

---

STATUTORY INSTRUMENTS

---

**2023 No. 1394**

**The Vehicle Emissions Trading Schemes Order 2023**

**Part 6**

**Civil penalties**

**Civil penalties: general**

**93.**—(1) The administrator—

- (a) may impose a civil penalty in accordance with articles 97 to 106; and
- (b) where it does so, it must give written notice of such penalty (referred to in this Part as a “penalty notice”).

(2) A penalty notice must specify—

- (a) the provision of this Order that is breached; and
- (b) information about rights of appeal.

(3) In this Part—

“block” means the restriction of the operation of a participant in the Trading Schemes’, or an SPV manufacturer’s, account in the registry, so that the participant or SPV manufacturer may not—

- (a) trade allowances or credits;
  - (b) bank or borrow CRTS allowances, within the meaning of [article 9](#);
  - (c) be treated as falling within [article 13\(4\)](#) or [\(6\)](#) (transitional allocation of CRTS allowances);
  - (d) acquire CCTS allowances under [article 35](#);
  - (e) bank or borrow VRTS allowances within the meaning of [article 41](#);
  - (f) be treated as falling within [article 45\(4\)](#) or [\(6\)](#) (transitional allocation of VRTS allowances);
  - (g) acquire VCTS allowances under [article 67](#);
  - (h) be treated as a low-volume CRTS participant or low-volume VRTS participant in accordance with [Schedule 4](#); or
  - (i) make an application to be a pool participant in the Trading Schemes under [Schedule 5](#);
- “financial year”, in relation to a participant in the Trading Schemes or an SPV manufacturer, has the meaning given in section 390 of the Companies Act 2006<sup>(1)</sup>;

“publication” means to publish on a part of the registry which is accessible to the public—

- (a) the name of a participant in the Trading Schemes or an SPV manufacturer, including, where a participant is a pool participant in the Trading Schemes, the name of each member of that pool participant; and
  - (b) details of the breach for which a civil penalty has been imposed;
- “turnover”, in relation to a participant in the Trading Schemes or an SPV manufacturer, means its turnover as defined in section 474(1) of the Companies Act 2006(2), as if that section applied to participants in the Trading Schemes or SPV manufacturers, and excluding turnover arising outside the United Kingdom.

(4) For so long as the operation of a pool participant in the Trading Schemes' account in the registry is restricted by a block, that participant continues to be treated as a pool participant in the Trading Schemes, even where the grant of an application by the administrator under Schedule 5 would otherwise be required.

- (5) In relation to a pool participant in the Trading Schemes—
  - (a) its turnover for the purposes of paragraph (3) is the aggregate turnover of each of the members of the pool participant; and
  - (b) a reference to its financial year is a reference to the financial year of the manufacturer identified to the administrator in accordance with—
    - (i) paragraph 5(c)(i) of Schedule 5 (application to be treated as a pool participant) in the application made under that Schedule; or
    - (ii) article 83(1) (updating information provided with application under Schedule 5).

### **Financial penalties: general**

94.—(1) A penalty notice in respect of a financial penalty must specify—

- (a) that payment must be made to the administrator;
- (b) how payment must be made;
- (c) where no daily penalty applies or the total amount of the daily penalty can be determined at the date of the giving of the notice—
  - (i) the total amount due;
  - (ii) where applicable, how it has been calculated; and
  - (iii) the date by which it must be paid; and
- (d) where a daily penalty rate applies and the total amount of the daily penalty cannot be determined at the date of the giving of the notice—
  - (i) the amount of the initial penalty; and
  - (ii) details of the applicable daily rate.

(2) Where paragraph (1)(d) applies and the total amount of the daily penalty can be determined after the date of giving of the notice, the administrator must give a further notice to the person liable to the penalty which complies with paragraph (1)(c).

(3) The administrator must pay any financial penalty received into the consolidated fund.

(4) In England and Wales, a financial penalty is recoverable as if it were payable under an order of the county court in England and Wales.

(5) In Scotland, a financial penalty may be enforced in the same manner as an extract registered decree arbitral bearing a warrant of execution issued by the sheriff court of any sheriffdom in Scotland.

---

(2) Section 474(1) is amended by S.I. 2015/980.

(6) Where action is taken under paragraph (4) for the recovery of a sum payable as a financial penalty pursuant to this Order, the financial penalty is, for England and Wales, to be treated for the purposes of section 98 of the Courts Act 2003(3) (register of judgments and orders etc.) as if it were a judgment entered in the county court.

#### **Non-financial penalties: general**

**95.**—(1) The administrator may impose the penalty of a block until—

- (a) the failure is remedied; and
- (b) any financial penalty imposed in respect of the same failure is paid.

(2) Publication lasts until—

- (a) the failure is remedied; and
- (b) any financial penalty imposed in respect of the same failure is paid.

(3) The administrator must remove a block or publication promptly when the breach to which it relates has been remedied and any associated financial penalty is paid.

(4) A civil penalty other than a financial penalty has effect from the date of service of the penalty notice, unless the notice provides otherwise.

#### **Waiver and modification of civil penalties**

**96.**—(1) Where the administrator considers appropriate, the administrator may—

- (a) waive a penalty;
- (b) allow additional time to pay a financial penalty;
- (c) impose a lower financial penalty than the amount provided for in articles 97 to 106 or substitute such a lower financial penalty where one has already been imposed; or
- (d) modify the application of a publication or a block.

(2) Where at any time before a financial penalty is due to be paid the administrator ceases to be satisfied that the person is liable for that penalty, the administrator may serve a further notice on that person to—

- (a) withdraw the penalty notice; or
- (b) modify the penalty notice by substituting a lower penalty.

(3) Before exercising a power in this article, the administrator must consult the relevant national authorities(4).

#### **Failure to make a payment to account for activity in the Trading Schemes**

**97.**—(1) The administrator may impose the penalties in paragraph (2) where a participant in the Trading Schemes fails to make a payment which is due in accordance with a payment notice given under article 28, 39, 60 or 71.

(2) The penalties are—

- (a) the financial penalty of—

---

(3) 2003 c. 39. Section 98 has been amended by sections 48(1) and 106(2) of, and paragraph 55(1), (2), (3)(a) and (b) of Schedule 8 and paragraph 15 of Schedule 16 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15) and section 17(5) of, and paragraph 40(a) and (c) of Part 2 of Schedule 9 to, the Crime and Courts Act 2013 (c. 22). Further amendments made by the Tribunals, Courts and Enforcement Act 2007 have yet to be brought into force.

(4) See section 47 of the Climate Change Act 2008 for the meaning of “relevant national authorities”.

- (i) the amount of the payment which was specified in the payment notice and which remains outstanding; and
- (ii) a daily penalty at a daily rate which is the sum of £750 and 0.75% of the amount of the payment specified in the payment notice, beginning with the day after the day on which that payment was due;
- (b) publication; and
- (c) a block.

### **Failure to provide information under [article 73](#)**

**98.**—(1) The administrator may impose the penalties in [paragraph \(2\)](#) where a participant in the Trading Schemes fails to comply with a requirement in [article 73](#) to provide, or to ensure that the administrator has available to it, the information or evidence specified in—

- (a) [article 73\(5\)\(a\)](#) to [\(d\)](#) (SPVs, car clubs and ZE car or van warranties);
  - (b) [paragraph 1\(g\), 6\(g\)12\(c\) or 13\(c\)](#) of [Schedule 7](#) (specific emissions of CO<sub>2</sub> of a car, van or SPV);
  - (c) [paragraph 1\(i\) or 6\(k\)](#) of [Schedule 7](#) (fuel type and fuel mode of a car, van or SPV);
  - (d) [paragraph 1\(l\) or 6\(n\)](#) of [Schedule 7](#) (code for any eco-innovations);
  - (e) [paragraph 1\(r\) or 6\(r\)](#) of [Schedule 7](#) (electric range of a car, van or SPV, where applicable).
- (2) The penalties are—
- (a) the financial penalty of—
    - (i) £7,500;
    - (ii) £15,000 for each car to which a failure in [paragraph \(1\)](#) relates;
    - (iii) £15,000 for each ZE SPV of category M1 to which a failure in [paragraph \(1\)](#) relates;
    - (iv) £18,000 for each van to which a failure in [paragraph \(1\)](#) relates; and
    - (v) £18,000 for each ZE SPV which is of category N1, or which is of category N2 and which falls within the description in [paragraph \(c\)](#) of the definition in “van” in [article 3\(1\)](#), to which a failure in [paragraph \(1\)](#) relates;
  - (b) publication; and
  - (c) a block.

(3) The administrator may impose the penalties in [paragraph \(4\)](#) where a participant in the Trading Schemes fails to comply with a requirement in [article 73](#) to provide, or to ensure that the administrator has available to it, any information other than that specified in [paragraph \(1\)](#).

- (4) The penalties are—
- (a) the financial penalty of £750; and
  - (b) publication.

### **Failure to maintain records**

**99.**—(1) The administrator may impose the penalties in [paragraph \(2\)](#) where a participant in the Trading Schemes fails to maintain and audit its records, as required by [article 75](#), or where an SPV manufacturer fails to maintain and audit its records, as required by [article 76](#).

- (2) The penalties are—
- (a) the financial penalty of £7,500;
  - (b) publication; and

- (c) a block.

**Failure to provide information under [article 81](#) (information required for the purposes of administering the Trading Schemes)**

- 100.**—(1) The administrator may impose the penalties in paragraph (2) where—
- (a) the administrator has required a participant in the Trading Schemes or an SPV manufacturer to provide information in a notice in accordance with [article 81](#); and
  - (b) the participant or manufacturer has failed to comply with the notice by the time specified in it.
- (2) The penalties are—
- (a) the financial penalty of £7,500; and
  - (b) publication.

**Failure to provide information under [article 86](#) (information required where suspected failure to comply with this Order)**

- 101.**—(1) The administrator may impose the penalties in paragraph (2) where—
- (a) the administrator or an authorised person has given notice to a participant in the Trading Schemes or an SPV manufacturer under [article 86](#); and
  - (b) the participant or SPV manufacturer has failed to comply with the notice by the time specified in it.
- (2) The penalties are—
- (a) the financial penalty of £750,000 or, if lower, 0.5% of the turnover of the participant in the Trading Schemes or the SPV manufacturer for its financial year ending during the scheme year to which the failure relates;
  - (b) publication; and
  - (c) a block.

**Failure to make officer available for questioning**

- 102.**—(1) The administrator may impose the penalties in paragraph (2) where—
- (a) the administrator or an authorised person has given notice to a participant in the Trading Schemes or an SPV manufacturer under [article 87](#) to make an officer available for questioning in accordance with that article; and
  - (b) that officer was not made available in accordance with the notice by the time specified in it.
- (2) The penalties are—
- (a) the financial penalty of £75,000;
  - (b) a block; and
  - (c) publication.

**Refusal to allow access to premises**

- 103.**—(1) The administrator may impose the penalties in paragraph (2) where a person in control of any premises refuses the administrator or an authorised person access to those premises, or intentionally obstructs the administrator or an authorised person from accessing to those premises, contrary to [article 88](#).

- (2) The penalties are—
- (a) the financial penalty of £75,000;
  - (b) a block; and
  - (c) publication.

#### **Failure to comply with enforcement notice**

**104.**—(1) The administrator may impose the penalty in paragraph (2) where a participant in the Trading Schemes or an SPV manufacturer fails to comply with the requirements of an enforcement notice given under [article 92](#).

- (2) The penalty is the financial penalty of—
- (a) £4,500; and
  - (b) a daily penalty at a daily rate of £100, beginning with the day after the day by which the participant in the Trading Schemes or SPV manufacturer was to have taken steps to comply with the requirements of the enforcement notice, up to a maximum of £3,000.

#### **Provision of false or misleading information: participants in the Trading Schemes**

**105.**—(1) The administrator may impose the penalties in [paragraph \(2\)](#) where a participant in the Trading Schemes provides false or misleading information under an obligation on a participant in [article 73](#) (provision of information to administrator).

- (2) The penalties are—
- (a) where the false or misleading information is the information or evidence specified in [article 98\(1\)](#), or where the false or misleading information consists of a failure to ensure that the administrator is aware of every car, van and SPV of which the participant in the Trading Schemes is the manufacturer and which is registered during a scheme year, the financial penalty of—
    - (i) £7,500;
    - (ii) £15,000 for each car to which the false or misleading information relates;
    - (iii) £15,000 for each ZE SPV of category M1 to which the false or misleading information relates;
    - (iv) £18,000 for each van to which the false or misleading information relates; and
    - (v) £18,000 for each ZE SPV which is of category N1, or which is of category N2 and which falls within the description in paragraph (c) of the definition in “van” in [article 3\(1\)](#), to which the false or misleading information relates;
  - (b) where the false or misleading information is information other than that described in [sub-paragraph \(a\)](#), the financial penalty of £750;
  - (c) publication; and
  - (d) a block.
- (3) The administrator may impose the penalties in [paragraph \(4\)](#) where a participant in the Trading Schemes provides false or misleading information in a notification under [article 78](#) (error notification).
- (4) The penalties are—
- (a) where the false or misleading information is that specified in paragraph 1(g), (i), (l) or (r) of [Schedule 7](#) (specific emissions of CO<sub>2</sub>, fuel type and fuel mode, eco-innovations and electric range), the financial penalty of—

- (i) £7,500;
  - (ii) £15,000 for each car to which the false or misleading information relates; and
  - (iii) £15,000 for each ZE SPV of category M1 to which the false or misleading information relates;
- (b) where the false or misleading information is that specified in paragraph 6(g), (k), (n) or (r), or paragraph 12(c) or 13(c) of Schedule 7 (specific emissions of CO<sub>2</sub>, fuel type and fuel mode, eco-innovations and electric range), the financial penalty of—
- (i) £7,500;
  - (ii) £18,000 for each van to which the false or misleading information relates; and
  - (iii) £18,000 for each ZE SPV which is of category N1, or which is of category N2 and which falls within the description in paragraph (c) of the definition in “van” in article 3(1), to which the false or misleading information relates;
- (c) where the false or misleading information is information other than that referred to in subparagraph (a) or (b), the financial penalty of £750;
- (d) publication; and
- (e) a block.
- (5) The administrator may impose the penalties in paragraph (6) where a participant in the Trading Schemes provides false or misleading information in response to a notice given by the administrator under article 81 (power of administrator to require information for purposes of Trading Schemes).
- (6) The penalties are—
- (a) the financial penalty of £7,500; and
  - (b) publication.
- (7) The administrator may impose the penalties in paragraph (8) where a participant in the Trading Schemes provides false or misleading information in response to a notice given by the administrator or an authorised person under article 86 (power to require information where suspected failure to comply with this Order).
- (8) The penalties are—
- (a) the financial penalty of £750,000 or, if lower, 0.5% of the turnover of the participant in the Trading Schemes for its financial year ending during the scheme year to which the false or misleading information relates;
  - (b) publication; and
  - (c) a block.
- (9) The administrator may impose the penalties in paragraph (10) where a participant in the Trading Schemes provides false or misleading information in an application made under—
- (a) Part 3 of Schedule 4 (application to be a low-volume CRTS or VRTS participant); or
  - (b) Schedule 5 (application to be pool participant in the Trading Schemes).
- (10) The penalties are—
- (a) the financial penalty of £75,000; and
  - (b) publication.

#### **Provision of false or misleading information: SPV manufacturers**

**106.**—(1) The administrator may impose the penalties in paragraph (2) where an SPV manufacturer provides false or misleading information under an obligation on an SPV manufacturer in article 74 (provision of information to the administrator).

- (2) The penalties are—
- (a) where the false or misleading information is the information or evidence specified in [article 74\(4\)\(a\) to \(d\)](#), the financial penalty of—
    - (i) £7,500;
    - (ii) £15,000 for each ZE SPV of category M1 to which the false or misleading information relates; and
    - (iii) £18,000 for each ZE SPV which is of category N1, or which is of category N2 and which falls within the description in paragraph (c) of the definition in “van” in [article 3\(1\)](#), to which the false or misleading information relates;
  - (b) where the false or misleading information is information other than that specified in [sub-paragraph \(a\)](#), the financial penalty of £750;
  - (c) publication; and
  - (d) a block.
- (3) The administrator may impose the penalties in paragraph (4) where an SPV manufacturer provides false or misleading information in a notification given by an SPV manufacturer under [article 78](#) (error notification).
- (4) The penalties are—
- (a) where the false or misleading information is that specified in [paragraph 1\(i\) or \(r\) of Schedule 7](#) (fuel type and fuel mode and electric range), the financial penalty of—
    - (i) £7,500; and
    - (ii) £15,000 for each ZE SPV of category M1 to which the false or misleading information relates;
  - (b) where the false or misleading information is that specified in [paragraph 6\(k\) or \(r\) of Schedule 7](#) (fuel type and fuel mode and electric range), the financial penalty of—
    - (i) £7,500; and
    - (ii) £18,000 for each ZE SPV which is of category N1, or which is of category N2 and which falls within the description in paragraph (c) of the definition in “van” in [article 3\(1\)](#), to which the false or misleading information relates;
  - (c) where the false or misleading information is information other than that mentioned in [sub-paragraph \(a\) or \(b\)](#), the financial penalty of £750;
  - (d) publication; and
  - (e) a block.
- (5) The administrator may impose the penalties in paragraph (6) where an SPV manufacturer provides false or misleading information in response to a notice given by the administrator under [article 81](#) (power to require information for purposes of Trading Schemes).
- (6) The penalties are—
- (a) the financial penalty of £7,500; and
  - (b) publication.
- (7) The administrator may impose the penalties in paragraph (8) where an SPV manufacturer provides false or misleading information in response to a notice given by the administrator or an authorised person under [article 86](#) (power of administrator to require information where suspected failure to comply with this Order).
- (8) The penalties are—



- (a) the financial penalty of £750,000 or, if lower, 0.5% of the turnover of the SPV manufacturer for its financial year ending during the scheme year to which the false or misleading information relates;
- (b) publication; and
- (c) a block.