
STATUTORY INSTRUMENTS

2010 No. 1996

**The Aviation Greenhouse Gas Emissions
Trading Scheme Regulations 2010**

PART 9

Detention and sale of aircraft

General

42.—(1) Subject to paragraph (3), where—

- (a) an aircraft operator has not paid a civil penalty within 6 months of the date by which it is due under regulation 30(3) or (4); or
- (b) an operator has had an operating ban imposed on it under Article 16(10) of the EU ETS Directive,

the regulator may detain any aircraft of which the regulator has reason to believe the defaulting operator is the operator.

(2) Where an aircraft has been detained—

- (a) under paragraph (1)(a) and the aircraft operator has not paid the civil penalty and regulator expenses within—
 - (i) 56 days of the date when the detention begins; or
 - (ii) if later, 21 days of the date of service of a notice under paragraph 2(1) of Schedule 2; or
- (b) under paragraph (1)(b) and—
 - (i) the operating ban has not been lifted within 56 days of the date when the detention begins; and
 - (ii) the operator has not paid the regulator expenses,

the regulator may, subject to the following regulations of this Part, sell that aircraft.

(3) Paragraphs (1) and (2), in relation to a detention under paragraph (1)(a), do not apply in relation to a civil penalty imposed in respect of a failure to comply with these Regulations before 1st January 2012.

Release of aircraft

43.—(1) The regulator must not detain, or continue to detain, or sell an aircraft under regulation 42 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 42(1)(a), the aircraft operator—

- (i) has made an appeal under regulation 52 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 aircraft 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 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 42(1)(a), the aircraft operator pays to the regulator—
 - (i) the civil penalty for which the aircraft has been detained;
 - (ii) any other civil penalty that the aircraft operator has not paid; and
 - (iii) any regulator expenses;
- (e) in relation to a detention under regulation 42(1)(b)—
 - (i) the operating ban imposed on the operator is lifted; and
 - (ii) the operator pays to the regulator—
 - (aa) any regulator expenses; and
 - (bb) any civil penalty that the aircraft operator has not paid; or
- (f) in relation to a detention under regulation 42(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 operator pays to the regulator any regulator expenses.

(2) Where an aircraft has been detained, but subsequently released under paragraph (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.

(3) In this regulation, “civil penalty” means a civil penalty which is due under regulation 30(3) or (4), or under regulation 21(3) or (4) of the 2009 Regulations.

Court procedures

44.—(1) The regulator must not sell an aircraft under regulation 42(2) without the leave of the court; and for that purpose Schedule 2 has effect.

(2) The court must not give leave under paragraph (1) in relation to a detention under regulation 42(1)(a) except where it is satisfied that—

- (a) a civil penalty is due to the regulator;
- (b) the aircraft 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 paragraph (1) in relation to a detention under regulation 42(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 in regulation 42(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 paragraph (1) the regulator must, in accordance with Schedule 2—
 - (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 paragraph (1) the regulator must sell the aircraft for the best price that can be reasonably obtained.
- (6) Failure to comply with paragraph (4) or (5) does not make a sale under this Part void or voidable.

Proceeds of sale

- 45.**—(1) The proceeds of any sale under these Regulations must be applied by the regulator in the following order—
- (a) in payment of any customs duty which is due in consequence of the aircraft having been brought into the United Kingdom;
 - (b) in payment of any regulator expenses;
 - (c) in payment of any charges in respect of any aircraft operated by the aircraft operator which the court has found to be due by virtue of section 73(1) of the Transport Act 2000⁽¹⁾;
 - (d) in payment of any airport charges incurred in respect of the aircraft which are due from the aircraft operator or operator to the person entitled to levy charges in respect of the aerodrome at which the aircraft was detained under regulation 42(1);
 - (e) in relation to a detention under regulation 42(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 aircraft operator has not paid which is due under regulation 30(3) or (4) or under regulation 21(3) or (4) of the 2009 Regulations, even where the failure giving rise to that civil penalty arose before 1st January 2012.
- (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

- 46.**—(1) The power to detain and sell an aircraft under regulation 42 includes the power to detain and sell equipment and stores carried in the aircraft provided it is the property of the aircraft operator, and references to the aircraft in regulations 42 to 45 include references to any such equipment and stores.
- (2) The power of detention under regulation 42(1) 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

- 47.**—(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.
- (2) An aerodrome operator is entitled to recover from the regulator a sum equal to any expense reasonably incurred by it in providing the regulator with assistance or advice under paragraph (1).

(1) 2000 c. 38.

Interpretation

48. In this Part—

- (a) “aerodrome” has the meaning given to it in section 105 of the Civil Aviation Act 1982⁽²⁾;
- (b) “aerodrome operator” means the person for the time being having the management or control of an aerodrome or, in relation to a particular aerodrome, the management or control of that aerodrome;
- (c) “aircraft documents” has the meaning given by section 88(10) of the Civil Aviation Act 1982;
- (d) “airport charges” means charges payable to the owner or manager of an aerodrome for the use of, or for services provided at, an aerodrome but does not include charges payable by virtue of section 73 of the Transport Act 2000;
- (e) “the court” means—
 - (i) in relation to England, Wales and Northern Ireland, the High Court; and
 - (ii) in relation to Scotland, the Court of Session;
- (f) “defaulting operator” means a person that falls under regulation 42(1)(a) or (b);
- (g) “regulator expenses” means any expenses incurred by the regulator in detaining, keeping or selling the aircraft, including—
 - (i) any sums recovered from the regulator under regulation 47(2) or 59(2), or any sums under regulation 51(5) that have not been recovered under regulation 51(6);
 - (ii) any expenses in connection with the application to the court under regulation 44; and
 - (iii) any regulator expenses that are deemed to be added by virtue of regulation 43(2).

(2) 1982 c. 16.