

Consultation on Proposed List of Conditions for Inclusion in Aviation Emissions Plans under the EU Emissions Trading System

December 2010

This consultation has been issued by the Environment Agency for England and Wales, together with the Northern Ireland Environment Agency and the Scottish Environment Protection Agency.

Information about this publication and further copies are available from:

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This document is available on the following websites at:

<http://www.environment-agency.gov.uk/business/topics/pollution/107596.aspx>

http://www.sepa.org.uk/climate_change/solutions/eu_emissions_trading_system/eu_ets_-_aviation.aspx

http://www.ni-environment.gov.uk/pollution-home/emissionstrading/emission_trading_aviation_system.htm

Contents

Background	3
1. The purpose of this document.....	3
2. What we are consulting on.....	3
3. What does this consultation mean to you?	6
4. Consultation questions	6
5. Responding to this consultation	6
Appendix 1 - Definitions	8

Background

Regulation 23 of The Aviation Greenhouse Gas Emissions Trading Scheme Regulations 2010 (“the Regulations”) places a duty on regulators to include conditions in Emissions Plans to ensure compliance with those requirements of the Monitoring and Reporting Decision that are not covered by the Regulations. The regulator must, in consultation with the other regulators, draw up a list of proposed conditions and then consult on these with specified government bodies, plus “any other person it considers may be affected”.

The Monitoring and Reporting Decision (or MRD) means Commission Decision 2007/589/EC as amended from time to time.

The regulators under the Regulations are the Environment Agency, the Scottish Environment Protection Agency and the chief inspector (Northern Ireland).

1. The purpose of this document

The regulators have decided to undertake a joint consultation.

This document contains the draft list of conditions proposed by the regulators for inclusion within aviation Emissions Plans and a set of definitions which would also be included in the Emissions Plans. Information is also provided in Table 1 to explain the purpose of each proposed condition and the requirement(s) that it delivers.

The document provides the necessary details to assist you in submitting any representations and objections you may have on the proposed conditions.

2. What we are consulting on

The regulators are proposing to include the following conditions in Emissions Plans and this consultation is your opportunity to provide comments on the proposed conditions. An explanation of the purpose of each condition is contained in Table 1 below.

Proposed emissions plan conditions:

1. The Aircraft Operator must retain all information as specified in Section 9 of Annex I of the Monitoring and Reporting Decision for a period of at least 10 years after the submission of the relevant annual report required under regulation 21 of the 2010 Regulations.
2. In relation to all Non-conformities and Mis-statements identified by a Verifier in relation to monitoring in the previous year and specified by the Verifier in the verification required under regulation 21 of the 2010 Regulations (“the Verifier’s specifications”), the Aircraft Operator must:
 - (a) submit a report to the Regulator, by 30 June each year, setting out its proposed improvements to address the Verifier’s specifications. The proposals must set out full details, including timescales, for implementing the improvements. If no improvement is proposed in response to a Verifier’s specification, the Aircraft Operator must justify why no action is to be taken.

- (b) implement all improvements to address the Verifier's specifications set out by the Regulator in the timescales specified by the Regulator.
 - (c) notify the Regulator when the improvements have been implemented.
3. Where the Aircraft Operator makes a change to its monitoring methodology (with the exception of the change referred to in condition 5), it must, within 14 days of making the change or, where not practicable, as soon as possible thereafter:
- (a) apply to the Regulator for a variation of its Emissions Plan where the change affects the information contained in its Emissions Plan; or
 - (b) notify the Regulator where the change does not affect the information contained in its Emissions Plan.

A variation application or notification must contain a description of the change, set out whether and, if so, how it affects the information contained in the Emissions Plan and explain how the change is in accordance with the Monitoring and Reporting Decision.

4. Before the end of each Trading Period, the Aircraft Operator must review its Emissions Plan and assess, to the satisfaction of the Regulator, if its monitoring methodology can be changed in order to improve the quality of the reported data without leading to unreasonably high costs. As a result of the review, the Aircraft Operator must, by 31 December of the last year of each Trading Period:
- (a) submit a report of the review to the Regulator; and
 - (b) identify its proposed changes to the monitoring methodology as a result of its review; and
 - (i) where the changes affect the information contained in its Emissions Plan, apply to the Regulator to vary its Emissions Plan accordingly; or
 - (ii) where the changes do not affect the information contained in its Emissions Plan, notify the Regulator.

A variation application or notification must contain a description of the change, set out whether and, if so, how it affects the information contained in the Emissions Plan and explain how the change is in accordance with the Monitoring and Reporting Decision.

5. Where an Aircraft Operator applying the simplified procedure to estimate fuel consumption in accordance with Section 4 of Annex XIV of the Monitoring and Reporting Decision exceeds the threshold for Small Emitters, the Aircraft Operator must within 14 days of exceeding the threshold (or such longer period as the Regulator considers to be reasonable in the circumstances):
- (a) notify the Regulator and demonstrate to the satisfaction of the Regulator that the threshold will not be exceeded again from the following calendar year onwards; or
 - (b) apply to vary its Emissions Plan to meet the monitoring requirements in Section 2 and 3 of Annex XIV of the Monitoring and Reporting Decision.

Table 1 - Purpose of Proposed Conditions

Condition	Purpose
1	As outlined in the condition this delivers the requirements of Section 9 of Annex I of the MRD regarding the retention of information.
2	Section 10.4.2 e) of Annex I of the MRD refers to the verification report to be submitted by an operator with its annual emissions report. Verifiers must identify non-conformities and mis-statements as part of its verification. Section 10.4.2 e) states that “Member States shall ensure that the operator addresses non-conformities and misstatements after consultation of the competent authority in a timeframe set by the competent authority”. Within this condition we are seeking to specify this process of consultation with the regulator and specification of the timescale to make the requirements clear, practical and easy to understand.
3	<p>Section 4.3 of Annex I of the MRD states that a competent authority must check and approve monitoring plans after any substantial changes to the monitoring methodology are applied by an operator. All other changes and proposed changes in monitoring methodology or the underlying data sets must be notified to the competent authority without undue delay. Where an operator makes a change to its monitoring methodology, this condition requires the operator to either notify the regulator or apply to vary its Emissions Plan, depending on whether or not the change affects the information contained in its plan. We propose that, to deliver the requirements of the MRD, all changes which affect the information contained in Emissions Plan should result in the variation of a plan for ease of reference for all and to ensure that operators and verifiers are clear in respect of the requirement on operators to monitor aviation emissions in accordance with their emissions plans and the MRD.</p> <p>The MRD requires that notifications of change must be made “without undue delay”. To ensure that compliance can be monitored, we propose that operators must notify us or apply to vary their Emissions Plans within 14 days of making the change. However, where this is not practicable, notification / application for variation must be made as soon as practicable thereafter.</p> <p>It is intended to provide further guidance to operators to assist in determining what types of change require a variation and what types of changes require notification under Condition 3 and how different changes may be treated.</p>
4	Section 6 of Annex XIV of the MRD states that “The competent authority shall ensure that the aircraft operator reviews the monitoring plan before the start of each trading period and submits a revised monitoring plan as appropriate. In performing such a review, the aircraft operator shall assess, to the satisfaction of the competent authority if the monitoring methodology can be changed in order to improve the quality of the reported data without leading to unreasonably high costs. Proposed changes to the monitoring methodology, if any, shall be notified to the competent authority. Substantial changes to the monitoring methodology which require an update of the monitoring plan shall be subject to the approval of the competent authority”. This condition delivers these requirements, both in respect of submission of the report, to ensure that the assessment has been carried out satisfactorily and in respect of variations / notifications.
5	This condition delivers the requirements of Section 4 of Annex XIV of the MRD, which specifies the notification / variation requirements in such circumstances as outlined in the condition. In relation to the timings, Section 4 requires applications for variation “without undue delay”. To ensure that compliance can

	be monitored, we propose to include an indicative timescale of 14 days but also flexibility as judged by the regulator to recognise the fact that operators may not be monitoring against the threshold on a daily basis.
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3. What does this consultation mean to you?

We think that this consultation will be of particular interest to:

- a. **Operators who are identified in the UK's section of Commission list's of aircraft operators, who hold or may be required to apply for an Emissions Plan under the EU Emissions Trading System and Verifiers who may carry out the verification requirements of Article 15 of the EU ETS Directive.**
- b. **Other governmental and non-governmental organisations with an interest in the regulation of UK operators under the EU Emissions Trading System.**

This is your opportunity to ensure that the conditions are practical, reasonable, sufficient and consistent whilst delivering the requirements of the MRD.

4. Consultation questions

Do you have any comments on the conditions presented in section 2?
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Please where possible substantiate your comments.

5. Responding to this consultation

The consultation opens for eight weeks on **Monday 13 December 2010** and closes on **Monday 7 February 2010**.

How to respond:

The Environment Agency will coordinate responses for consideration by all three regulators.

We would prefer you to respond by email to etaviationhelp@environment-agency.gov.uk as this will help us gather and summarise responses quickly and accurately. It would help if you title your email with Aviation Emissions Plan Consultation in the subject line.

However, if you would rather send your response by post, please send it to:

Emissions Trading
Aviation Consultation Responses
Environment Agency
Richard Fairclough House
Knutsford Road
Warrington
WA4 1HT



Publishing consultation responses

We will summarise all responses and place this summary on the following websites at:

<http://www.environment-agency.gov.uk/business/topics/pollution/107596.aspx>

http://www.sepa.org.uk/climate_change/solutions/eu_emissions_trading_system/eu_ets_-_aviation.aspx

http://www.ni-environment.gov.uk/pollution-home/emissionstrading/emission_trading_aviation_system.htm

This summary will include a list of names or organisations that responded but not people's personal names, addresses or other contact details.

Appendix 1 - Definitions

The following will be added to the current list of definitions in the Emissions Plan:

Except where otherwise provided in this Emissions Plan, words and expressions which are defined in the 2010 Regulations shall have the same meaning as in those regulations. Definitions set out below which repeat definitions in the 2010 Regulations are repeated for ease of reference only.

In this Emissions Plan, the following words and phrases shall have the following meanings:

“2010 Regulations” means that Aviation Greenhouse Gas Emissions Trading Scheme Regulations 2010 (SI 2010/1996).

“Aircraft Operator” means the person to whom this Emissions Plan has been issued (until such time as the person ceases to be a UK operator).

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

“Mis-statement” means an omission, misrepresentation or error in the report required to be submitted under regulation 21 of the 2010 Regulations.

“Monitoring and Reporting Decision” means Commission Decision 2007/589/EC establishing guidelines for the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87/EC of the European Parliament and of the Council, as amended from time to time.

“Non-conformity” means any act or omission of an act by the Aircraft Operator, either intentional or unintentional, that is contrary to the requirements of the Emissions Plan”.

“Regulator” has the meaning given by regulation 4 of the 2010 Regulations.

“Small Emitter” means an aircraft operator operating fewer than 243 flights per period for three consecutive four-month periods or operating flights with total annual emissions lower than 10,000 tonnes CO₂.

“Trading Period” has the meaning set out in regulation 2 of the 2010 Regulations.

“UKAS” means the United Kingdom Accreditation Service.

“UK Operator” has the meaning set out in regulation 2 of the 2010 Regulations.

“Verifier” means a person or body accredited or endorsed by UKAS to carry out the verification requirements of Article 15 of the EU ETS Directive.