of the reportable emissions referred to in paragraph 4(1)(a) or 5(1)(a) of that Schedule.

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(9) Where an operator is in breach of the requirement to comply with a notice given under paragraph 11(2) of Schedule 6 or paragraph 10(2) of Schedule 7, the registry administrator must set the operator holding account to blocked status until that notice has been complied with.

(10) Where the registry administrator sets a registry account to blocked status pursuant to subregulation (6), (8) or (9) it must notify the account holder specifying the reason why, and the period during which, the relevant registry account will be blocked.

(11) The regulator must, as soon as is reasonably practicable, notify the registry administrator where a change to the allocation table or aviation allocation table becomes necessary—

- (a) by virtue of Article 50(1) or 54(1); or
- (b) for any other reason (and in particular in consequence of paragraph 5 or 10 of Schedule 6).

(12) The registry administrator must, as soon as is reasonably practicable, notify the European Commission in accordance with Article 50(2) or 54(2) of any changes to the allocation table or aviation allocation table (other than those falling within subsection (11)(a)).

(13) This subsection applies where—

- (a) a notice of surrender or a revocation notice has been given and has taken effect; and
- (b) the operator is unable to comply with the requirement to surrender allowances imposed by that notice by the date specified in the notice, due to the suspension of access to the relevant registry account by the registry administrator pursuant to Article 31.

(14) Where subsection (13) applies, the registry administrator must, if so requested by the operator, surrender the number of allowances specified in the notice of surrender or the revocation notice.

(15) The registry administrator or the KP registry administrator may refuse to—

- (a) open any account in the Union Registry or the Gibraltar Registry; or

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- (b) approve an authorised representative or an additional authorised representative in relation to such an account,

where it is not satisfied that the proposed account holder, authorised representative or additional authorised representative is a fit and proper person to hold such an account or, as the case may be, act as such a representative.

(16) The registry administrator may extend the suspension of the running of delays under Article 36(3) to all days in a scheme year that are not working days, provided that the decision to do so is published by the registry administrator by 1st December in the previous scheme year.

The Gibraltar Registry.

71.(1) The regulator must continue to operate the Gibraltar Registry for the purposes of meeting Gibraltar's obligations under Article 3(1) of the Registries Regulation 2010, and in that capacity is referred to in these Regulations as the "KP registry administrator".

(2) The regulator may require users of the Gibraltar Registry to comply with reasonable terms and conditions in relation to that registry.

**PART 10
SUPPLEMENTARY**

Recovery of fees.

72.(1) In this regulation "allowances" includes aviation allowances.

(2) Any fee payable by virtue of these Regulations may be recovered by the regulator—

- (a) as a civil debt; or
- (b) by the seizure and sale of a number of allowances held by the operator or Gibraltar administered operator liable to the fee ("the debtor") in accordance with subregulation (3).

(3) Where the regulator proposes to recover an unpaid fee by the seizure and sale of allowances held by the debtor, the regulator must—

- (a) notify the registry administrator and the debtor;

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- (b) instruct the registry administrator to transfer a number of allowances sufficient to cover the unpaid fee, and any expenses incurred in recovering it from the debtor, to the regulator's person holding account in the Union Registry;
- (c) sell the allowances transferred under paragraph (b) for the best price that can reasonably be obtained, though a failure to do so does not make a sale under this subregulation void or voidable; and
- (d) apply the proceeds of sale in the following order—
 - (i) in payment of the unpaid fee in respect of which the allowances were seized and sold;
 - (ii) in payment of any expenses incurred by the regulator in seizing and selling the allowances,

and pay any residue from the proceeds of sale to the debtor.

Consequence for non-payment.

73. The regulator is not required to perform a function for which a fee is payable in relation to a person who has not paid a fee which that person is liable to pay.

Guidance.

74.(1) The authority may issue guidance to the regulator with respect to the carrying out of any of the regulator's functions under these Regulations, the Monitoring and Reporting Regulation or the Verification Regulation.

(2) The Minister may issue guidance to the registry administrator or the KP registry administrator with respect to the carrying out of any of its functions under these Regulations, the Registries Regulation 2011 or the Registries Regulation 2010.

(3) The regulator, the registry administrator or the KP registry administrator must have regard to any guidance issued under subregulation (1) or (2).

Duty of Minister to publish information

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74A.(1) By 31st March each year, the Minister must publish the total amount of compensation that has been provided in the previous scheme year for the purposes of the first subparagraph of Article 10a(6) of the Directive.

(2) The Minister must publish that information in a form that is easily accessible to the public.

(3) Where the compensation provided in a particular scheme year exceeds an amount that is more than 25% of the revenues generated from the auctioning of allowances in that year, the Minister must set out in a report the reasons for exceeding that amount.

Revenue from auctioned allowances.

75.(1) Where the Government receives any revenue arising from the auction of allowances, at least 50% of such revenue shall be used for one or more of the following—

- (a) to reduce greenhouse gas emissions, including by contributing to the Global Energy Efficiency and Renewable Energy Fund and to the Adaptation Fund as made operational by the Poznan Conference on Climate Change (COP 14 and COP/MOP 4), to adapt to the impacts of climate change and to fund research and development as well as demonstration projects for reducing emissions and for adaptation to climate change, including participation in initiatives within the framework of the European Strategic Energy Technology Plan and the European Technology Platforms;
- (b) to develop renewable energies to meet the commitment of the Community to using 20 % renewable energies by 2020, as well as to develop other technologies contributing to the transition to a safe and sustainable low-carbon economy and to help meet the commitment of the Community to increase energy efficiency by 20 % by 2020;
- (c) measures to avoid deforestation and increase afforestation and reforestation in developing countries that have ratified the international agreement on climate change, to transfer technologies and to facilitate adaptation to the adverse effects of climate change in these countries;
- (d) forestry sequestration in the Community;

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- (e) the environmentally safe capture and geological storage of CO₂, in particular from solid fossil fuel power stations and a range of industrial sectors and subsectors, including in third countries;
- (f) to encourage a shift to low-emission and public forms of transport;
- (g) to finance research and development in energy efficiency and clean technologies in the sectors covered by this Directive;
- (h) measures intended to increase energy efficiency and insulation or to provide financial support in order to address social aspects in lower and middle income households;
- (i) to cover administrative expenses of the management of the Community scheme.

(2) Member States shall be deemed to have fulfilled the provisions of this paragraph if they have in place and implement fiscal or financial support policies, including in particular in developing countries, or domestic regulatory policies, which leverage financial support, established for the purposes set out in the first subparagraph and which have a value equivalent to at least 50 % of the revenues generated from the auctioning of allowances referred to in paragraph 2, including all revenues from the auctioning referred to in paragraph 2, points (b) and (c).

Financial measures.

75A.(1) Where the Government receives any revenue arising from the auction of allowances, subject to (2) below, such revenue shall be used for financial measures in favour of sectors or subsectors which are exposed to a genuine risk of carbon leakage.

(2) The Government shall seek to use no more than 25% of any revenues generated from the auctioning of allowances within a calendar year for the purposes outlined in (1) above.

(3) In the event that the Government exceed the limit outlined in (2), a report shall be published which complies with the requirements at (4).

(4) The report produced at (3) must contain-

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- (a) relevant information on electricity prices for large industrial consumers benefitting from those financial measures set out at (1);
- (b) information on whether due consideration has been given to other measures to sustainability lower indirect carbon costs in the medium to long term.

Reporting.

75B.(1) Without prejudice to regulation 75A(3), the Government shall make public, in an easily accessible form, the total amount of compensation provided per benefitting sector and subsector.

(2) The figures outlined at (1) shall be published within the last three months of the end of each calendar year.

Definitions for sections 75A and 75B.

75C.(1) This section supplements sections 75A and 75B and includes definitions.

(2) A sector or subsector shall be deemed to be exposed to a genuine risk of carbon leakage based on ex-ante benchmarks for the indirect emissions of CO₂ per unit of production.

(3) The ex-ante benchmarks in (2) shall be calculated for a given sector or subsector as the product of the electricity consumption per unit of production corresponding to the most efficient available technologies and of the CO₂ emissions of the relevant European electricity production mix.

Rules and Regulations.

75D. The Minister may issue Rules and/or Regulations from time to time to define or provide procedures for any of the matters contained in sections 75A to 75C.

**PART 11
MISCELLANEOUS**

Revocations.

76. Subject to regulations 77 and 78, the following enactments are revoked—

- (a) the 2004 Rules; and

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- (b) the 2010 Regulations.

Savings and transitional provisions: the 2004 Rules.

77.(1) Notwithstanding the revocations made by regulation 76, the following provisions of the 2004 Rules (“the relevant provisions”) continue to have effect to the extent specified below.

(2) Part 1 and Schedule 1 have effect for the purpose of the relevant provisions.

(3) Rules 14 and 15 have effect for the purposes of making an application for the surrender of a permit, or the service of a notice of revocation in respect of a failure to make such an application, where the circumstances giving rise to the requirement to make the application occurred before 1 January 2013.

(4) Rule 16 has effect.

(5) Rule 19 has effect for all purposes relating to the registry referred to in Article 3(2) of the Registries Regulation 2010.

(6) Part 4 (enforcement) has effect in so far as it relates to any activities carried out, or emissions arising, prior to 1st January 2013.

(7) Part 5 has effect in relation to any appeal brought against a decision or notice specified in rule 24(1) to (3) of the 2004 Rules.

(8) Rule 26 has effect in so far as it relates to functions carried out before 1 January 2013 or under the relevant provisions.

(9) Rule 27 has effect in so far as it relates to a civil penalty in respect of emissions arising before 1 January 2013.

(10) Rule 28 has effect.

(11) For the purposes rule 29(1), in so far as it relates to the relevant provisions, where the conduct giving rise to the offence occurs after 31 December 2012 the following civil penalties apply instead of the offences under that subrule—

- (a) the penalty in regulation 51 applies instead of the offence of failing to making an application to surrender a permit;

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- (b) the penalties in regulation 60 apply instead of the offence of failing to comply with an enforcement notice; and
- (c) the penalty in regulation 62 applies instead of an offence under subrule (1)(f) of rule 29.

(12) Subject to subregulation (13) below, rule 29(3) and (4) has effect.

(13) No prosecution may be brought in respect of an offence under rule 29(1)(a) if—

- (a) the conduct that gave rise to the offence continues after 31 December 2012; and
- (b) the person who has committed the offence will be liable to a civil penalty under regulation 44.

(14) Rules 30 to 32 have effect in relation to a failure to surrender allowances in respect of emissions arising before 1 January 2013, and regulation 31 has effect in relation to an understatement of such emissions.

(15) Part 8 has effect in so far as it relates to functions carried out, or powers exercised, under the relevant provisions or as national administrator under the Registries Regulation 2010.

Savings and transitional provisions: the 2010 Regulations.

78.(1) Notwithstanding the revocations made by regulation 76, the following provisions of the 2010 Regulations (“the relevant provisions”) continue to have effect to the extent specified below.

(2) Regulations 1 to 3 have effect for the purposes of the relevant provisions.

(3) Regulation 4 has effect in relation to a person who became an aircraft operator under the 2010 Regulations before 1 January 2013.

(4) Regulation 9(4) to (7) has effect in relation to aviation emissions arising before 1 January 2013.

(5) Regulation 11 has effect in relation to the functions referred to in that regulation.

(6) Regulation 12 has effect in relation to conduct occurring before 1 January 2013

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(7) Regulation 15 has effect.

Transitional provisions: permits.

79.(1) A permit granted under rule 8 of the 2004 Rules that is in force immediately before 1st January 2021, continues to have effect until it is revoked or surrendered under these Regulations.

(2) The regulator must vary the content of a greenhouse gas emissions permit that is in force immediately before 1st January 2021 to comply with the requirements of paragraph 2 of Schedule 4.

(3) Subject to subregulations (4) and (5), an excluded installation emissions permit that is in force immediately before 1st January 2021 continues to have effect as if it were an Article 27 installation emissions permit until it is revoked, surrendered or varied under these Regulations.

(4) The regulator must vary the excluded installation emissions permit as necessary to bring it into a form in which it could have been granted under regulation 9(2).

(5) The regulator must, where an excluded installation is not eligible to obtain an Article 27 installation emissions permit, vary the excluded emissions permit with effect from 1st January 2021 so that the provisions of the permit that satisfy the requirements of paragraph 3 of Schedule 5 are replaced by provisions satisfying the requirements of paragraph 2 of Schedule 4.

(6) The regulator may make any arrangements it considers necessary during the transitional period to—

- (a) vary a permit under subregulations (2), (4) or (5);
- (b) grant an Article 27 installation emissions permit under regulation 9(2);
- (c) revoke a permit under regulation 13(1)(b)(ii) or (iii);
- (d) vary a greenhouse gas emissions permit under paragraph 2 of Schedule 5.

(7) In this regulation, the “transitional period” means the period which—

- (a) begins with 1st May 2020; and

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(b) ends with 31st December 2020.

Transitional provisions: aviation emissions plans.

80.(1) An application for an monitoring plan under regulation 4 of the 2010 Regulations that has not been determined under those Regulations may be treated by the regulator as an application for an emissions plan made under regulation 25 above.

(2) An application for the variation of an emissions plan, pursuant to a condition of the plan, that is made to the regulator before 1 January 2013 may be treated by the regulator as an application made under regulation 30(2)(a) above.

(3) Subject to subregulations (4) and (5), an aviation emissions plan that is in force immediately before 1 January 2013 (“the plan”) continues to have effect.

(4) The regulator must vary the plan as necessary to bring it into a form in which it could have been issued under regulation 27 above.

(5) Until such variations are made, the plan has effect in relation to emissions in the year beginning with 1 January 2013, or in any subsequent scheme year, as if—

- (a) any reference in the plan to Commission Decision 2007/589/EC of 18 July 2007 were a reference to the Monitoring and Reporting Regulation, and any reference to Section 9 of Annex 1 and Sections 2, 3 and 4 of Annex 14 to that Decision were a reference to the corresponding provision of that Regulation; and
- (b) any requirement of the plan to submit a report to the regulator by 30 June each year, setting out proposed improvements in monitoring of aviation activities, applied only in relation to the report required to be submitted by 30 June 2013.

Alternative arrangements for registry and related functions.

81.(1) The Minister may, where necessary practical or expedient so to do, allow for any registry and any associated administrative functions required by or permitted under these Regulations, to be undertaken by another registry or registry administrator but only where that registry or registry

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administrator is subject to the same European Union obligations as apply to a registry and registry administrator operating in Gibraltar.

(2) Where subregulation (1) applies any duties under these Regulations shall be modified in accordingly.

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SCHEDULE 1

Regulation 3

PART A*(This Part reproduces Annex I to the Directive)***ANNEX I****CATEGORIES OF ACTIVITIES TO WHICH THIS DIRECTIVE
APPLIES**

1. Installations or parts of installations used for research, development and testing of new products and processes and installations exclusively using biomass are not covered by this Directive.
2. The thresholds values given below generally refer to production capacities or outputs. Where several activities falling under the same category are carried out in the same installation, the capacities of such activities are added together.
3. When the total rated thermal input of an installation is calculated in order to decide upon its inclusion in the Community scheme, the rated thermal inputs of all technical units which are part of it, in which fuels are combusted within the installation, are added together. These units could include all types of boilers, burners, turbines, heaters, furnaces, incinerators, calciners, kilns, ovens, dryers, engines, fuel cells, chemical looping combustion units, flares, and thermal or catalytic post-combustion units. Units with a rated thermal input under 3 MW and units which use exclusively biomass shall not be taken into account for the purposes of this calculation. 'Units using exclusively biomass' includes units which use fossil fuels only during start-up or shut-down of the unit.
4. If a unit serves an activity for which the threshold is not expressed as total rated thermal input, the threshold of this activity shall take precedence for the decision about the inclusion in the Community scheme.
5. When the capacity threshold of any activity in this Annex is found to be exceeded in an installation, all units in which fuels are combusted, other than units for the incineration of hazardous or municipal waste, shall be included in the greenhouse gas emission permit.
6. From 1 January 2012 all flights which arrive at or depart from an aerodrome situated in the territory of a Member State to which the Treaty applies shall be included.

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| Activities | Greenhouse gases |
|---|-------------------------------------|
| Combustion of fuels in installations with a total rated thermal input exceeding 20 MW (except in installations for the incineration of hazardous or municipal waste) | Carbon dioxide |
| Refining of mineral oil | Carbon dioxide |
| Metal ore (including sulphide ore) roasting or sintering, including pelletisation | Carbon dioxide |
| Production of pig iron or steel (primary or secondary fusion) including continuous casting, with a capacity exceeding 2.5 tonnes per hour | Carbon dioxide |
| Production or processing of ferrous metals (including ferro-alloys) where combustion units with a total rated thermal input exceeding 20 MW are operated. Processing includes, inter alia, rolling mills, re-heaters, annealing furnaces, smitheries, foundries, coating and pickling | Carbon dioxide and perfluorocarbons |
| Production of primary aluminium | Carbon dioxide |
| Production or processing of non-ferrous metals, including production of alloys, refining, foundry casting, etc., where combustion units with a total rated thermal input (including fuels used as reducing | Carbon dioxide |

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| Production of cement clinker in rotary kilns with a production capacity exceeding 500 tonnes per day or in other furnaces with a production capacity exceeding 50 tonnes per day | Carbon dioxide |
| Production of lime or calcination of dolomite or magnesite in rotary kilns or in other furnaces with a production capacity exceeding 50 tonnes per day | Carbon dioxide |
| Manufacture of glass including glass fibre with a melting capacity exceeding 20 tonnes per day | Carbon dioxide |
| Manufacture of ceramic products by firing, in particular roofing tiles, bricks, refractory bricks, tiles, stoneware or porcelain, with a production capacity exceeding 75 tonnes per day | Carbon dioxide |
| Manufacture of mineral wool insulation material using glass, rock or slag with a melting capacity exceeding 20 tonnes per day | Carbon dioxide |
| Drying or calcination of gypsum or production of plaster boards and other gypsum products, where combustion units with a total rated thermal input exceeding 20 MW are operated | Carbon dioxide |
| Production of pulp from timber or other fibrous materials | Carbon dioxide |
| Production of paper or cardboard with a production capacity exceeding 20 tonnes per day | Carbon dioxide and nitrous oxide |
| Production of carbon black involving the carbonisation of organic substances such as oils, tars, cracker and distillation residues, where combustion units with a total rated thermal input exceeding 20MW are operated | Carbon dioxide and nitrous oxide |
| Production of nitric acid | Carbon dioxide and nitrous oxide |
| Production of adipic acid | Carbon dioxide |

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| <p>Production of bulk organic chemicals by cracking, reforming, partial or full oxidation or by similar processes, with a production capacity exceeding 100 tonnes per day</p> | <p>Carbon dioxide</p> |
| <p>Production of hydrogen (H₂) and synthesis gas by reforming or partial oxidation with a production capacity exceeding 25 tonnes per day</p> | <p>Carbon dioxide</p> |
| <p>Production of soda ash (Na₂CO₃) and sodium bicarbonate (NaHCO₃)</p> | <p>Carbon dioxide</p> |
| <p>Capture of greenhouse gases from installations covered by this Directive for the purpose of transport and geological storage in a storage site permitted under Directive 2009/31/EC</p> | <p>Carbon dioxide</p> |
| <p>Transport of greenhouse gases by pipelines for geological storage in a storage site permitted under Directive 2009/31/EC</p> | <p>Carbon dioxide</p> |
| <p>Geological storage of greenhouse gases in a storage site permitted under Directive 2009/31/EC</p> | <p>Carbon dioxide</p> |
| <p>Aviation</p> <p>Flights which depart from or arrive in an aerodrome situated in the territory of a Member State to which the Treaty applies.</p> <p>This activity shall not include:</p> <p>(a) flights performed exclusively for the transport, on official mission, of a reigning Monarch and his immediate family, Heads of State, Heads of Government and Government Ministers, of a country other</p> | |
| <p>(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;</p> <p>(g) flights performed exclusively for the</p> | |

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|---|--|
| <p>purpose of scientific research or for the purpose of checking, testing or certifying aircraft or equipment whether airborne or ground-based;</p> <p>(h) flights performed by aircraft with a certified maximum take-off mass of less than 5,700 kg;</p> <p>(i) flights performed in the framework of public service obligations imposed in accordance with Regulation (EEC) No 2408/92 on routes within outermost regions, as specified in Article 299(2) of the Treaty, or on routes where the capacity offered does not exceed 30,000 seats per year; and</p> <p>(j) flights which, but for this point, would fall within this activity, performed by a commercial air transport operator operating either:</p> <p>— fewer than 243 flights per period for three consecutive four-month periods, or</p> <p>— flights with total annual emissions lower than 10,000 tonnes per year.</p> <p>Flights performed exclusively for the transport, on official mission, of a reigning Monarch and his immediate family, Heads of State, Heads of Government and Government Ministers, of a Member State may not be excluded under this point.</p> | |
|---|--|

PART B
(This Part reproduces Annex II to the Directive)
ANNEX II
GREENHOUSE GASES REFERRED TO IN ARTICLES 3 AND 30

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Carbon dioxide (CO₂)

Methane (CH₄)

Nitrous Oxide (N₂O)

Hydrofluorocarbons (HFCs)

Perfluorocarbons (PFCs)

Sulphur Hexafluoride (SF₆)

Nitrogen trifluoride (NF₃)

SCHEDULE 2

Regulation 5

Notices etc.

1. In this Schedule, “instrument” means any notice or direction served or given under these Regulations (but does not include a notice or direction required to be given to the regulator or registry administrator).
2. An instrument must be in writing.
3. An instrument may be served on or given to a person (“P”) by—
 - (a) delivering it to P in person;
 - (b) sending it to a postal address or e-mail address provided by P for the purpose of service of instruments; or
 - (c) sending or leaving it at P’s proper address;
4. In the case of a body corporate, an instrument may be served on or given to the secretary or clerk of that body.
5. In the case of a partnership, an instrument may be served on or given to a partner or a person having control or management of the partnership business.
6. If a person (“Q”) to be served with or given an instrument has specified an address in Gibraltar (other than Q’s proper address) at which Q or someone on Q’s behalf will accept instruments of that description, that address must instead be treated as Q’s proper address.
7. For the purposes of this Schedule, “proper address” means (subject to paragraph 6)—
 - (a) in the case of a body corporate or its secretary or clerk—
 - (i) the registered or principal office of that body, or
 - (ii) the e-mail address of the secretary or clerk;
 - (b) in the case of a partnership or a partner or person having control or management of the partnership business—

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- (i) the principal office of the partnership, or
- (ii) the e-mail address (or, in the case of a partnership established outside Gibraltar, the last known address) of a partner or a person having that control or management;
- (c) in any other case, a person's last known address (which for the purpose of this subparagraph and subparagraph (b) includes an e-mail address).

8. For the purposes of paragraph 7, where a body corporate registered outside Gibraltar or a partnership established outside Gibraltar has an office in Gibraltar, the principal office of that body corporate or partnership is its principal office in Gibraltar.

9.(1) Where for the purposes of paragraph 7 the person giving or serving an instrument is not able to ascertain a proper address in relation to a Gibraltar administered operator, a relevant address may instead be treated as the proper address.

(2) For that purpose, "relevant address" means an address derived from information supplied to the regulator by Eurocontrol (or any other organisation) at the request of the European Commission.

10. The provisions of this Schedule do not apply where a contrary provision applies under paragraph 8 of Schedule 9.

SCHEDULE 3

Regulation 6, 27, 62

Applications etc.

Applications etc.: general.

1.(1) This paragraph applies—

- (a) to any application, report or notice submitted to the regulator under any provision of—
 - (i) these Regulations,
 - (ii) a permit, or
 - (iii) an aviation emissions plan; and
- (b) notwithstanding any further provision made under or by virtue of these Regulations in respect of such application, notice or report.

(2) Subparagraph (10) also applies to applications—

- (a) to the registry administrator to open an account in the Union Registry; and
- (b) to the KP registry administrator to open an account in the Gibraltar Registry,

and for that purpose the provision of updated information in relation to such an account is to be treated as an application.

(3) For the purposes of this paragraph, an application includes any proposed plan required to be submitted as part of the application.

(4) An application, report or notice—

- (a) must be in writing, and
- (b) unless agreed otherwise in writing with the regulator, must be submitted on a form made available by the regulator for that purpose.

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- (5) Such a form must specify, as the case may be—
- (a) the information required by the regulator to determine the application; or
 - (b) the matters required to be included in the report.
- (6) Unless agreed otherwise in writing with the regulator, the form must be sent to the regulator electronically.
- (7) A form provided by the regulator which specifies an electronic address for submission must, if submitted electronically, be sent to that address.
- (8) A form provided by the regulator for submission through a website must, unless the regulator agrees otherwise in writing, be submitted through that site and in accordance with the instructions given there for completion and submission.
- (9) Unless the information has been provided in a previous application made to the regulator, an application must contain the name, postal address and telephone number of the applicant, together with—
- (a) an email address for service; or
 - (b) a postal address for service in the Gibraltar,
- and in the case of an application under regulation 11 (transfer of permits) those requirements apply to each of the joint applicants.
- (10) An application must be accompanied by the fee prescribed, but where the application is sent electronically, the fee may be sent to the regulator separately from the application (and in that case the application is deemed not to have been received by the regulator until the fee has also been received).
- (11) An application may be withdrawn at any time before it is determined.
- (12) The regulator may, by notice to the applicant, require the applicant to provide such further information specified in the notice, within the period so specified, as the regulator may require for the purpose of determining the application.
- (13) The application is deemed to have been withdrawn where—

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- (a) the applicant has failed to provide that information by the end of that period (or by such later date as may be agreed with the regulator); and
- (b) the regulator gives notice to the applicant that the application is treated as having been withdrawn.

Determination of applications.

2.(1) Subject to subparagraph (2), where an application to the regulator under these Regulations is duly made it must be determined by the regulator within—

- (a) the period of 2 months beginning with the date on which the application was received; or
- (b) such longer period as may be agreed in writing with the applicant.

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

- (a) an application is determined when notice of the determination is given to the applicant by the regulator; and
- (b) in calculating the period of 2 months, no account is to be taken of any period beginning with date on which a notice under paragraph 1(12) is served on the applicant and ending with the date on which the applicant provides the information specified in the notice.

(3) If the regulator fails to determine the application within the period allowed by subparagraphs (1) and (2)—

- (a) the applicant may give to the regulator notice that the applicant treats the application as having been refused; and
- (b) the application is then deemed to have been refused at the end of that period.

(4) Where the application is an application for a permit or the transfer of a permit, any permit that is granted as a result of the application must be attached to the notice given under subparagraph (2)(a).

SCHEDULE 4

Regulations 3,9-15,37,45 and 70

Permits

Applications for permits.

1.(1) An application for a permit must contain—

- (a) as well as the address for service required under Schedule 3, any address to which correspondence relating to the application should be sent; and (if the applicant is a body corporate)—
 - (i) its registered number and the postal address of its registered or principal office, and
 - (ii) if that body corporate is a subsidiary of a holding company the name of the holding company (other than a holding company which is itself a subsidiary) and the postal address of its principal office;
- (b) in relation to the site of the installation—
 - (i) the postal address of the site; and
 - (ii) a description of the site and the location of the installation on it;
- (c) a description of the installation, including—
 - (i) the regulated activities to be carried out at the installation and the specified emissions from those activities; and
 - (ii) any directly associated activities (within Article 3(e) of the Directive) that are also to be carried out, and the technologies used;
- (d) a description of the raw and auxiliary materials used in carrying out regulated activities in the installation, the use of which is likely to lead to specified emissions;

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- (e) a description of the sources of specified emissions from the regulated activities carried out in the installation;
- (f) a monitoring plan submitted under Article 12 of the Monitoring and Reporting Regulation, together with—
 - (i) the supporting documents under Article 12(1) of that Regulation;
 - (ii) the summary of a procedure ensuring fulfilment of the requirements referred to in Article 12(3)(a) and (b) of that Regulation; and
 - (iii) any uncertainty assessment carried out under Article 28(1)(a) of that Regulation
- (g) a description, including the reference number, of any environmental licence issued in relation to the installation;
- (h) any additional information which the applicant wishes the regulator to take into account in considering the application; and
- (i) a non-technical summary of the information referred to in subparagraphs (c) to (h).

(2) For the purposes of subparagraph (1)(g), “environmental licence” means an authorisation or a permit under any enactment relating to the control or prevention of pollution.

(3) Where an application is for a permit to operate more than one installation, the application must contain the information required by subparagraph (1) in respect of each installation.

Content of greenhouse gas emissions permits.

2.(1) A permit granted under regulation 9 must contain—

- (a) the name and postal address in Gibraltar of the operator;
- (b) the postal address of the installation;
- (c) a description of the installation, including—

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- (i) the regulated activities to be carried out at the installation and the specified emissions from those activities; and
 - (ii) any directly associated activities (within Article 3(e) of the Directive) that are also to be carried out;
 - (d) a description of the site and the location of the installation on that site;
 - (e) as defined below-
 - (i) the monitoring plan;
 - (ii) the monitoring and reporting requirements;
 - (iii) the surrender requirements; and
 - (iv) the supplementary requirements.
- (2) The monitoring plan is the plan approved in accordance with Articles 11 to 13 of the Monitoring and Reporting Regulation.
- (3) The monitoring and reporting requirements are—
- (a) a requirement to monitor the annual reportable emissions of the installation in accordance with—
 - (i) the Monitoring and Reporting Regulation; and
 - (ii) the monitoring plan (including the written procedures supplementing that plan);
 - (b) a requirement to prepare, for each scheme year, a verified report of those emissions in accordance with the Monitoring and Reporting Regulation and the Verification Regulation, and to submit that report to the regulator by 31 March in the following year; and
 - (c) a requirement to satisfy the regulator, if an emission factor of zero has been reported in respect of the use of bioliquids, that the sustainability criteria set out in Article 17(2) to (5) of the Renewable Energy Directive have been fulfilled in accordance with Article 18(1) of that Directive; and

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- (d) any further conditions that the regulator considers necessary to give effect to the Monitoring and Reporting Regulation or the Verification Regulation.

(4) The surrender requirements are conditions obliging the operator to surrender, by 30 April in the year following a scheme year, a number of allowances equal to the annual reportable emissions of the installation in that scheme year.

(5) For the purposes of the surrender requirements the amount of the annual reportable emissions of the installation in a recovery year is deemed to be increased by an amount equal to the amount of annual reportable emissions, arising in the non-compliance year, in respect of which the operator failed to comply with the surrender requirements.

(6) For the purposes of subparagraph (5)–

- (a) a “non-compliance year” is a scheme year in respect of which an operator fails to comply with the surrender requirements; and
- (b) the “recovery year” is–
 - (i) the scheme year following that non-compliance year; or
 - (ii) where the non-compliance results from an error in the verified emissions report submitted by the operator, the scheme year in which the error is discovered.

(7) The supplementary requirements are–

- (a) notification requirements corresponding to the requirements in paragraphs 6(2) and 8(4)(a) and (5) of Schedule 6 (except in the case of the installations mentioned in paragraph 1(3)(b) of that Schedule);
- (b) any other conditions that the regulator considers necessary to ensure that the operator notifies the regulator of any planned or effective changes to the capacity, activity level or operation of the installation, by 31 December in the year in which the change was planned or has occurred; and
- (c) any other conditions that the regulator considers appropriate to include in the permit.

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Transfer of permits.

- 3.(1) An application under regulation 11 must—
- (a) contain the information mentioned in subparagraph (3);
 - (b) identify the installations, or parts of an installation, to which the application relates (“the transferred units”) and the regulated activities authorised to be carried out at them (“the transferred activities”).
- (2) In the case of a partial transfer—
- (a) the application must also state—
 - (i) the amount of allowances that are to be transferred to the transferred units; and
 - (ii) the initial installed capacity of all sub-installations to which the permit relates, identifying those that correspond to the transferred units; and
 - (b) the application may not be granted unless the regulator is satisfied that—
 - (i) the amount mentioned in subparagraph (a)(i) reflects the historical activity levels of the transferred units, calculated in accordance with Article 9 of the Free Allocation Decision; and
 - (ii) the capacities mentioned in subparagraph (a)(ii) have been calculated in accordance with Article 7(3) of the Free Allocation Decision.
- (3) The information referred to in subparagraph (1)(a) is—
- (a) in relation to each applicant, as well as the address for service required under Schedule 3 any address to which correspondence relating to the application should be sent;
 - (b) in relation to the new operator, the information mentioned in paragraph 1(1)(a)(i) and (ii); and
 - (c) a monitoring plan and other information mentioned in paragraph 1(1)(f) submitted by the new operator, or a

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specification by that operator of the parts of the existing monitoring plan that it is proposed should be varied and any necessary corresponding updating of that information.

(4) Where the application relates to a partial transfer, a transfer of the permit is effected by the regulator giving notice—

- (a) granting a permit to the new operator (“the new permit”) which—
 - (i) authorises the carrying out of the transferred activities;
 - (ii) identifies the transferred units at which they may be carried out; and
 - (iii) includes such other provisions as the regulator (subject to subparagraph (5)) considers appropriate; and
- (b) making such corresponding variations to the provisions of the permit held by the current operator (“the original permit”) as the regulator (subject to subparagraph (5)) considers appropriate.

(5) In exercising the powers given by subparagraph (4)(a)(iii) and (b), the regulator must ensure that the conditions of the new permit, or the original permit as varied, are (so far as relevant) the same as the conditions that were included in the original permit, subject to such modifications as in the opinion of the regulator are necessary to take account of the transfer.

(6) For the purposes of subparagraph (4) the new permit, and the variations of the original permit, have effect from a date agreed with the applicants and specified in the new permit and in the original permit as so varied.

(7) Where the application does not relate to a partial transfer, the transfer of the permit is effected by the regulator giving notice varying the permit so that it includes—

- (a) the name and other particulars of the new operator;
- (b) the date referred to in subparagraph (8); and
- (c) such variations to the monitoring plan as the regulator considers appropriate.

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(8) From a date agreed with the applicants, the new operator is to be treated as the holder of the permit as varied under subparagraph (7).

(9) If the new operator already holds a permit (an “existing permit”) for an installation that is on the same site as the transferred unit the regulator may effect a transfer within subparagraph (7) by–

- (a) giving notice of such variations to the existing permit as in the opinion of the regulator are necessary to take account of the transfer; and
- (b) cancelling the permit held by the current operator.

(10) For the purposes of subparagraph (9)–

- (a) the variations of the existing permit have effect from a date agreed with the applicants and specified in the existing permit as so varied; and
- (b) the cancelled permit ceases to have effect on that date.

(11) A regulator who effects the transfer of a permit in accordance with this paragraph must notify the registry administrator of the transfer.

(12) Upon receipt of a notice under subparagraph (11) the registry administrator must carry out any necessary changes to the national allocation table pursuant to Article 50(1)(d) or (e) of the Registries Regulation 2011.

Surrender of permits.

4.(1) The notice of surrender must require the operator, in relation to the scheme year in which it takes effect (“the relevant year”), to–

- (a) submit to the regulator by a date specified in the notice a report (“the surrender report”) specifying the reportable emissions from the beginning of the relevant year until the date on which the notice takes effect;
- (b) ensure that the surrender report is prepared and verified in accordance with the monitoring and reporting requirements of the greenhouse gas emissions permit to which the application to surrender relates (“the permit”); and

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- (c) by a date specified in the notice, surrender allowances equal to—
 - (i) the reportable emissions specified in the surrender report;
 - (ii) where an operator has failed to comply with the surrender requirements of the permit imposed in respect of the last scheme year for which the date for surrendering allowances in accordance with those requirements has passed, the annual reportable emissions in respect of which the operator failed so to comply;
 - (iii) where the notice of surrender is served in a scheme year in which an error in the report submitted by an operator under the monitoring and reporting requirements in relation to any earlier scheme year has been discovered, the annual reportable emissions in respect of which, as a result of that error, the operator failed to comply with the surrender requirements of the permit in respect of the scheme year to which the error relates; and
 - (iv) where an operator has failed to comply with regulation 12(2), the total number of allowances which by the date on which the notice of surrender is served have been issued in respect of the installation which would not have been issued if the operator had so complied.
- (2) From the date on which the notice of surrender takes effect—
 - (a) the permit ceases to have effect to authorise the carrying out of a regulated activity or to require the monitoring of emissions; but
 - (b) any conditions of the permit continue to have effect so far as they are not superseded by the requirements of that notice until the regulator certifies—
 - (i) that those requirements and any surrender requirements of the permit have been complied with, or
 - (ii) that there is no reasonable prospect of further allowances being surrendered by the operator in respect of the installation to which the notice relates.

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(3) From the scheme year following the relevant year, for the purposes of assessing compliance with any surrender requirements of the permit the reportable emissions of the installation (before any increase in accordance with paragraph 2(5)) is deemed to be zero.

(4) Where the regulator certifies in accordance with sub-paragraph (2)(b)(ii) that there is no reasonable prospect of further allowances being surrendered by the operator the regulator must notify the registry administrator.

(5) The requirements specified in a notice of surrender pursuant to subparagraph (1)(a) and (b) are to be treated as if they were monitoring and reporting requirements of the permit.

(6) Subject to paragraph (7), the requirements specified in a notice of surrender pursuant to sub paragraph (1)(c) are to be treated as if—

- (a) they were surrender requirements of the permit, and
- (b) the number of allowances required to be surrendered by the notice of surrender were the annual reportable emissions of the installation in respect of the scheme year to which the notice relates.

(7) Where the surrender report understates any reportable emissions, the requirement to surrender allowances equal to the amount of the understatement is not superseded by the requirements specified in the notice of surrender.

(8) Where the operator fails to comply with the requirements of a notice of surrender included pursuant to subparagraph (1), the regulator must notify the registry administrator.

Revocation of permits.

5.(1) The revocation notice must require the operator, in relation to the scheme year in which it takes effect (“the relevant year”), to—

- (a) submit to the regulator by a date specified in the notice a report (“the revocation report”) specifying the reportable emissions from the beginning of the relevant year until the date on which it takes effect;
- (b) ensure that the revocation report is prepared and verified in accordance with the monitoring and reporting requirements of

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the greenhouse gas emissions permit to which the revocation notice relates (“the permit”); and

- (c) by a date specified in the notice surrender allowances equal to—
- (i) the reportable emissions specified in the revocation report;
 - (ii) where an operator has failed to comply with the surrender requirements of the permit imposed in respect of the last scheme year for which the date for surrendering allowances in accordance with those requirements has passed, the annual reportable emissions in respect of which the operator failed so to comply;
 - (iii) where the revocation notice is served in a scheme year in which an error in the report submitted by an operator under the monitoring and reporting requirements in relation to any earlier scheme year has been discovered, the annual reportable emissions in respect of which, as a result of that error, the operator failed to comply with the surrender requirements of the permit in respect of the scheme year to which the error relates; and
 - (iv) where notice has been served under regulation 13(1)(b), the total number of allowances which by the date on which the revocation notice is served have been issued in respect of the installation which would not have been issued if the operator had so complied.

(2) A revocation notice must specify a period within which the fee for the revocation of the permit must be paid.

(3) From the date on which the revocation notice takes effect—

- (a) the permit ceases to have effect to authorise the carrying out of a regulated activity or to require the monitoring of emissions; but
- (b) any conditions of the permit continue to have effect so far as they are not superseded by the requirements of that notice until the regulator certifies—
 - (i) that those requirements and any surrender requirements of the permit imposed have been complied with, or

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- (ii) that there is no reasonable prospect of further allowances being surrendered by the operator in respect of the installation to which the notice relates.

(4) From the scheme year following the relevant year, for the purposes of assessing compliance with the surrender requirements of the permit the amount of reportable emissions of the installation (before any increase in accordance with paragraph 2(5)) is deemed to be zero.

(5) Where the regulator certifies in accordance with sub-paragraph (3)(b)(ii) that there is no reasonable prospect of further allowances being surrendered by the operator the regulator must notify the registry administrator.

(6) The requirements specified in a revocation notice pursuant to subparagraph (1)(a) and (b) are to be treated as if they were monitoring and reporting requirements of the permit.

(7) Subject to paragraph (8), the requirements specified in a revocation notice pursuant to subparagraph (1)(c) are to be treated as if—

- (a) they were surrender requirements of the permit, and
- (b) the number of allowances required to be surrendered by the revocation notice were the annual reportable emissions of the installation in respect of the scheme year to which the notice relates.

(8) Where the revocation report understates any reportable emissions, the requirement to surrender allowances equal to the amount of the understatement is not superseded by the requirements specified in the revocation notice.

(9) Where the operator fails to comply with the requirements of a revocation notice included pursuant to subparagraph (1), the regulator must notify the registry administrator.

(10) A regulator who has served a revocation notice may, at any time before the date on which it takes effect, withdraw the notice.

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SCHEDULE 5

Regulations 3, 9, 10, 14, 37, 45, 47, 49, 50, 65 and 67

Excluded installations

Interpretation.

1. In this Schedule—

“emissions report” has the meaning given by paragraph 3(7)(a)(i);

“emissions target”, in relation to a scheme year, means an amount of reportable emissions specified in an excluded installations emission permit as the target for the excluded installation in that year;

“maximum amount” means reportable emissions of 24,999 tonnes of carbon dioxide equivalent in any scheme year.

Conversion of a greenhouse gas emissions permit.

2.(1) Where a greenhouse gas emissions permit has been granted in respect of an installation that is an excluded installation, the regulator must vary the greenhouse gas emissions permit (with effect from a date to be included in the permit) so that the conditions of the permit are replaced by provisions that satisfy the requirements of paragraph 3.

(2) In varying a permit under subparagraph (1)—

(a) the regulator may make only such variations as appear to the regulator to be necessary as a consequence of the installation being an excluded installation; but

(b) that is without prejudice to the duty to vary the permit in accordance with regulation 79(6).

(3) A variation of a permit under this paragraph does not affect any obligations of the operator under the permit in respect of emissions arising from activities prior to 1 January 2013.

Excluded installation emissions permit conditions.

3.(1) An excluded installation emissions permit granted in respect of an excluded installation must contain—

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- (a) the name and postal address in Gibraltar of the operator and any other address for correspondence specified by the operator;
- (b) the postal address of the installation;
- (c) a description of the installation, including—
 - (i) the regulated activities to be carried out at the installation and the specified emissions from those activities; and
 - (ii) the directly associated activities (within Article 3(e) of the Directive) that are also to be carried out;
- (d) a description of the site and the location of the installation on that site;
- (e) an emissions target for each scheme year prior to 2021;
- (f) a monitoring plan (as defined in subparagraph (6));
- (g) the monitoring and reporting conditions (as defined in subparagraph (7));
- (h) any other conditions that the regulator considers appropriate to include in the permit.

(2) The authority may give the regulator directions as to the calculation of emissions targets.

(3) If the regulator has been so directed under subparagraph (2) before 30 September in any scheme year, the regulator must amend the emissions targets of the permit for each of the following scheme years in order to take into account (to the extent and in the manner specified in the direction)—

- (a) any amendments to the Directive;
- (b) any amendments to the list adopted by the European Commission under Article 10a(13) of the Directive;
- (c) any amendments to Decision No. 406/2009/EC of the European Parliament and the Council of 23 April 2009 on the effort of Member States to reduce their greenhouse gas emissions to meet the Community's greenhouse gas emission reduction commitments up to 2020;

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(d) any other matters mentioned in the direction.

(4) An excluded installation emissions permit that is granted in respect of an excluded installation must contain a condition requiring the operator to give notice to the regulator by the relevant date if the operator believes that the annual reportable emissions from the installation will in any scheme year exceed the maximum amount.

(5) For the purposes of subparagraph (4), the relevant date is 31 March in the year following the scheme year in question.

(6) The monitoring plan is the plan approved in accordance with Articles 11 to 13 of the Monitoring and Reporting Regulation.

(7) The monitoring and reporting conditions are—

(a) a requirement to monitor the annual reportable emissions of the installation in accordance with—

(i) the relevant provisions of the Monitoring and Reporting Regulation; and

(ii) the monitoring plan (including the written procedures supplementing that plan);

(b) a requirement to submit to the regulator, for each scheme year, by 31 March in the following year a report of the annual reportable emissions from the installation in accordance with the relevant provisions of the Monitoring and Reporting Regulation (“the emissions report”) that is either—

(i) verified in accordance with the Verification Regulation, or

(ii) accompanied by a notice declaring that—

(aa) in preparing the emissions report the operator has complied with the relevant provisions of the Monitoring and Reporting Regulation;

(bb) the operator has complied with the monitoring plan for the installation; and

(cc) the report is free from material misstatements;

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- (c) a requirement to satisfy the regulator, if an emission factor of zero has been reported in respect of the use of bioliquids, that the sustainability criteria set out in Article 17(2) to (5) of the Renewable Energy Directive have been fulfilled in accordance with Article 18(1) of that Directive; and
- (d) any further conditions that the regulator considers necessary to ensure that the operator complies with the relevant provisions of the Monitoring and Reporting Regulation.

(8) In this paragraph, “relevant provisions” means the provisions specified in the permit as relevant for the purposes of monitoring and reporting emissions from excluded installations.

(9) The authority may give the regulator directions as to the provisions that are to be specified in accordance with subparagraph (8).

Emissions target: duty not to exceed.

4. An operator must ensure that reportable emissions from an excluded installation in a scheme year do not exceed the emissions target for that year.

Emissions target: increase in the capacity of an excluded installation.

5.(1) Where a capacity increase has occurred at an excluded installation after 30 June 2011, the operator may apply to the regulator for an increase in the emissions targets for the installation.

(2) An application under subparagraph (1) must be made—

- (a) by 31 December in the year during which the capacity increase occurred or within 3 months of the date of the capacity increase, whichever is later; or
- (b) where the capacity increase occurred before 1 January 2013, by 30 June 2013.

(3) The application must contain evidence demonstrating the following—

- (a) the date on which the capacity increase was put into operation;
- (b) that the increase is not temporary;

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- (c) that the increase is in operation and is required for the purpose of carrying out the operator's primary business activities;
- (d) in the case of a capacity increase at a heat sub-installation where measurable heat is produced otherwise than within the installation's boundaries, that the increase is solely associated with measurable heat produced at the installation; and
- (e) any further matters that the regulator is required to take into account by a direction referred to in subparagraph (7).

(4) Where the regulator receives an application under subparagraph (1), and is satisfied with information provided by the operator under subparagraph (3), the regulator may calculate new emissions targets for that and subsequent scheme years.

(5) Where the regulator calculates new emissions targets pursuant to subparagraph (4), the regulator must vary the permit by substituting the new emissions targets for the existing targets.

(6) Where after having varied the permit under subparagraph (5) the regulator is subsequently satisfied that the evidence provided by the operator under subparagraph (3) is incorrect or incomplete, the regulator may recalculate those new emissions targets and vary the permit accordingly by making a new substitution of emissions targets.

(7) The authority may give the regulator directions as to—

- (a) the further matters required to be taken into account when considering an application under subparagraph (1); and
- (b) the calculation or recalculation of emissions targets under subparagraphs (4) or (6).

(8) In this paragraph—

“capacity increase” means an increase in a sub-installation's installed capacity whereby one or more identifiable physical changes relating to its technical configuration and functioning other than a replacement of an existing production line takes place;

“installed capacity” means—

- (a) the sub-installation's installed capacity on 30 June 2011; or

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- (b) in the case of an installation which has had a capacity increase since 30 June 2011, the installed capacity of the sub-installation following the last capacity increase;

“measurable heat” has the same meaning as in Article 3(e) of the Free Allocation Decision;

“sub-installation” has the meaning given in Article 3(b), (c), (d) and (h) of Article 6 of the Free Allocation Decision.

Banking an overachieved emissions target.

6.(1) Subject to subparagraph (2), in this paragraph “bankable amount” in relation to a scheme year means the difference between—

- (a) the emissions target for that year; and
- (b) the amount of reportable emissions stated in the emissions report for that year.

(2) Where the carrying out of regulated activities at an excluded installation has been suspended for a period, in circumstances where the installation would be deemed to have permanently ceased the carrying out of regulated activities were it an installation to which Schedule 6 applied, the bankable amount is zero in relation to any scheme year in which that period (or any part of that period) falls.

(3) For the purposes of deciding whether the circumstances mentioned in subparagraph (2) apply, the operator may make an application under paragraph 7(2) of Schedule 6.

(4) Subject to subparagraph (5), where for any scheme year (“S”) the bankable amount is greater than zero the regulator—

- (a) may increase the emissions target for the installation for the following scheme year by the bankable amount; and
- (b) must in that case vary the permit by substituting that increased emissions target for the existing target.

(5) If increasing the emissions target under subparagraph (4) would result in an emissions target which exceeds the maximum amount, the increased emissions target must instead be equal to the maximum amount.

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(6) Where the amount of reportable emissions stated in the emissions report for S is amended following a determination of emissions under regulation 37(3), the regulator must—

- (a) calculate the bankable amount using the data as so determined; and
- (b) where an increased emissions target has been substituted under subparagraph (4)(b), make a further variation of the permit to substitute a revised emissions target.

(7) Where an increased emissions target for a scheme year has been substituted following an application under paragraph 5(1), but the application was determined in the following year, the regulator must—

- (a) calculate any bankable amount for the scheme year using that increased target; and
- (b) vary the permit to substitute a revised emissions target for the following year, based on the amount so calculated.

Termination of an excluded installation emissions permit.

7.(1) Where the regulator is satisfied that the annual reportable emissions from an excluded installation have exceeded the maximum amount the regulator must, as soon as is reasonably practicable, give a notice to the operator.

(2) A notice under subparagraph (1) must state that, from the beginning of the scheme year following the year in which the notice is given—

- (a) the installation will not be treated as an excluded installation; and
- (b) the operator will be required to comply with the conditions of a greenhouse gas emissions permit in respect of the installation.

(3) This subparagraph applies where the regulator is satisfied that the operator of an excluded installation has—

- (a) committed a sufficiently serious breach of the conditions of the excluded installation emissions permit, or

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(b) failed to pay to the regulator the penalty imposed under regulation 48 within 1 month after the date specified in the penalty notice.

(4) Where subparagraph (3) applies the regulator may revoke the permit under regulation 13 or give a notice to the operator in accordance with subparagraph (5).

(5) The notice must state that, from the beginning of the scheme year following the year in which notice is given—

- (a) the installation will not be treated as an excluded installation; and
- (b) the operator will be required to comply with the conditions of a greenhouse gas emissions permit in respect of the installation.

(6) Where notice is given under subparagraphs (1) or (4), the regulator must vary the excluded installation emissions permit, with effect from the 1 January in the scheme year following the year in which the notice was given (“the date of conversion”), so that the provisions of the permit that satisfy the requirements of paragraph 3 are replaced by provisions satisfying the requirements of paragraph 2 of Schedule 4.

(7) In varying a permit under subparagraph (6), the regulator may make only such variations as appear to the regulator to be necessary in consequence of the installation ceasing to be treated as an excluded installation.

(8) A variation of a permit under subparagraph (6) does not affect any obligations of the operator under the permit in respect of emissions arising from activities prior to the date of conversion.

(9) Where—

- (a) notice is given under subparagraph (1) or (4), and
- (b) the operator holds a registry account with excluded status in respect of the installation,

the regulator must give notice to the registry administrator, in accordance with the Registries Regulation 2011, to change the status of the account to open from the year beginning with the date of conversion.

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(10) Where subparagraph (3) applies and the permit is revoked, the regulator must give notice to the registry administrator in accordance with the Registries Regulation 2011 to close the account.

End of excluded installation status.

8.(1) By 1 July 2020 the regulator must give a notice to each operator of an excluded installation stating that, from 1 January 2021—

- (a) the installation will not be treated as an excluded installation;
and
- (b) the operator will be required to comply with the conditions of a greenhouse gas emissions permit in respect of the installation.

(2) Subparagraphs (6) to (9) of paragraph 7 apply in respect of a notice given under subparagraph (1) of this paragraph as they apply to in respect of a notice give under paragraph 7(1).

SCHEDULE 6

Regulation 3, 12, 59, 62, 65, 67 and 70

Free allocation of allowances

Interpretation.

1.(1) In this Schedule—

“the allocation table” has the meaning given by regulation 69(2);

“new entrant reserve” means the reserve of allowances provided for under Article 10a(7) of the Directive;

“preliminary total annual amount of allowances” is that amount as calculated in accordance with Article 19(3) of the Free Allocation Decision;

“verified” means verified as satisfactory in accordance with Article 8 of the Free Allocation Decision (except that the reference to Decision 2007/589/EC in Article 8(3) is to be read as a reference to the Verification Regulation);

“year” means a scheme year in the trading period 2013 to 2020.

(2) In this Schedule, the following expressions have the meanings given to them in Article 3 of the Free Allocation Decision—

“added capacity” (see Article 3(l));

“incumbent installation” (see Article 3(a));

“reduced capacity” (see Article 3(m));

“significant capacity extension” (see Article 3(i));

“significant capacity reduction” (see Article 3(j));

“start of changed operation” (see Article 3(o));

“start of normal operation” (see Article 3(n));

“sub-installation” (see Article 3(b), (c), (d) and (h) and Article 6).

Application for an allocation from the new entrant reserve: new entrants.

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2.(1) Subject to subparagraph (2), where—

- (a) the permit for an installation was granted on or after 30 June 2011, or
- (b) the permit was granted before 30 June 2011, but the start of normal operation was on or after that date,

the operator of the installation may apply to the regulator for an allocation of allowances in respect of that installation from the new entrant reserve.

(2) Such an application may not be made where the start of normal operation was before 30 June 2011.

(3) Any application under subparagraph (1) must be made—

- (a) before the end of the period of 12 months commencing with the start of normal operation of the installation; or
- (b) if that period expired before 1 February 2013, by that date.

(4) The application must contain—

- (a) all relevant information regarding each parameter listed in Annex 5 to the Free Allocation Decision for each separate sub-installation; and
- (b) the initial installed capacity for each sub-installation calculated by the operator in accordance with Article 17(4) of the Free Allocation Decision; and
- (c) a statement that the data referred to in subparagraphs (a) and (b) have been verified.

(5) If the regulator approves those calculations of initial installed capacity the regulator must calculate—

- (a) the activity levels of the installation in accordance with Article 18(1) and (2) of the Free Allocation Decision; and
- (b) the preliminary annual number of allowances to be allocated as from the start of normal operation of the installation for each sub-installation in accordance with Article 19(1) to (3) of the Free Allocation Decision; and

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- (c) the preliminary total amount of allowances to be allocated to the installation.

(6) The result of any calculation under subparagraph (5) must be included in the notice of the determination of an application under subparagraph (1).

Application for an allocation from the new entrant reserve: significant capacity extensions.

3.(1) Where an installation had a significant capacity extension—

- (a) after 30 June 2011, or
- (b) on or before that date, but where the added capacity was capable of determination only after 30 September 2011,

the operator of the installation may (subject to subparagraph (2)) apply to the regulator for an allocation of allowances from the new entrant reserve.

(2) Any application under subparagraph (1) must be made—

- (a) before the end of the period of 12 months beginning with—
 - (i) the start of changed operation of the installation, or
 - (ii) in the case mentioned in subparagraph (1)(b), the date of determination of added capacity; or
- (b) if that period expired before 1 February 2013, by that date.

(3) The application must contain—

- (a) all relevant information regarding each parameter listed in Annex 5 to the Free Allocation Decision for each separate sub-installation;
- (b) the installed capacity, and a calculation of the added capacity, for each such sub-installation;
- (c) any other evidence necessary to demonstrate that the criteria for a significant capacity extension have been met; and
- (d) a statement that the data referred to in subparagraphs (a) to (c) have been verified.

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(4) If the regulator approves the calculation of added capacity the regulator must calculate—

- (a) the activity levels (for the added capacity only) of the sub-installations to which the significant capacity extension applies in accordance with Article 18(1) and (2) of the Free Allocation Decision;
- (b) the preliminary number of allowances to be allocated for each sub-installation insofar as the extension is concerned in accordance with Articles 19(1) to (3) and 20 of the Free Allocation Decision; and
- (c) the preliminary total annual amount of allowances to be allocated to the installation insofar as the extension is concerned.

(5) The result of any calculation under subparagraph (4) must be included in the notice of the determination of an application under subparagraph (1).

Notification of preliminary annual number of allowances: new entrants and significant capacity extensions.

4.(1) The regulator must, within 28 days after the date of the notice referred to in paragraph 2(6) or 3(5) notify the preliminary total annual amount calculated under paragraph 2(5)(c) or 3(4)(c) to—

- (a) the authority;
- (b) the Minister (where the Minister is not the authority); and
- (c) the European Commission, pursuant to Article 19(4) of the Free Allocation Decision.

(2) Where the European Commission notifies the regulator that the preliminary total annual amount is rejected the regulator must, as soon as is reasonably practicable, notify the operator giving the reasons for rejection provided by the European Commission.

Calculation of final annual amount of allowances allocated free of charge: new entrants and significant capacity extensions.

5.(1) Where the European Commission approves the preliminary total annual amount notified under paragraph 4(1), the regulator must calculate

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the final total annual amount of allowances allocated to the installation concerned.

- (2) For the purpose of subparagraph (1) the final total annual amount is—
- (a) the preliminary total annual amount, and
 - (b) adjusted annually by the linear reduction factor referred to in Article 10a(7) of the Directive, using the preliminary total annual amount for 2013 as a reference.
- (3) The regulator must, as soon as is reasonably practicable, notify the final total annual amount to—
- (a) the operator;
 - (b) the authority;
 - (c) the registry administrator; and
 - (d) the Minister (where the Minister is not the authority).

Adjustment of allocation: significant capacity reductions.

6.(1) This subparagraph applies where a sub-installation has had a significant capacity reduction—

- (a) after 30 June 2011; or
 - (b) on or before that date, but the extent of the reduction could not be determined before 30 September 2011.
- (2) Where subparagraph (1) applies the operator of the installation must, by the relevant date, submit to the regulator a notice containing—
- (a) a statement of the reduced capacity, and of the installed capacity of the sub-installation after taking into account the capacity reduction; and
 - (b) a statement that the data submitted under subparagraph (a) have been verified.
- (3) For that purpose, the relevant date is the later of—
- (a) the last day of the period of 7 months following the date of the change of capacity;

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- (b) 31 December in the year in which that change occurred; or
 - (c) 1 February 2013.
- (4) Once the operator has submitted the information required by subparagraph (2) the regulator must—
- (a) in accordance with Article 18 of the Free Allocation Decision, calculate the activity levels for the reduced capacity of the sub-installation to which the significant capacity reduction relates in accordance with Article 18(3) of the Free Allocation Decision;
 - (b) in accordance with Article 21(2) of the Free Allocation Decision, reduce the preliminary annual number of allowances allocated to each sub-installation by the preliminary annual number of allowances allocated to the sub-installation concerned calculated in accordance with Article 19(1) of the Free Allocation Decision insofar as the significant capacity reduction is concerned; and
 - (c) in accordance with Article 21(2) of the Free Allocation Decision, revise the preliminary total annual amount for the installation concerned in accordance with the methodology applied to determine the preliminary total annual amount prior to the significant capacity reduction.
- (5) The regulator must request the registry administrator to withhold the allocation of allowances to the operator of an installation for as long as any of the following circumstances obtains—
- (a) the regulator is investigating whether or not there has been a significant capacity reduction in relation to the installation;
 - (b) the information required under subparagraph (2)—
 - (i) has not been submitted in accordance with that subparagraph; or
 - (ii) has been submitted but is insufficient;
 - (c) the regulator is carrying out functions under subparagraph (4);

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- (d) a notification has been given to the European Commission pursuant to paragraph 9(3)(d) and the notified amount of allowances has not yet been approved by the European Commission; or
- (e) a notification has been made to the registry administrator under regulation 70(11) but the necessary changes to the national allocation table have not yet been made.

(6) The registry administrator must comply with a request made under subparagraph (5).

(7) Where the regulator makes a request under subparagraph (5) the regulator—

- (a) must notify the operator of the decision to do so as soon as is reasonably practicable; and
- (b) may, if the regulator considers it appropriate to do so, subsequently notify the operator that—
 - (i) the allocation of allowances will be permanently reduced; or
 - (ii) the allowances (or a proportion of them) will be issued.

(8) Where the European Commission approves the preliminary total annual amount of allowances notified under paragraph 9(1), the regulator must treat the installed capacity of the sub-installation after having had a significant capacity reduction as the sub-installation's initial installed capacity when assessing any subsequent significant capacity change.

Adjustment of allocation to an installation: permanent cessations of regulated activities.

7.(1) For the purposes of this paragraph, an installation permanently ceases the carrying out of regulated activities where any of the following conditions are met—

- (a) the permit or a licence for the installation has been surrendered or revoked, or otherwise ceased to have effect;
- (b) the operation of regulated activities at the installation is technically impossible;

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- (c) the installation was, but is no longer, carrying out regulated activities and it is technically impossible for it to resume doing so;
- (d) subject to subparagraphs (2) and (3), the operator—
 - (i) has suspended the carrying out of regulated activities at the installation, and
 - (ii) the carrying out of regulated activities has not recommenced within the period of 6 months following the date of the suspension.

(2) The operator may apply to the regulator for the period of 6 months mentioned in subparagraph (1)(d) to be extended to a period not exceeding 18 months, on the ground that the carrying out of regulated activities at the installation cannot be recommenced within that period of 6 months due to exceptional and unforeseeable circumstances that could not have been avoided even if all due care had been exercised, and were beyond the control of the operator.

(3) Subparagraph (1)(d) does not apply to an installation if it is kept in reserve or on standby, or is operated on a seasonal basis, provided that—

- (a) the operator holds a permit and a licence for the installation;
- (b) it is technically possible to commence the carrying out of regulated activities without making physical changes to the installation; and
- (c) regular maintenance of the installation is carried out.

(4) Subject to subparagraph (5), no allocation of allowances to an installation may be made for any year following the year in which the installation has permanently ceased the carrying out of regulated activities.

(5) Notwithstanding the provisions of paragraph 2(2)(b), where regulated activities at the installation recommence after the expiry of the period of 6 months following the date of suspension or any longer period allowed pursuant to subparagraph (2) (“the relevant period”), the operator may apply for an allocation of allowances under paragraph 2.

(6) This subparagraph applies where the operator—

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- (a) has suspended the carrying out of regulated activities at the installation; and
- (b) intends to recommence regulated activities before the expiry of relevant period.

(7) Where subparagraph (6) applies, the operator may within a period of one month beginning with the date of suspension apply to the regulator for the suspension to be treated as temporary; and if the application is granted—

- (a) allowances may be issued to the installation notwithstanding that the relevant period has not expired; but
- (b) such an issue of allowances is without prejudice to subparagraph (4) and paragraph 11(1).

(8) An application under subparagraph (7) must provide evidence that the carrying out of regulated activities will recommence within the relevant period.

(9) The regulator must request the registry administrator to withhold the allocation of allowances to the operator of an installation for as long as any of the following circumstances obtains—

- (a) the regulator is investigating whether or not the installation has permanently ceased the carrying out of regulated activities;
- (b) an application under subparagraph (7) has been made but the application—
 - (i) has not yet been determined, or
 - (ii) has been refused and the relevant period has not yet expired;
- (c) an application under regulation 11(1) has been made but has not yet been determined;
- (d) a notice of surrender or revocation notice has been given but has not yet taken effect;
- (e) an appeal against such a notice has been made but has not been determined or withdrawn;

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- (f) a notification has been made to the registry administrator under regulation 70(11) but the necessary changes to the allocation table have not yet been made.

(10) The registry administrator must comply with a request made under subparagraph (9).

(11) Where the regulator makes a request under subparagraph (9) the regulator—

- (a) must notify the operator of the decision to do so as soon as is reasonably practicable; and
- (b) may, if the regulator considers it appropriate to do so, subsequently notify the operator that—
- (i) the allocation of allowances will be permanently reduced; or
- (ii) the allowances (or a proportion of them) will be issued.

(12) In this paragraph—

- (a) a “licence” for an installation is a permit in force issued in relation to that installation in accordance with—
- (i) Directive 2008/1/EC of the European Parliament and of the Council concerning integrated pollution prevention and control, as the same may be amended for time to time; or
- (ii) Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions (integrated pollution prevention and control), as the same may be amended for time to time;
- (b) “relevant period” has the meaning given in subparagraph (5).

Adjustment of allocation to an installation: partial cessation of regulated activities.

8.(1) For the purposes of this paragraph, an installation partially ceases regulated activities where subparagraph (2) applies in relation to that installation.

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(2) This subparagraph applies where one sub-installation of the installation which contributes to—

- (a) at least 30% of the final annual amount of allowances allocated to the installation, or
- (b) the allocation of more than 50,000 allowances,

reduces its activity level in a given year by at least 50% compared to the activity level originally used for calculating the sub-installation's allocation ("initial activity level").

(3) However, following a partial transfer, subparagraph (2) applies as follows—

- (a) the amount of allowances transferred to the transferred units, in accordance with paragraph 3(2) of Schedule 4, is to be treated as the final annual amount of allowances allocated to the installation for the purposes of this paragraph; and
- (b) the activity level calculated in accordance with paragraph 3(2)(b)(i) of Schedule 4 is to be treated as the initial activity level for the purposes of this paragraph.

(4) Where an installation partially ceases regulated activities—

- (a) the operator must notify the regulator that such a reduction in activity level has occurred, stating the amount of that reduction and the sub-installation to which it applies—
 - (i) by 31 December in the year in which the reduction occurred, or
 - (ii) within 1 month after the date on which it occurred, if later; and
- (b) the regulator must—
 - (i) adjust the allocation of allowances in accordance with subparagraph (6),
 - (ii) revise the preliminary annual number of allowances allocated to each sub-installation; and

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- (iii) revise the preliminary total annual amount of allowances to be allocated, commencing with the year following the year in which the reduction in activity level occurred.

(5) Where a sub-installation of an installation that contributes as described in subparagraph (2)(a) or (b) reduced its activity level in 2012 by at least 50% compared to the initial activity level—

- (a) the operator must by 31 January 2013 notify the regulator that such a reduction in activity level has occurred; and
- (b) the regulator must take the action described in subparagraph (4)(b).

(6) Where the activity level of a sub-installation is reduced—

- (a) by 50% or more but less than 75% compared to the initial activity level, the operator is entitled to receive a quantity of allowances representing half of the final annual amount of allocated allowances in respect of that sub-installation, commencing with the year following the year during which the reduction took place;
- (b) by 75% or more but less than 90% compared to the initial activity level, the operator is entitled to receive a quantity of allowances representing 25% of the final annual amount of allocated allowances in respect of that sub-installation, commencing with the year following the year during which the reduction took place;
- (c) by 90% or more, the operator is entitled to no allowances in respect of that sub-installation, commencing with the year following the year during which the reduction took place.

(7) Where, following such reduction, the activity level of a sub-installation subsequently reaches more than—

- (a) 50% compared to the initial activity level, the operator is entitled to receive a quantity of allowances equal to the full quantity of the final annual amount of allowances allocated in respect of that sub-installation, commencing with the year following the year during which the activity level exceeded 50%;

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- (b) 25% compared to the initial activity level, the operator is entitled to receive a quantity of allowances equal to half of the final annual amount of allowances allocated in respect of that sub-installation, commencing with the year following the year during which the activity level exceeded 25%.

(8) Where subparagraph (7) applies—

- (a) the operator must take the action described in subparagraph (4)(a) in relation to the subsequent change; and
- (b) the regulator must—
 - (i) adjust the allocation of allowances in accordance with subparagraph (7);
 - (ii) revise the preliminary annual number of allowances allocated to each sub-installation; and
 - (iii) revise the preliminary total annual amount of allowances to be allocated, commencing with the year following the year in which the subsequent change occurred.

(9) The regulator must request the registry administrator to withhold the allocation of allowances to the operator of an installation for as long as any of the following circumstances obtains—

- (a) the regulator is investigating whether or not the installation has partially ceased regulated activities ;
- (b) the information required under subparagraph (4)—
 - (i) has not been submitted in accordance with that subparagraph; or
 - (ii) has been submitted but is insufficient;
- (c) the regulator is carrying out functions under subparagraph (4)(b);
- (d) a notification has been given to the European Commission pursuant to paragraph 9(3)(d) and the notified amount of allowances has not yet been approved by it;

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- (e) a notification has been made to the registry administrator under regulation 70(11) but the necessary changes to the allocation table have not yet been made.

(10) The registry administrator must comply with a request made under subparagraph (9).

(11) Where the regulator has made a request under subparagraph (9) the regulator—

- (a) must notify the operator of the decision to do so as soon as is reasonably practicable; and
- (b) may, if the regulator considers it appropriate to do so, subsequently notify the operator that—
 - (i) the allocation of allowances will be permanently reduced; or
 - (ii) the allowances (or a proportion of them) will be issued.

(12) In this paragraph “activity level” means (subject to subparagraph (3)(b)) the activity level used for calculating the sub-installation’s allocation in accordance with Article 9 of the Free Allocation Decision (or, where applicable, Article 18).

Notification of preliminary annual number of allowances: significant capacity reductions and partial cessation of regulated activities.

9.(1) The regulator must, within 28 days after the date of making a calculation under—

- (a) paragraph 6(4)(c) (significant capacity reductions); or
- (b) paragraph 8(4)(b) or (8)(b) (partial cessation of regulated activities),

notify the revised preliminary total annual amount of allowances to the persons mentioned in subparagraph (3).

(2) A notice given to the operator under paragraph (1) may specify a period within which a fee for making the calculation must be paid.

(3) Those persons are—

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- (a) the operator;
- (b) the authority;
- (c) the Minister (where the Minister is not the authority); and
- (d) the European Commission, pursuant to Article 24(2) of the Free Allocation Decision.

(4) Where the European Commission notifies the regulator that the revised preliminary total annual amount of allowances is rejected the regulator must, as soon as is reasonably practicable, notify the operator giving the reasons for rejection provided by the European Commission.

Calculation of final total annual amount of allowances: significant capacity reductions and partial cessation of regulated activities.

10.(1) Where the European Commission approves the revised preliminary total annual amount of allowances notified under paragraph 9(1), the regulator must calculate the revised final total annual amount of allowances allocated to the installation concerned.

- (2) For the purposes of subparagraph (1) the final total annual amount is—
 - (a) the revised preliminary total annual amount notified under paragraph 9(1), but
 - (b) in the case of a significant capacity reduction, that amount as adjusted by multiplying that number of allowances by the cross-sectoral correction factor under Article 10(9) of the Free Allocation Decision.

(3) The regulator must, as soon as is reasonably practicable, notify the final total annual amount to—

- (a) the operator;
- (b) the registry administrator;
- (c) the authority; and
- (d) the Minister (where the Minister is not the authority).

Recovery of allowances.

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11.(1) This subparagraph applies where an operator (“P”) has been issued allowances to which P is not entitled as a result, in particular, of—

- (a) a failure to notify the regulator of any change to an installation’s capacity, activity level or operation;
- (b) the installation’s allocation not being adjusted in sufficient time to prevent such an over-allocation of allowances;
- (c) the installation having permanently ceased the carrying out of regulated activities despite allowances having been issued under paragraph 7(7); or
- (d) an error of the regulator or registry administrator.

(2) Where subparagraph (1) applies, the regulator must give a notice to P instructing P to return a sum of allowances equal to the allowances to which P is not entitled.

(3) The notice under subparagraph (1) must specify—

- (a) the number of allowances to which the operator is not entitled;
- (b) the reasons why the operator is not entitled to those allowances;
- (c) the process by which those allowances must be returned; and
- (d) the date by which those allowances must be returned.

(4) An operator must comply with a notice given under subparagraph (2).

SCHEDULE 7

Regulations 18, 23, 31, 59, 65 and 70

Allocation of aviation allowances**Purpose of this Schedule.**

1.(1) This Schedule sets out the requirements that must be satisfied by a Gibraltar administered operator (“P”) who wishes to apply for an allocation of aviation allowances issued under Article 3e of the Directive in any trading period other than 2013 to 2020.

(2) Paragraph 10 provides for the recovery of aviation allowances to which a Gibraltar administered operator is not entitled, and applies to aviation allowances issued following an application made under Schedule 8 as well as one made under this Schedule.

Application for a benchmarking plan.

2.(1) P must apply to the regulator for a plan in accordance with Article 51(2) of the Monitoring and Reporting Regulation (a “benchmarking plan”).

(2) That application must contain a plan to monitor tonne-kilometre data from P’s aviation activity (together with supporting documents) submitted under Article 12(1) of the Monitoring and Reporting Regulation.

Issue of a benchmarking plan.

3.(1) Where P has made an application under paragraph 2 the regulator must, by notice given to P—

- (a) issue a benchmarking plan to P, or
- (b) where subparagraph (2) applies, refuse the application.

(2) This subparagraph applies where—

- (a) the regulator is not satisfied that the plan proposed in the application complies with the Monitoring and Reporting Regulation; and
- (b) P has not agreed to amendments of the plan that so satisfy the regulator.

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(3) Where the regulator by notice refuses to issue a benchmarking plan under subparagraph (1)(b), the notice must state what changes must be made to the proposed plan for the purposes of any fresh application under paragraph 2.

Amendment of a benchmarking plan.

4.(1) P must apply to the regulator to vary P's benchmarking plan where any significant modifications of that plan are necessary by virtue of Articles 14 and 15 of the Monitoring and Reporting Regulation.

(2) Where the regulator varies the plan following an application under paragraph (1), any reference in this paragraph or in paragraph 5 to a benchmarking plan is a reference to the plan as so varied.

Monitoring tonne-kilometre data.

5. P must monitor tonne-kilometre data from P's aviation activity carried out in the benchmarking year in accordance with—

- (a) the benchmarking plan issued under paragraph 3 (including the written procedures supplementing that plan); and
- (b) the Monitoring and Reporting Regulation.

Reporting tonne-kilometre data.

6. P must—

- (a) prepare a verified report of tonne-kilometre data monitored in accordance with paragraph 5;
- (b) ensure that the report complies with the Monitoring and Reporting Regulation and the Verification Regulation; and
- (c) make an application by submitting the report to the regulator by 31 March in the year after the benchmarking year.

Submission of the report to the Minister and the European Commission.

7.(1) Where P has made an application under paragraph 6(c) the regulator must—

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- (a) grant the application and submit the report to the Minister; or
- (b) subject to subparagraph (2), refuse the application where the regulator is not satisfied that P has complied with the requirements of this Schedule.

(2) The regulator may grant the application under subparagraph (1)(a) where P has otherwise complied with the requirements of this Schedule but failed to comply with the deadline in Article 51(2) of the Monitoring and Reporting Regulation or in paragraph 6(c).

(3) Where the regulator refuses the application under subparagraph (1)(b), the notice of determination must state the regulator's reasons for doing so.

(4) The Minister must ensure that by 30th June in the year after the benchmarking year, a report submitted under sub-paragraph (1)(a) is submitted to the European Commission.

Publication of aviation allowances.

8. Within the period of 3 months beginning with the date on which the Commission adopts a decision under Article 3e(3) of the Directive in respect of a trading period, the Minister must (in accordance with Article 3e(4)) calculate and publish—

- (a) the total allocation of aviation allowances for the period to each Gibraltar administered operator whose report was submitted under paragraph 7(4); and
- (b) the allocation of aviation allowances to each such Gibraltar administered operator for each year of the period.

Force majeure.

9.(1) Paragraphs 4 to 8 are subject to the provisions of Article 68 of the Monitoring and Reporting Regulation (which apply where a person cannot monitor and report tonne-kilometre data because of serious and unforeseeable circumstances outside that person's control).

(2) The Minister must notify to the registry administrator any revised allocation of aviation allowances published by the Minister under Article 68(3).

Recovery of allowances.

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10.(1) This subparagraph applies where a Gibraltar administered operator (“Q”)–

- (a) has a duty to return excess aviation allowances under Article 68(3) of the Monitoring and Reporting Regulation; or
- (b) has otherwise been issued aviation allowances to which Q is no longer entitled as a result, in particular, of–
 - (i) Q having ceased to perform an aviation activity; or
 - (ii) as a result of an error of the regulator or registry administrator.

(2) Where subparagraph (1) applies, the regulator must give notice to Q instructing Q to return a sum of aviation allowances equal to those to which Q is not entitled.

(3) The notice under subparagraph (2) must specify–

- (a) the number of aviation allowances to which Q is not entitled;
- (b) the reason why Q is not entitled to them;
- (c) the process by which they must be returned; and
- (d) the date by which they must be returned.

(4) Q must comply with a notice given under subparagraph (2).

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SCHEDULE 8

Regulations 23 and 31

Allocation of aviation allowances from the special reserve**Purpose of this Schedule.**

1.(1) This Schedule sets out the requirements that must be satisfied by an eligible person (“R”) who wishes to apply for an allocation of allowances issued from the special reserve under Article 3f of the Directive in any trading period.

(2) For that purpose, and subject to subparagraphs (3) and (4), an eligible person in a trading period is—

- (a) a person who becomes a Gibraltar aircraft operator after the benchmarking year for that trading period; or
- (b) a Gibraltar aircraft operator whose tonne-kilometre data in the second calendar year in the trading period exceeds by more than 93.9% its tonne-kilometre data in the benchmarking year for that trading period.

(3) A person is not an eligible person by virtue of subparagraph (2)(a) if that person has previously received an allocation of aviation allowances for that trading period.

(4) A person within subparagraph (2)(a), or a Gibraltar aircraft operator within subparagraph (2)(b), who would otherwise qualify as an eligible person by virtue of performing an aviation activity does not so qualify where that aviation activity is in whole or part a continuation of an activity previously performed by another person who is or has been a person falling within the definition of “aircraft operator” in Article 3(o) of the Directive.

Benchmarking plan for eligible persons.

2.(1) R must apply to the regulator for a benchmarking plan in accordance with Article 51(2) of the Monitoring and Reporting Regulation.

(2) That application must contain a plan to monitor tonne-kilometre data from R’s aviation activity (together with supporting documents) submitted under Article 12(1) of the Monitoring and Reporting Regulation.

Issue of a benchmarking plan.

3.(1) Where R has made an application under paragraph 2 the regulator must, by notice given to R—

- (a) issue a benchmarking plan to R; or
- (b) where subparagraph (2) applies, refuse to issue such a plan.

(2) This subparagraph applies where—

- (a) the regulator is not satisfied that the plan proposed in the application complies with the Monitoring and Reporting Regulation; and
- (b) P has not agreed to amendments of the plan that satisfy the regulator.

(3) Where the regulator by notice refuses to issue a benchmarking plan under subparagraph (1)(b), the notice must state what changes must be made to the proposed plan for the purposes of any fresh application under paragraph 2.

Amendment of a benchmarking plan.

4(1) R must apply to the regulator to vary the benchmarking plan where any significant modifications of that plan are necessary by virtue of Articles 14 and 15 of the Monitoring and Reporting Regulation.

(2) Where the regulator varies the plan following an application under subparagraph (1), any reference in this paragraph or in paragraph 5 to a benchmarking plan is a reference to the plan as so varied.

Monitoring tonne-kilometre data.

5. R must monitor tonne-kilometre data from R's aviation activity carried out in the benchmarking year in accordance with—

- (a) the benchmarking plan issued under paragraph 3 (including the written procedures supplementing that plan); and
- (b) the Monitoring and Reporting Regulation.

Application for an allocation of allowances.

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6.(1) R must apply to the regulator by 30 June in the third year of a trading period.

(2) That application must—

- (a) contain evidence that R is an eligible person under paragraph 1(2);
- (b) include a verified report of R's tonne-kilometre data monitored in accordance with paragraph 5;
- (c) ensure that the report complies with the Monitoring and Reporting Regulation and the Verification Regulation; and
- (d) where R is eligible by virtue of paragraph 1(2)(b), include evidence of—
 - (i) the percentage increase in R's tonne-kilometres from the benchmarking year to the second calendar year in the trading period;
 - (ii) the increase in R's tonne-kilometres from the benchmarking year to the second calendar year in the trading period; and
 - (iii) the amount in tonne-kilometres by which R exceeds the percentage in paragraph 1(2)(b) in the second calendar year in the trading period.

Submission of an application to the Minister and the European Commission.

7.(1) Where R has made an application under paragraph 5 the regulator must—

- (a) grant the application and forward it to the Minister; or
- (b) subject to subparagraph (2), refuse the application where the regulator is not satisfied that R has complied with the requirements of this Schedule.

(2) The regulator may grant the application under subparagraph (1)(a) where R has otherwise complied with the requirements of this Schedule but failed to comply with the deadline in Article 51(2) of the Monitoring and Reporting Regulation or paragraph 6(1).

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(3) Where the regulator refuses the application under subparagraph (1)(b), the notice of determination must state the regulator's reasons for doing so.

(4) The Minister must ensure that an application received under subparagraph (1)(a) is submitted to the European Commission within 6 months of the deadline in paragraph 6(1).

Publication of aviation allowances from the special reserve.

8. Within the period of 3 months beginning with the date on which the Commission adopts a decision under Article 3f(5) of the Directive in respect of a trading period, the Minister must (in accordance with Article 3f(7)) calculate and publish—

- (a) the allocation of aviation allowances from the special reserve to each Gibraltar administered operator whose application was submitted under paragraph 7(4); and
- (b) the allocation of aviation allowances to each such Gibraltar administered operator for each year of the period.

Restriction on allocation of allowances.

9. No more than 1 million allowances from the special reserve may be allocated to R where he is eligible by reason of his compliance with paragraph 1(2)(b).

SCHEDULE 9

Regulations 32, 42 and 57

Detention and sale of aircraft**Interpretation.**

1. In this Schedule—

“aircraft documents” means any certificate of registration, maintenance or airworthiness of that aircraft, any log book relating to the use of that aircraft or its equipment and any similar document;

“airport charges” means charges payable to the owner or manager of an aerodrome for the use of, or for services provided at, an aerodrome;

“civil penalty” means any civil penalty which is due under regulation 42, or regulation 12(7) to (9) of the 2010 Regulations (even where the failure giving rise to that civil penalty arose before 1st January 2012);

“the court” means the Supreme Court;

“defaulting operator” means a person who falls under regulation 32(1)(a) or (b)

“operating ban” means an operating ban imposed under Article 16(10) of the Directive;

“regulator expenses” means any expenses incurred by the regulator in detaining, keeping or selling an aircraft, including—

- (a) any sums recovered from the regulator under paragraph 7(2) or any sums under paragraph 2(4)(b) of Schedule 10 that have not been recovered under paragraph 2(5) of that Schedule;
- (b) any expenses in connection with the application to the court under paragraph 4; and
- (c) any regulator expenses that are deemed to be added by virtue of paragraph 3(2).

Sale following detention of aircraft.

2. Where an aircraft has been detained—

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- (a) under regulation 32(1)(a) and the Gibraltar aircraft operator has not paid the civil penalty and regulator expenses within—
 - (i) 56 days beginning with the date on which the detention begins; or
 - (ii) 21 days beginning with the date of service of a notice under paragraph 8(2), if later; or
- (b) under regulation 32(1)(b) and—
 - (i) the operating ban has not been lifted within the period of 56 days beginning with the date on which the detention began; and
 - (ii) the defaulting operator has not paid the regulator expenses,

the regulator may, subject to the following provisions of this Schedule, sell that aircraft.

Release of aircraft.

3.(1) The regulator must not detain, or continue to detain, or sell an aircraft if—

- (a) following detention, the regulator no longer has reason to believe the defaulting operator is the operator of the aircraft;
- (b) in relation to a detention under regulation 32(1)(a), the defaulting operator—
 - (i) has lodged an appeal under regulation 65 in respect of the civil penalty for which the aircraft has been detained;
 - (ii) gives to the regulator, pending the determination of the appeal, sufficient security for the payment of that civil penalty and any other civil penalty that the defaulting operator has not paid; and
 - (iii) pays the regulator any regulator expenses;
- (c) the defaulting operator or any other person claiming an interest in the aircraft demonstrates to the satisfaction of the regulator

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that the defaulting operator is no longer entitled to possession of the detained aircraft, or no longer entitled to possession of a part of it, in particular by virtue of the termination of any lease of the aircraft or of any part;

- (d) in relation to a detention under regulation 32(1)(a), the defaulting operator pays to the regulator—
 - (i) the civil penalty for which the aircraft has been detained;
 - (ii) any other civil penalty that the defaulting operator has not paid; and
 - (iii) the regulator expenses;
- (e) in relation to a detention under regulation 32(1)(b)—
 - (i) the operating ban imposed on the defaulting operator is lifted; and
 - (ii) the defaulting operator pays to the regulator—
 - (aa) any regulator expenses; and
 - (bb) any civil penalty that the defaulting operator has not paid; or
- (f) in relation to a detention under regulation 32(1)(b)—
 - (i) the regulator is satisfied that the aircraft will not be flown from the aerodrome in contravention of the operating ban; and
 - (ii) the defaulting operator pays to the regulator—
 - (aa) any regulator expenses; and
 - (bb) any civil penalty that the defaulting operator has not paid.

(2) Where an aircraft has been detained, but subsequently released under subparagraph (1)(c), any unpaid regulator expenses incurred in relation to that detention are deemed to be added to any regulator expenses that may subsequently be incurred in relation to an aircraft of which the defaulting operator is the operator.

Court procedures.

4.(1) The regulator must not sell an aircraft under paragraph 2 without the leave of the court.

(2) The court must not give leave under subparagraph (1) in relation to a detention under regulation 32(1)(a) except where it is satisfied that—

- (a) a civil penalty is due to the regulator;
- (b) the Gibraltar administered operator has not paid the civil penalty to the regulator; and
- (c) the regulator is entitled to apply to the court for leave to sell the aircraft.

(3) The court must not give leave under subparagraph (1) in relation to a detention under regulation 32(1)(b) except where it is satisfied that—

- (a) an operating ban has been imposed on the operator;
- (b) the operating ban has not been lifted before the expiry of the period mentioned in paragraph 2(b); and
- (c) the regulator is entitled to apply to the court for leave to sell the aircraft.

(4) Before applying to the court for leave under subparagraph (1) the regulator must, in accordance with the procedure set out in paragraph 8—

- (a) take steps for bringing the proposed application to the notice of any person who may have an interest in the aircraft; and
- (b) afford those persons an opportunity of becoming a party to the proceedings.

(5) Where leave is given under subparagraph (1) the regulator must sell the aircraft for the best price that can be reasonably obtained.

(6) Failure to comply with subparagraph (4) or (5) does not make a sale void or voidable.

Proceeds of sale.

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5.(1) The proceeds of any sale under this Schedule must be applied by the regulator in the following order—

- (a) in payment of any import duty which is due in consequence of the aircraft having been brought into Gibraltar;
- (b) in payment of any regulator expenses that remain unpaid;
- (c) in payment of any airport charges incurred in respect of the aircraft which are due from the defaulting operator to the person entitled to levy charges in respect of the aerodrome at which the aircraft was detained under regulation 32(1);
- (d) in relation to a detention under regulation 32(1)(a), in payment of the civil penalty in respect of which the aircraft was detained and sold;
- (f) in payment of any other civil penalty that the defaulting operator has not paid.

(2) The regulator must, after making the payments under paragraph (1), pay any residue from the proceeds of sale to the person or persons whose interests have been divested by reason of the sale.

Equipment and documents.

6.(1) The power to detain and sell an aircraft under regulation 32 and this Schedule includes the power to detain and sell equipment and stores carried in the aircraft provided it is the property of the defaulting operator; and for that purpose references to the aircraft include references to any such equipment and stores.

(2) The power of detention under regulation 32 extends to any aircraft documents carried in the aircraft, and any such documents may, if the aircraft is sold under these Regulations, be transferred by the regulator to the purchaser.

Assistance of aerodrome operator.

7.(1) An aerodrome operator must provide such reasonable assistance and advice as the regulator may require in connection with any of the regulator's functions under this Part.

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(2) An aerodrome operator is entitled to recover from the regulator a sum equal to any expense reasonably incurred in providing the regulator with assistance or advice under subparagraph (1).

Procedure for applying for leave to sell an aircraft.

8.(1) The following procedure applies where the regulator proposes to apply to the court for leave to sell an aircraft under paragraph 4.

(2) At least 21 days before applying to the court the regulator must, unless it is impracticable to so do, serve a notice in accordance with subparagraph (6) on—

- (a) the person in whose name the aircraft is registered;
- (b) the person, if any, who appears to the regulator to be the owner of the aircraft;
- (c) any person who appears to the regulator to be a charterer of the aircraft whether or not by demise;
- (d) any person who appears to the regulator to be the operator of the aircraft;
- (e) any person who is registered as a mortgagee of the aircraft or who appears to the regulator to be a mortgagee of the aircraft under any law other than under Gibraltar law;
- (f) any other person who appears to the regulator to have a proprietary interest in the aircraft or any part of it including an international interest as defined in regulation 3 of the International Interests in Aircraft Equipment (Cape Town Convention) Regulations 2015.

(3) Where a person who has been served with a notice in accordance with subparagraph (2) informs the regulator within the period of 14 days beginning with the day following service of the notice of the person's desire to become a party to the proceedings the regulator must make that person a party to the application.

(4) At the same time as serving any notice under subparagraph (2), the regulator must publish a copy of that notice—

- (a) in the Gazette; and

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(b) in one or more local newspapers.

(5) A notice under subparagraph (2) must—

- (a) state the nationality and registration marks of the aircraft;
- (b) state the type of aircraft;
- (c) state, as the case may be, the matters mentioned in subparagraph (6) or (7);
- (d) invite the person to whom the notice is given to inform the regulator within 14 days after the date of service of the notice if the person wishes to become a party to the proceedings on the application.

(6) The matters mentioned in this subparagraph are that—

- (a) by reason of default in the payment of a civil penalty, the regulator, on a date specified in the notice, detained the aircraft under these Regulations; and
- (b) unless payment of the sum so due is made within a period of—
 - (i) 56 days beginning with the date when the detention began, or
 - (ii) 21 days after the date of service of the notice, if later,

the regulator may apply to the court for leave to sell the aircraft.

(7) The matters mentioned in this subparagraph are that—

- (a) by reason of an operating ban being imposed on the operator of the aircraft under Article 16(10) of the Directive and not having been lifted within the period of 56 days beginning with the date on which the detention began, the regulator, on a date specified in the notice, detained the aircraft under these Regulations; and
- (b) unless the operating ban is lifted and the operator of the aircraft has paid the regulator expenses by a date specified in the notice,

the regulator may apply to the court for leave to sell the aircraft.

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- (8) A notice under subparagraph (2) must be served by the regulator—
- (a) delivering it to the person to whom it is to be sent;
 - (b) leaving it at that person's usual or last known place of business or abode;
 - (c) sending it, addressed to that person at that person's usual or last known place of business or abode, by a registered post service or by a postal service which provided for the delivery of the notice by post to be recorded; or
 - (d) if the person to whom it is to be sent is an incorporated company or body, delivering it to the secretary, clerk or other appropriate officer of the company or body at its registered or principal office or sending it, addressed to the secretary, clerk or other officer of the company or body at that office, by a registered post service or by a postal service which provides for the delivery of the notice by post to be recorded.
- (9) In subparagraph (8), any notice which is sent by a postal service in accordance with that subparagraph to a place outside the Gibraltar must be sent by air mail or by some other equally expeditious means.

SCHEDULE 10

Regulations 33 and 58

Aircraft operating bans**Application for an operating ban.**

1.(1) Where the Minister intends to make a request to the European Commission under Article 16(5) of the Directive to impose an operating ban on a Gibraltar administered operator (“A”), the Minister must first give notice to the regulator.

(2) A notice under subparagraph (1) may require relevant information to be provided to the Minister by a deadline specified in the notice, and may require in particular—

- (a) evidence that A has not complied with obligations under these Regulations; and
- (b) details of any enforcement action against A that has been taken by the regulator.

(3) Following the giving of notice under subparagraph (1) and, where applicable, the provision of information under subparagraph (2), the Minister must give notice to A.

(4) A notice under subparagraph (3) must—

- (a) include a copy of any information provided under subparagraph (2);
- (b) include a copy of the request that the Minister intends to send to the European Commission;
- (c) give A an opportunity to make representations before the Minister makes the request; and
- (d) set out the deadline by which those representations must be made.

(5) A request to the European Commission made by the Minister under Article 16(5) of the Directive must include the following information—

- (a) evidence that A has not complied with obligations under these Regulations;

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- (b) details of any enforcement action against A that has been taken by the regulator;
- (c) a justification for the imposition of an operating ban at European Union level; and
- (d) a recommendation for the scope of an operating ban at European Union level and any conditions that should be applied.

Enforcement of an operating ban.

2.(1) Where the European Commission has adopted a decision to impose an operating ban on an aircraft operator under Article 16(10) of the Directive, the regulator must take all reasonable steps to ensure that the operator does not operate a flight that departs from or arrives in Gibraltar.

(2) The steps a regulator may take under subparagraph (1) include—

- (a) subject to subparagraph (3), issuing to aerodrome operators (or to any other person) any direction that the regulator deems necessary to enforce the ban;
- (b) detaining and selling an aircraft of the operator in accordance with Schedule 9.

(3) Before issuing a direction under subparagraph (2)(a) the regulator must receive approval from the Minister.

(4) A person to whom a direction is issued under subparagraph (2)(a)—

- (a) must comply with that direction, but
- (b) is entitled to recover from the regulator a sum equal to any expense reasonably incurred by that person in complying with the direction.

(5) The regulator is entitled to recover as a civil debt from the operator concerned all sums incurred under subparagraph (4).

SCHEDULE 11

Regulation 3

FEEES

1. The following fees are prescribed and shall be payable to the regulator—

| | |
|--|------|
| (1) An application for a permit | £530 |
| (2) An application for the variation of a permit (except where the regulator considers that the application relates to changes of a purely administrative nature) | £240 |
| (3) An application for the transfer of a permit (in whole or in part) | £240 |
| (4) An application to surrender a permit, (in whole or in part) or for its revocation. | £280 |
| (5) Application by a Gibraltar aircraft operator for approval of an emissions monitoring plan | £750 |

2. Except where the regulator considers that a variation relates to changes of a purely administrative nature, where a regulator serves a variation notice varying the conditions of a greenhouse gas emissions permit, the fee prescribed in respect of the variation shall be £240 and shall be payable by the date specified in the variation notice.

SCHEDULE 12

Regulation 35A

**PROJECT ACTIVITIES APPROVAL AND AUTHORISATION TO
PARTICIPATE**

Interpretation.

1. In this Schedule—

“Article 6 project activity” means a project within the meaning of Article 6 of the Kyoto Protocol;

“Article 12 project activity” means a project within the meaning of Article 12 of the Kyoto Protocol;

“approval” means, in relation to a proposed project activity—

- (a) the approval of an Article 6 project activity required by Article 6(1)(a) of the Kyoto Protocol; or
- (b) the approval of voluntary participation in an Article 12 project activity required by Article 12(5)(a) of the Kyoto Protocol;

Approval of and authorisation of participation in project activities.

2.(1) A person wishing to have a proposed project activity approved shall, in accordance with this regulation, apply to the Minister for approval of the proposed project activity.

(2) A person wishing to be authorised to participate in an Article 6 project activity shall, in accordance with this regulation, apply to the Minister for such authorisation.

(3) An application under this paragraph shall be made in the English language and shall contain the following information—

- (a) the applicant’s name and address;
- (b) a description of the project activity or proposed project activity; and
- (c) any other information that the Minister may require for the purpose of determining the application.

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(4) Any application made under this paragraph shall be made in such a form as may be required by the Minister.

(5) The Minister may require any information included in an application under this paragraph to be independently verified and a requirement under this paragraph may include a requirement for the verification to be provided by a person of a description specified by the Minister, and any costs related thereto will be borne by the applicant.

(6) An application under subparagraph (2) may be combined with an application under subparagraph (1).

(7) An application made under this paragraph may be withdrawn at any time before it is determined.

Request for further information.

3.(1) For the purposes of determining an application made under paragraph 2, the Minister may serve a notice on the applicant requesting further information as he considers necessary.

(2) The notice shall specify the information required and the time period for furnishing such further information.

(3) A notice under subparagraph (1) may include a requirement for information furnished to be independently verified and for the verification to be provided by a person of a description specified by the Minister.

(4) Costs relating to the verification of information required by a notice issued under this paragraph must be borne by the applicant.

(5) If an applicant fails to comply with a request under subparagraph (1), the Minister may serve a notice on the applicant stating that the application is deemed to have been withdrawn.

Determination of application.

4.(1) Where an application is duly made under paragraph 2, the Minister shall determine whether to approve the proposed project activity or to authorise the participation in accordance with this paragraph.

(2) When determining an application duly made under paragraph 2, the Minister may attach such conditions to an approval or authorization as he thinks necessary.

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(3) The Minister may not approve a proposed project activity to be carried out in Gibraltar.

(4) The Minister may only approve a proposed project activity if he is satisfied that—

- (a) where a proposed project activity is to be undertaken in a country which has signed a Treaty of Accession with the European Union, the baseline used for determining the emissions reductions from the project activity complies with the body of common rights and obligations which binds all Member States within the European Union, including the temporary derogations set out in that Treaty; and
- (b) in relation to a proposed project activity for the production of hydro-electric power within a generating capacity of more than 20 megawatts, the development of the proposed project activity will respect the criteria and guidelines identified in the Report produced by the World Commission on Dams on 16th November 2000 entitled “Dams and Development— A New Framework for Decision-Making”.

(5) The Minister may only authorise the applicant’s participation in a proposed project activity if he is satisfied that—

- (a) all project participants have headquarters either in a country that has concluded the international agreement relating to such projects or in a country or sub-federal or regional entity which is linked to a scheme pursuant to Article 25 of the Directive; and
- (b) to do so would be consistent with Article 11b (5) of the Directive.

Offence.

5.(1) It is an offence for a person to make a statement which he 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 the connection with an application under paragraph 2.

(2) A person convicted of an offence under subparagraph (1) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

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(3) Where a body corporate is guilty of an offence under this paragraph and that offence is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of—

- (a) a qualified person appointed as such for the purposes of these Regulations;
- (b) a director, manager, secretary of the body corporate; or
- (c) a person who was purporting to act in any such capacity;

he, as well as the body corporate, is guilty of the offence and is liable to be proceeded against and punished accordingly.

(4) For the purposes of subparagraph (3)(b), “director”, in relation to a body corporate whose affairs are managed by its members means a member of the body corporate.