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Policy paper

Annex 2: Climate change schemes - the Environment Agency's approach to applying civil penalties

Updated 17 March 2022

Applies to England

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This publication is available at <https://www.gov.uk/government/publications/environment-agency-enforcement-and-sanctions-policy/annex-2-climate-change-schemes-the-environment-agencys-approach-to-applying-civil-penalties>

Annex 2 applies to the following climate change schemes:

- European Union Emissions Trading Scheme (EU ETS)
- CRC Energy Efficiency Scheme (CRC)
- Energy Savings Opportunity Scheme (ESOS)
- Fluorinated Greenhouse Gas regime (F Gas)
- Climate Change Agreements (CCA)

Section A explains the steps we will take to decide whether to impose a civil penalty or to work out the final penalty amount. Within the steps we will assess:

- the nature of the breach
- culpability (blame)
- the size of the organisation
- financial gain
- any history of non-compliance
- the attitude of the non-compliant person
- personal circumstances

Section A also explains when we cannot apply the stepped approach.

Sections B, C, D and E explain how we will initially assess each EU ETS, CRC, ESOS and F Gas breach. These sections explain our normal 'nature of the breach' assessment and other enforcement positions specific to the scheme.

The nature of the breach assessment is the seriousness of the breach based on the impact it has on the integrity of the scheme. This means the trust in, transparency, reliability and effectiveness of the scheme. It may include the length of time a person has been required to comply with the law. Maintaining the integrity of the scheme is vital to reduce the UK's contribution to climate change.

For certain F Gas breaches, the nature of the breach assessment also includes the seriousness of the breach based on its environmental effect. Environmental effect may be potential and/or actual harm, including the risk to people, communities and the environment.

The law sets the maximum penalty available for each breach (known as the

statutory maximum). Sections B, C, D and E, for each breach, explain our normal assessment and other enforcement positions, including whether we think a penalty should be waived or whether the 'initial penalty amount' (see step 1 in section A) should be the statutory maximum or something lower.

Section F explains our approach to CCA breaches.

Section A: Environment Agency's penalty setting approach for the climate change schemes

Once we have determined that a person is liable to a civil penalty, where the legal framework allows, we can apply our discretion and decide whether to:

- waive (not apply) the civil penalty
- reduce the civil penalty
- extend the time for payment

We use a stepped approach to make this decision. The steps are based on those in the [Definitive Guideline for the Sentencing of Environmental Offences \(known as the Guideline\)](https://webarchive.nationalarchives.gov.uk/ukgwa/20221122031726mp_/https://www.sentencingcouncil.org.uk/publications/item/environmental-offences-definitive-guideline/) (https://webarchive.nationalarchives.gov.uk/ukgwa/20221122031726mp_/https://www.sentencingcouncil.org.uk/publications/item/environmental-offences-definitive-guideline/). We have adjusted the steps so that they are appropriate for the climate change civil penalties. The Guideline applies to criminal offences with no statutory maximum levels in the Crown Court; therefore we cannot follow it entirely.

We cannot apply the stepped approach to the breaches set out in paragraphs B3.1, B3.4 and section F due to their nature and legal requirements. See our approach to these breaches in those sections.

Where the legislation requires us to apply a mandatory penalty we cannot apply our discretion. Sections B to F set out our approach to mandatory penalties.

How the Environment Agency sets the penalty level

When we can apply our discretion we carry out the following steps to make our decisions:

Step 1 - check or determine the statutory maximum penalty for the breach.

Step 2 - decide whether to waive the penalty or set the initial penalty amount by assessing the nature of the breach and other enforcement positions in line with sections B, C, D and E.

Step 3 - if we decide to impose a penalty, work out the penalty starting point and penalty range based on culpability (blame) and size of the organisation.

Step 4 - set the final penalty amount by assessing the aggravating and mitigating factors and adjust the starting point as appropriate.

Set the initial penalty amount: steps 1 and 2

We will first check or determine the statutory maximum penalty available for the breach.

We will then consider our normal 'nature of the breach' assessment and other enforcement positions (if applicable), set out for each breach in sections B, C, D and E. We may decide to waive the penalty. Where we decide to impose a penalty, we will set the initial penalty amount at the statutory maximum or lower.

Work out the penalty starting point and penalty range: step 3

This calculation is based on culpability (blame) and size of the organisation.

Culpability

We will determine culpability in line with the following categories as set out in the Guideline.

Deliberate

This means one of the following:

- intentional breach of or flagrant disregard for the law by person(s) whose position of responsibility in the organisation is such that their acts/omissions can properly be attributed to the organisation
- deliberate failure by the organisation to put in place and to enforce such systems as could reasonably be expected in all the circumstances to avoid commission of the offence

Reckless

This means one of the following:

- actual foresight of, or wilful blindness to, risk of offending but risk nevertheless taken by person(s) whose position of responsibility in the organisation is such that their acts/omissions can properly be attributed to the organisation
- reckless failure by the organisation to put in place and to enforce such systems as could reasonably be expected in all the circumstances to avoid commission of the offence

Negligent

This means failure by the organisation as a whole to take reasonable care to put in place and enforce proper systems for avoiding commission of the offence.

Low or no culpability

This means an offence committed with little or no fault on the part of the organisation as a whole. For example:

- by accident or the act of a rogue employee despite the presence and due enforcement of all reasonably required preventive measures
- where such proper preventive measures were unforeseeably overcome by exceptional circumstances

Size of the organisation

We will determine the size of the organisation by its turnover or equivalent (such as the annual revenue budget for public bodies) in line with the following categories in the Guideline:

- large - £50 million and over
- medium - between £10 million and £50 million
- small - between £2 million and £10 million
- micro - not more than £2 million

When we assess the turnover for CRC and ESOS, we will consider the turnover or equivalent of the 'participant'.

If the non-compliant person is an individual, we will assess turnover or income, whichever is appropriate.

We will use tables 1 and 2 to work out the penalty starting point and penalty range.

Table 1 shows the penalty factor we will use to calculate the penalty starting point based on the culpability category and size of the organisation. We will apply this to the initial penalty amount.

Table 1: Size of organisation (based on turnover or equivalent)

Breach category	Large	Medium	Small	Micro
Deliberate	1	0.4	0.1	0.05
Reckless	0.55	0.22	0.055	0.03
Negligent	0.3	0.12	0.03	0.015
Low or no culpability	0.05	0.02	0.005	0.0025

If after applying the penalty factor the starting point is less than £1,000 we will round it up to £1,000. Otherwise the starting point will be too low to reflect the nature of the breach.

Table 2 shows the penalty range factors we will use based on the culpability category and size of the organisation. We will apply this to the initial penalty amount. In step 4, we will normally adjust the penalty starting point within the penalty range.

Table 2: Size of organisation (based on turnover or equivalent)

Breach category	Large	Medium	Small	Micro
Deliberate	0.45 to statutory maximum	0.17 to statutory maximum	0.045 to 0.4	0.009 to 0.095
Reckless	0.25 to statutory maximum	0.1 to 0.5	0.024 to 0.22	0.003 to 0.055
Negligent	0.14 to 0.75	0.055 to 0.3	0.013 to 0.12	0.0015 to 0.03
Low or no culpability	0.025 to 0.13	0.01 to 0.05	0.0025 to 0.02	0.0005 to 0.005

We have developed the factors in these tables for the climate change penalties because we cannot use the tables in the Guideline. It uses different legislative provisions and a different assessment of harm.

Our factors and ranges are derived from the penalty levels under 'harm' category 1 in step 3 of the Guideline. This recognises that 'harm' will already have been considered at the point that the factors are applied.

To calculate our penalty factors and ranges, the starting points for each of the different organisation sizes and culpability levels have been divided by £1 million. Our penalty factors cannot exceed 1 because the maximum climate change penalties are set in law and so the ranges are capped.

At the end of step 3 we will have adjusted the initial penalty amount to reflect culpability and the size of the organisation.

Set the final penalty amount: step 4

We may adjust the penalty from the starting point within the penalty range by assessing the following aggravating and mitigating factors:

- financial gain - whether or not a profit has been made or costs avoided as a

result of the breach

- history of non-compliance - includes the number, nature and time elapsed since the previous non-compliance(s)
- attitude of the non-compliant person - the person's reaction, including co-operation, self-reporting, acceptance of responsibility, exemplary conduct and steps taken to remedy the problem
- personal circumstances - including financial circumstances (such as profit relative to turnover), economic impact and ability to pay (only if sufficient evidence is provided). Also for a public or charitable body whether the proposed penalty would have a significant impact on the provision of its service (only if sufficient evidence is provided)

These factors differ to those listed in the Guideline. We have selected applicable factors from the list. We have also taken factors from other steps in the Guideline. We have then adjusted and simplified them so they are relevant to the climate change schemes.

We will normally adjust a penalty within the range but, in some circumstances, we may move outside the range, including waiving the penalty.

If a public or charitable body provides sufficient evidence to show that the proposed penalty would have a significant impact on the provision of its services, we will normally substantially reduce the penalty from the starting point.

At the end of step 4 we will have calculated the final penalty amount.

Examples of final penalty amount calculations

CRC Energy Efficiency Scheme example

Breach: failure to provide an accurate annual report in the 2013 to 2014 compliance year contrary to article 76 of the CRC Order 2013.

Penalty: £40 per tonnes of CO₂ (tCO₂) of so much of those supplies or emissions which were inaccurately reported:

- 3,000 tCO₂ were inaccurately reported
- the participant has an annual turnover of £60 million and so is a large organisation
- the culpability of the participant is assessed as reckless

Step 1

Check or determine the statutory maximum penalty available for the breach.

- £40 per tCO₂ inaccurately reported
- 3,000 tonnes affected
- $40 \times 3,000 = 120,000$
- statutory maximum = £120,000

Step 2

Set the initial penalty amount by assessing the nature of the breach.

Under section C, paragraph C.3.6, the normal 'nature of the breach' assessment for the 2013 to 2014 compliance year is that we will impose a penalty of £24 per tCO₂ inaccurately reported.

Initial penalty amount = £72,000.

Step 3

Work out the starting point and range for the penalty using the correct factors in tables 1 and 2.

For a large organisation with reckless culpability, the penalty factor in table 1 is 0.55. The penalty range in table 2 is 0.25 up to the statutory maximum.

- $£72,000 \times 0.55 = £39,600$
- $£72,000 \times 0.25 = £18,000$
- Statutory maximum = £120,000
- Penalty starting point = £39,600
- Penalty range = £18,000 to £120,000

Step 4

Set the final penalty amount by assessing the aggravating and mitigating factors.

Penalty starting point reduced by an appropriate amount to take account of the case-specific mitigating factors.

Final penalty amount = £35,640.

EU Emissions Trading Scheme example

Breach: failure to submit a verified emissions report by the statutory deadline contrary to permit condition 2. Penalty: £3,750. The operator:

- submitted a 'not verified' report
- has an annual turnover of £40 million and so is a medium organisation
- is assessed as negligent culpability

Step 1

Check or determine the statutory maximum penalty available for the breach.

£3,750 (no additional daily penalty applies).

Statutory maximum = £3,750.

Step 2

Set the initial penalty amount by assessing the nature of the breach.

Under section B, paragraph B.3.2, the normal 'nature of the breach' assessment is that we impose a penalty of £3,750.

Initial penalty amount = £3,750.

Step 3

Work out the starting point and range for the penalty using the correct factors in tables 1 and 2.

For a medium organisation with negligent culpability, the penalty factor in table 1 is 0.12. The penalty range in table 2 is 0.055 to 0.3.

- $£3,750 \times 0.22 = £450$
- $£3,750 \times 0.055 = £206.25$
- $£3,750 \times 0.3 = £1,125$
- Penalty starting point = £1,000 (lower limit of £1,000 applies)
- Penalty range = £206.25 to £1,125

Step 4

Set the final penalty amount by assessing the aggravating and mitigating factors.

Penalty starting point increased by an appropriate amount to take account of the case-specific aggravating factors.

Final penalty amount = £1,100.

Section B: EU Emissions Trading Scheme (EU ETS)

Section B explains:

- how we normally assess the nature of the breach for each EU ETS breach
- our additional EU ETS enforcement positions

You must read this with [section A](#) which explains our general civil penalty setting principles for the climate change schemes.

B1: The types of EU ETS civil penalties

Under the Greenhouse Gas Emissions Trading Scheme Regulations 2012 (the GGETS Regulations), we may impose civil penalties for certain breaches. The penalty that applies to each breach is set out in GGETS Regulations 52 to 70.

The penalty can be:

- a fixed sum only
- a fixed sum and an additional daily penalty up to a set maximum
- calculated with a formula

The Environment Agency can impose an additional daily penalty for the following breaches - failure to:

- comply with a condition of a permit
- submit or resubmit an application for an emissions plan
- comply with a condition of an emissions plan
- monitor aviation emissions
- report aviation emissions
- return allowances
- comply with an enforcement notice
- comply with an information notice

An additional daily penalty starts to accumulate from the day after the date that the initial notice of civil penalty is served. It stops accumulating on the date the person puts the breach right or the maximum amount payable (if applicable) is reached (read [paragraph B5 which explains the procedure](#)).

We use the additional daily penalty:

- to encourage timely compliance
- if there is a continuing breach which can be put right

We will not use it if the breach cannot be put right or has already been put right.

We may apply our discretion to the fixed sum and/or the additional daily penalty where the law allows.

B2: When and how the Environment Agency will apply discretion to EU ETS penalties

We cannot apply our discretion to the penalty for failure to surrender sufficient

allowances to cover reportable emissions by the statutory deadline (the Excess Emissions Penalty). Read paragraph B3.3 which explains the Excess Emissions Penalty.

We have a specific approach to applying discretion for:

- the exceedance of emissions targets by excluded installations - read paragraph B3.4
- carrying out a regulated activity without a permit - read paragraph B3.1

Otherwise we will apply discretion as explained in [section A](#).

B3: Civil penalties for installations and aviation

Paragraphs B3.1 to B3.20 list the GGETS Regulations breaches and state the maximum civil penalty available for each breach.

Each paragraph states the breach and explains our normal 'nature of the breach' assessment and other enforcement position (if there is one) for that breach.

Our nature of the breach assessment may state that we will not normally impose a penalty (waive the civil penalty) or it will state the normal 'initial penalty amount' (as explained in [section A](#)). However, before we set the initial penalty amount we will take account of any representations we receive - see [section 6.2 Enforcement and sanctions policy \(ESP\)](https://webarchive.nationalarchives.gov.uk/ukgwa/20221122031726mp_/https://www.gov.uk/government/publications/environment-agency-enforcement-and-sanctions-policy) (https://webarchive.nationalarchives.gov.uk/ukgwa/20221122031726mp_/https://www.gov.uk/government/publications/environment-agency-enforcement-and-sanctions-policy).

B3.1: Carrying out a regulated activity without a permit

GGETS Regulation 52 provides a formula for calculating a penalty for this breach. We must use the formula and follow a [Secretary of State's Direction](https://webarchive.nationalarchives.gov.uk/ukgwa/20221122031726mp_/https://www.gov.uk/government/publications/direction-from-the-secretary-of-state-on-calculating-penalties-for-operating-an-eu-ets-activity-without-a-permit) (https://webarchive.nationalarchives.gov.uk/ukgwa/20221122031726mp_/https://www.gov.uk/government/publications/direction-from-the-secretary-of-state-on-calculating-penalties-for-operating-an-eu-ets-activity-without-a-permit) which tells us how to estimate certain factors in the formula.

Our penalty setting approach

We will normally impose a penalty for this breach.

The formula for each affected scheme year is $A + (B \times C)$ where:

- A is the estimated amount of the costs avoided 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

We must work out the 'total costs avoided' element of the penalty. This is:

- A - avoided monitoring, reporting and verification (MRV) costs plus avoided fees
- $B \times C$ - the cost of allowances to cover emissions during the non-compliance period

We may increase the resulting figure by 5% to ensure the penalty exceeds the amount of any economic benefit obtained from the non-compliance. This is known as the 'punitive element' of the penalty.

Normally we will only reduce the 'total costs avoided' element if the operator can demonstrate it has not avoided some or all of these costs. This is because the calculation should reflect all the costs avoided by not having a permit. By paying this sum it puts the operator into the same position as it would have been had it complied.

We will pro-rata the calculation of A (not including the permit variation fee) to take account of the number of days the operator carried out a regulated activity without a permit in any one year. This will be from the start date of the regulated activity in the first year of non-compliance to the effective date of the permit in that year or a following year.

To calculate avoided fees we must include the permit variation fee. But, if a regulated activity at an installation started after 1 January 2013, we will normally reduce the penalty by £430 (the variation fee). This is because the variation fee is intended to cover varying a Phase II permit to a Phase III permit. So if activities started after 1 January 2013, there would have been no Phase II permit to vary. Therefore it is not an avoided fee.

To calculate the MRV element of the costs we will use £8,000 for the first year of non-compliance and for all following years of non-compliance. The Direction suggests using £15,000 for the first year of non-compliance (to account for set up costs) and £8,000 for all following years of non-compliance.

We have removed the set up cost element because they are not normally avoided by the operator. An operator must learn about the scheme, invest in systems and pay the permit application fee whether they are applying for a permit on time or later.

We will normally reduce the MRV element of the costs avoided if the operator can demonstrate that for the period of non-compliance it has:

- monitored its annual emission data
- submitted a report
- had the data verified

If an operator fails to hold an EU ETS permit and as a result the installation is captured by the CRC for the period of non-compliance, we will normally reduce the total costs avoided element of the penalty by the cost of the CRC allowances purchased by the CRC participant to cover the installation's:

- gas consumption
- electricity consumption during Phase II of CRC only

We will not normally take account of a CRC participant's monitoring and reporting costs incurred through CRC when we determine costs avoided by the operator.

For the punitive element of the penalty, we will apply our discretion as described in [section A](#). The initial penalty amount will be the maximum sum available.

B3.2: Failure to comply with a condition of an EU ETS permit

GGETS Regulation 53 sets the penalty amount for a breach of the majority of permit conditions - they are both of the following:

- £3,750

- an additional £375 for each day the operator fails to comply with the condition following the service of the initial notice of civil penalty, up to a maximum of £33,750

The penalty for failing to comply with a condition requiring notification of a qualifying significant capacity reduction or a qualifying partial cessation is £5,000.

Our normal 'nature of the breach' assessment and other enforcement positions are in the following paragraphs for failing to comply with a condition of:

- a greenhouse gas emissions (GHG) permit
- an [excluded installations emissions \(EIE\) permit](#)

GHG permit conditions

GHG permit: condition 1

The operator must monitor the annual reportable emissions of the installation in accordance with the Monitoring and Reporting Regulation (Commission Regulation (EU) No 601/2012 of 21 June 2012) and the monitoring plan (including the written procedures supplementing that plan).

Our nature of the breach assessment

The monitoring obligations underpin the reporting and surrender requirements and are vital to the integrity of the scheme.

Our nature of the breach assessment will consider how many emissions have not been correctly monitored and the percentage of the installation's annual reportable emissions this number represents.

We will determine the installation category (as defined in Article 19(2) of the Monitoring and Reporting Regulation (MRR)) and the relevant threshold using the figures in this table:

Category of installation	Average verified annual emissions (tCO ₂)	Threshold

Category of installation	Average verified annual emissions (tCO ₂)	Threshold
A	≤50,000	≥ 1,000 tCO ₂ or 10% of annual reportable emissions, whichever is the higher
B	>50,000 - 500,000	≥ 5,000 tCO ₂ or 5% of annual reportable emissions, whichever is the higher
C	>500,000	≥ 50,000 tCO ₂ or 2% of annual reportable emissions, whichever is higher

Whether we impose a penalty will depend on whether the emissions affected by a breach are above or below the threshold for that category of installation. If they are below the threshold we will not normally impose a penalty because we will not regard the breach as undermining the integrity of the scheme. If they are above the threshold we will normally impose a penalty. We will normally use the statutory maximum as the initial penalty amount.

Our nature of the breach assessment will check whether an operator has back-up methodologies for monitoring failures. This is likely to determine whether an operator can submit a verified emissions report. If, despite the monitoring breach, an operator is able to submit a verified emissions report, there will be less of an impact on the integrity of the scheme. We will normally for a monitoring breach:

- leading to a 'not verified' emissions report, impose a penalty for the monitoring breach and a penalty for failure to submit a verified emissions report
- with a verified emissions report, set the initial penalty amount at 50% of the statutory maximum - we will take account of the time taken to restore compliance and may use an additional daily penalty to do so

GHG permit: condition 2

The operator must, by 31 March each year, submit a verified report of its annual reportable emissions made in the previous year to the regulator, in accordance

with the MRR and the Verification Regulation (Commission Regulation (EU) No 601/2012 of 21 June 2012).

Our nature of the breach assessment

Reporting accurately and on time is vital to the effective operation of the scheme. The deadline for reporting is 31 March. Meeting this deadline allows time to obtain allowances and surrender them by 30 April.

An operator will be in breach of this requirement if it:

- does not submit an emissions report - the most serious breach, which significantly impacts the integrity of the scheme
- submits a 'not verified' emissions report - a serious breach which also significantly impacts the integrity of the scheme because there are likely to be material errors or missing data
- submits a 'verified' emissions report late (after 31 March) - a less serious breach but it still impacts the integrity of the scheme
- submits a 'verified' emissions report which is later found to be inaccurate - see our approach in B3.3

We will normally impose a penalty for the first 3 breaches.

We will normally set the initial penalty amount for the fixed sum and additional daily penalty (if applicable) as shown in this table:

Type of breach	Normal fixed penalty amount	Normal additional daily penalty (where applicable)
No report submitted	£3,750	£375
Submission of a 'not verified' report	£3,750	£375
Submission of a late verified report	£2,750	£275

Our assessment will:

- not take account of the level of emissions or size of the operator because this does not affect how seriously the breach impacts on the integrity of the scheme - however, we will consider the operator's size and financial circumstances in steps 3 and 4 of our stepped penalty setting approach
- not be more lenient for the first year an operator has been required to comply with the reporting obligation
- reflect the extent of the lateness of the report in the additional daily penalty amount

We will aim to issue an 'initial notice of civil penalty' (see [paragraph B5](#)) within one week of the 31 March deadline to all operators who have not submitted an emissions report.

GHG permit: condition 3

The operator must satisfy the regulator, if an emission factor of zero has been reported in respect of the use of bio liquids, 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.

Our nature of the breach assessment

If an operator fails to satisfy us as required by this condition, we will determine the reportable emissions. We will substitute the emissions factor reported for an emissions factor greater than zero. This power is set out in GGETS Regulation 44(1)(b). We will not normally impose a penalty in these cases, as it does not significantly impact the integrity of the scheme.

We will normally impose a penalty if an operator used a zero emissions factor in its verified annual emissions report and we later found out it had not met the sustainability criteria. We will normally use the statutory maximum as the initial penalty amount.

GHG permit: condition 4

The operator must, by 30 April in each year, surrender a number of allowances in the registry equal to the annual reportable emissions of the installation made in the previous year.

Our approach to penalty setting

Our approach is explained in paragraph B3.3: Failure to surrender allowances.

GHG permit: condition 5

Where an operator proposes to make a significant modification to its monitoring plan under Article 15 of the MRR, the operator must apply to the regulator for a variation of its permit at least 14 days prior to making the change or, where this is not practicable, as soon as possible thereafter and such application must:

- include a description of the change
- set out how it affects the information contained in the monitoring plan

Our nature of the breach assessment

We will not normally impose a penalty if the operator submits an application to vary its permit in time to enable verification of its annual emissions report by 31 March. Doing this will not significantly impact the integrity of the scheme.

Our additional enforcement position

We will normally impose a penalty if an operator repeatedly breaches this condition. We will normally use the statutory maximum as the initial penalty amount.

The operator may be in breach of permit condition 1 if the change to its monitoring plan is not in line with the MRR. An early application will help resolve any issues and avoid potential breach.

GHG permit: condition 6

Where an operator makes a change to its monitoring plan under Article 14 or 58(4) of the MRR that is not a significant modification, the operator must notify the regulator by 31 December in the year in which the change occurred and such notification must:

- include a description of the change
- set out how it affects the information contained in the monitoring plan
- explain how the change is in accordance with the MRR

Our nature of the breach assessment

We will not normally impose a penalty if an operator fails to notify us of a 'non-significant' change to its monitoring plan as this will not significantly impact the integrity of the scheme.

GHG permit: condition 7

Where the name of the operator changes, the operator must apply to the regulator for a variation of its permit in order to reflect the change as soon as practicable following the change.

Our nature of the breach assessment

We will not normally impose a penalty for breach of this condition as it does not significantly impact the integrity of the scheme. A name change is not a change of legal entity (which requires a permit transfer).

GHG permit: condition 8

Where the operator does not apply at least the tiers required or applies a fall-back methodology pursuant to the MRR, the operator must submit a report to the regulator in accordance with the requirements specified in Article 69(1) of the MRR by the following deadlines, starting in the case of a new operator with 30 June in the year following that in which the permit is granted and for any other operator, with 30 June 2013:

- for a category A installation, by 30 June every 4 years
- for a category B installation, by 30 June every 2 years
- for a category C installation, by 30 June every year

Our nature of the breach assessment

We will normally impose a penalty for this breach. We consider this breach less serious than failing to submit a verified report of annual reportable emissions. But it does impact the integrity of the scheme and may have serious consequences. We will normally set the initial penalty amount at £1,500.

Our additional enforcement position

For an operator's first breach of this condition, we will not normally impose a penalty if we receive the report within 10 working days of the deadline.

GHG permit: condition 9

Where a verification report states outstanding non-conformities or recommendations for improvements as specified in Article 69(4) of the MRR, the operator must submit a report to the regulator in accordance with the requirements of that Article by 30 June of the year in which the verification report is issued.

Our nature of the breach assessment

Verifiers can state 2 types of improvements, a:

- non-conformity - this must be rectified because the operator has not conformed with its plan or the MRR
- recommendation for improvement - the operator must consider the improvement but does not have to implement it because it is a suggestion on how to improve methodology

There is less impact on the integrity of the scheme if an operator fails to submit an improvement report relating to a recommendation for improvement at all or by 30 June than if it fails to submit one relating to a non-conformity.

We will normally impose a penalty for these breaches. We will normally set the initial penalty amount for the fixed sum (or waive the penalty) as shown in this table:

Type of breach	Normal initial penalty amount
First failure to submit an improvement report relating to a non-conformity if submitted within 10 working days of the deadline	waived
Failure to submit an improvement report relating to a non-conformity	£1,500
First failure to submit an improvement report relating to a recommendation	waived
Subsequent failure to submit an improvement report relating to a recommendation	£1,500

If an operator fails to submit an improvement report relating to a non-conformity in one year and then fails to submit a report relating to a recommendation in a future year, we will normally impose a penalty for the later failure. We will normally set the initial penalty amount as £1,500.

Our assessment will:

- not take account of the level of emissions or size of the operator because it is

difficult to identify the proportion of emissions affected by the stated improvements; however, we will consider the operator's size and financial circumstances in steps 3 and 4 of our stepped penalty setting approach

- reflect the extent of the lateness of the report in the additional daily penalty - the normal additional daily penalty amount will be £150 per day

We will issue an 'initial notice of civil penalty' (see [paragraph B5](#)) as soon as possible after 10 working days from the deadline.

GHG permit: condition 10

The operator must notify the regulator in accordance with the MRR at least 14 days prior to commencement of any of the circumstances in paragraphs (1) to (4) below or, where this is not practicable, as soon as possible thereafter:

- where there is a temporary change to its monitoring methodology as specified in Article 23 of the MRR
- where tier thresholds are exceeded or equipment is found not to conform to requirements which require corrective action as specified in Article 28(1) of the MRR
- where a piece of measurement equipment is out of operation as specified in Article 45 of the MRR
- where an installation with low emissions exceeds the relevant threshold as specified in Article 47(8) of the MRR

Our nature of the breach assessment

We will not normally impose a penalty for breach of this condition because the operator only needs to notify us of a change. It does not significantly impact the integrity of the scheme.

If an operator does notify us of a change to its monitoring and the change could cause it to breach permit condition 1 (a more serious breach), then we will notify them of the potential breach. This will give the operator the opportunity to ensure their monitoring complies with permit condition 1.

GHG permit: condition 11

Except in the case of installations not eligible for an allocation, where a sub-

installation has had a qualifying significant capacity reduction, the operator must, by the later of (a) the end of the period of 7 months following the change of capacity, (b) 31 December in the year in which that change occurred or (c) 1 February 2013 (the relevant date), submit a notice to the regulator containing both of the following:

- a statement of the reduced capacity and the installed capacity of the sub-installation after taking into account the capacity reduction
- a statement that the data under paragraph (a) have been verified except that, where the relevant date is before 30 May 2013, the statement required in (b) above need only be submitted by 30 May 2013.

GHG permit: condition 12

Except in the case of installations not eligible for an allocation, where a sub-installation had a qualifying partial cessation which occurred in any year other than 2012, the operator must, by the later of (a) 31 December in the year in which the reduction occurred or (b) within one month after the date on which it occurred, notify the regulator that a reduction in activity level has occurred, stating the amount of that reduction and the sub-installation to which it applies.

GHG permit: condition 13

Except in the case of installations not eligible for an allocation, where a sub-installation had a qualifying partial cessation which occurred during 2012, the operator must, by 1 February 2013, notify the regulator that a reduction in activity level has occurred, stating the amount of that reduction and the sub-installation to which it applies.

Our nature of the breach assessment for conditions 11, 12 and 13

We will not normally impose a penalty if the operator notifies us of a significant capacity reduction or partial cessation before it is issued with its free allocation of allowances affected by the notification.

In all other cases we will normally impose a penalty as this impacts the integrity of the scheme. We will normally use the statutory maximum as the initial penalty amount.

GHG permit: condition 14

Unless already notified in accordance with other requirements of this permit, the operator must notify 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.

Our nature of the breach assessment

We will not normally impose a penalty for breach of this condition. It is unlikely to impact the integrity of the scheme.

GHG permit: condition 15

The operator must keep records of all relevant data and information in accordance with Article 66 of the MRR.

Our nature of the breach assessment

We will normally impose a penalty for this breach. We will normally use the statutory maximum as the initial penalty amount. The operator must be able to provide adequate records. The quality of the operator's data and information impacts the integrity of the scheme.

Excluded installations emissions (EIE) permit conditions

EIE permit conditions 1, 3, 4, 5, 6 and 7 are the same as those in the GHG permit. Our assessments are the same.

EIE permit: condition 2

The operator must, by 31 March each year, submit to the regulator a report of its annual reportable emissions made in the previous year, in accordance with the relevant provisions of the MRR that is either:

- verified in accordance with the Verification Regulation
- accompanied by a notice declaring that:
- in preparing the report, the operator has complied with the relevant provisions of the MRR
- the operator has complied with the monitoring plan
- the report is free from material misstatements

Our nature of the breach assessment

An operator will be in breach of this requirement if:

- it does not submit a report
- it submits a 'not self-verified' report - one that does not include a notice declaring the requirements of (b) above
- it submits a report late
- we find the notice submitted with the report is incorrect because the operator has not complied with the relevant provisions of the MRR and its monitoring plan or the report does contain material misstatements

We will normally impose a penalty for all of these breaches because they impact the integrity of the scheme. It is vital that operators report accurately and on time. But the requirement is slightly less significant for EIE permit holders than for GHG permit holders because excluded installations are not required to surrender allowances to cover their emissions.

We will normally set the initial penalty amounts for both the fixed sum and the additional daily penalty (if applicable) as shown in this table:

Type of breach	Normal fixed penalty amount	Normal additional daily penalty (where applicable)
No report submitted	£3,250	£325
Submission of a 'not self-verified' report	£3,250	£325
Submission of a late report	£2,250	£225
Notice is incorrect	£3,250	£325

Our assessment will:

- not take account of the level of emissions or size of the operator because this does not affect how seriously the breach impacts on the integrity of the scheme - however, we will consider the operator's size and financial

circumstances in steps 3 and 4 of our stepped penalty setting approach

- not be more lenient for the first year an operator has been required to comply with the reporting obligation
- reflect the extent of the lateness of the report in the additional daily penalty

We will aim to issue an 'initial notice of civil penalty' (see [paragraph B5](#)) within one week of the deadline to all operators who have failed to submit a report.

EIE permit: condition 8

Where the installation does not primarily provide services to a hospital, the operator must notify the regulator if the annual reportable emissions from the installation in any year exceed the maximum amount, by 31 March in the following year.

EIE permit: condition 9

Where the installation primarily provides services to a hospital, the operator must notify the regulator if the installation ceases to do so in any year, by 31 March in the following year.

Our nature of the breach assessment for conditions 8 and 9

Read [paragraph B3.7](#) for our assessment on when an operator fails to notify us that its excluded installation no longer meets the rules for being excluded.

EIE permit: condition 10

The operator must keep records of all relevant data and information in accordance with Article 66 and in relation to any notice submitted under condition 2.

Our nature of the breach assessment

We will normally impose a penalty for this breach. We will normally use the statutory maximum as the initial penalty amount. We audit excluded installations and will require the operator to provide records so that we can confirm the annual emissions report is correct.

EIE permit: condition 11

Unless notification has been given under condition 8 and where the operator operates an installation which primarily provides services to a hospital, the

operator must:

- maintain records demonstrating that it continues to primarily provide services to a hospital
- comply with requests from the regulator to inspect those records for the purpose of verifying the accuracy of the records and of the emissions report

Our nature of the breach assessment

We will not normally impose a penalty for this breach. If an operator cannot demonstrate it primarily provides services to a hospital then it must re-enter EU ETS as a GHG permit holder. The financial and administrative cost of this is higher than the cost of imposing a penalty.

B3.3: Failure to surrender allowance

We are required to impose the Excess Emissions Penalty if an operator or UK administered operator fails to surrender allowances equal to its annual reportable emissions in the Union Registry by the statutory deadline.

GGETS Regulation 54 sets the Excess Emissions Penalty. The starting point for the penalty is the sterling equivalent of €100 for each allowance the person failed to surrender. The amount is converted to sterling by the first rate of conversion to be published in September of the year preceding the scheme year in which the person is liable to the penalty in the C series of the Official Journal of the European Union (see GGETS Regulation 54(7)).

From 2013 onwards, we must adjust this figure as a result of the Harmonised Index of Consumer Prices for the Member States of the European Union (HICP) published by Eurostat. If the last HICP published before the end of April in the year the breach took place shows an average percentage price increase compared with the last HICP published before the end of April 2012, then we will increase the sterling equivalent by the same percentage.

We cannot apply our discretion to this breach because the Excess Emission Penalty is mandatory. The amount of the penalty and the requirement to impose it are set in the EU ETS Directive (2003/87/EC).

However, an operator or UK administered operator may be liable to a reduced penalty if it submitted its verified emissions report (or its emissions are

determined by us) for a particular year and later it does all of the following:

- finds out it has under-reported its annual reportable emissions in that report or determination
- corrects the error
- co-operates with us

The penalty is the sterling equivalent of €20 for each allowance it failed to surrender by the statutory deadline. We may apply our discretion to this penalty.

To calculate the €20 per allowance penalty, we must use the same definition of 'sterling equivalent' as applies to the Excess Emissions Penalty (see above). In part of the calculation, we must determine the scheme year in which an operator or UK administered operator is liable to the penalty. For under-surrenders relating to emissions in:

- the scheme years before 2013, an operator or UK administered operator is liable to the penalty on 31 January 2014, being the date on which the relevant provisions of the GGETS Regulations came into force
- 2013 onwards, an operator or UK administered operator is liable to the penalty on 30 April in the year in which it failed to surrender sufficient allowances

Our nature of the breach assessment

We will normally impose a penalty where the €20 per allowance penalty applies. We will normally use the statutory maximum as the initial penalty amount.

Our assessment will not take account of the level of unreported emissions compared to the total reportable emissions. It is the most serious breach under the scheme. This breach significantly impacts the integrity of the scheme, regardless of how many emissions have been unreported. Also, the penalty is €20 multiplied by the number of allowances not surrendered (normally the amount of unreported emissions). So the calculation itself already takes account of the level of unreported emissions.

Our additional enforcement position

We will not normally impose a penalty if the statutory maximum penalty for this breach is €1,000 or less when the operator:

- did not deliberately under-report
- had no serious management failure
- put the errors right quickly
- co-operated with us

This is because the cost of imposing the penalty normally outweighs the public interest in imposing it. But we may impose a penalty if the opposite applies, as it may be in the public interest to do so.

If, after submitting a verified emissions report, an operator or UK administered operator finds it has under-reported its emissions, it is likely to also have breached the requirement to:

- monitor emissions in line with the MRR and its monitoring plan
- submit a verified emissions report in line with the MRR and Verification Regulation

This is because, in most cases, incorrect monitoring and reporting will have led to the under-report.

If we impose a penalty for a failure to surrender allowances because of an under-report, we will normally waive the penalties for breach of the associated monitoring and reporting requirements. The penalty will be large enough to penalise the operator or UK administered operator and deter other operators or UK administered operators and so is proportionate.

B3.4: Exceeding an emissions target for an excluded installation

Excluded installations are set emissions targets. If the operator's emissions are greater than their target, GGETS Regulation 55 sets a civil penalty. The penalty is $(A - B) \times C$, where:

- 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

Our penalty setting approach

When we apply our discretion to this breach we will not use the stepped approach explained in [Section A](#).

We do not think this penalty is a sanction for non-compliance. Rather than surrendering allowances to cover their emissions, excluded installations must make sure that their emissions do not exceed their emissions target.

Where an excluded installation exceeds their emissions target the penalty is designed to cover the payment of the excess emissions. The European Commission agreed the Opt-out Scheme based on it delivering equivalent emissions reductions to installations within the full EU ETS. So the penalty is essential for the Opt-out Scheme to operate effectively and plays an important part in reducing emissions.

We may, in exceptional circumstances, reduce the penalty, for example, if an error in the emissions target is discovered after the compliance deadline.

We may extend the time for payment of a penalty, where payment by the set payment deadline would cause financial hardship.

We will not normally publicise these penalties.

B3.5: Failure to pay a penalty for exceeding an emissions target for an excluded installation

GGETS Regulation 56 sets the civil penalties - they are both of the following:

- 10% of the penalty imposed under Regulation 55
- an additional £150 for each day that the operator fails to pay that penalty following service of the initial notice of civil penalty, up to a maximum of £13,500

Our nature of the breach assessment

We will normally impose a penalty for this breach as it significantly impacts the integrity of the scheme. We will normally use the statutory maximum as the initial penalty amount.

B3.6: Under-reporting of emissions from an excluded installation

GGETS Regulation 57 sets the civil penalty. It 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

Our nature of the breach assessment

We will not normally impose a penalty for this breach if an operator:

- notifies us that it has under-reported its emissions
- corrects the error
- submits an accurate report
- pays any applicable penalties for breaching its emissions target

In all other circumstances, we will normally impose a penalty for this breach. We will normally use the statutory maximum as the initial penalty amount.

B3.7: Failure to notify when an excluded installation ceases to meet the criteria for being excluded

If an operator no longer meets the criteria for being excluded, it must notify us and re-enter EU ETS as a GHG permit holder. GGETS Regulation 58 sets the penalty for not notifying us.

If an operator does not notify us by 31 March in the relevant year, the penalty is £2,500. For the first and each following year the operator still fails to notify us by 31 October in that year, the penalty is set higher than the cost saved by the operator by not re-entering the EU ETS as a GHG permit holder.

Our nature of the breach assessment

We will normally impose a penalty for this breach as it impacts the integrity of the scheme. We will normally use the statutory maximum as the initial penalty amount.

We will not normally impose a penalty if the operator tells us they no longer meet the exclusion criteria in time for us to notify the operator (under Schedule 5, paragraph 8(1) to the GGETS Regulations - the regulator notice) and vary its permit, so that it takes effect on 1 January in the scheme year after the year that the regulator notice was given.

B3.8: Failure to notify when an excluded installation has had a significant capacity reduction or partial cessation

If an excluded installation is to re-enter the EU ETS, the operator must notify us of relevant significant capacity reductions or partial cessations at the installation. GGETS Regulation 58A sets the civil penalty for not notifying us - it is £5,000.

Our nature of the breach assessment

We will not normally impose a penalty if the operator notifies us of the significant capacity reduction or partial cessation before it is issued with its free allocation of allowances.

We will normally impose a penalty for this breach in all other cases as it impacts the integrity of the scheme. We will normally use the statutory maximum as the initial penalty amount.

B3.9: Failure to notify when the operator of an excluded installation has suspended the carrying out of regulated activities

If an excluded installation is to re-enter the EU ETS, the operator must notify us if it has suspended carrying out regulated activities at the installation during the relevant period. The civil penalty for not notifying us is set by GGETS Regulation 58B - it is £3,750.

Our nature of the breach assessment

We will not normally impose a penalty for this breach unless the failure to notify results in the issue of allowances to which the installation is not entitled. In that case, we will use the statutory maximum as the initial penalty amount.

B3.10: Failure to surrender a permit

GGETS Regulation 59 sets the civil penalty for this breach - it is £5,000.

Our nature of the breach assessment

We will not normally impose a penalty for this breach if the operator does not gain anything from holding the permit, such as receiving allowances to which it is not entitled.

We will normally impose a penalty if the operator does gain from this breach as it impacts the integrity of the scheme. We will normally use the statutory maximum as the initial penalty amount.

B3.11: Failure to submit or resubmit an application for an emissions plan

A UK administered operator must submit and, if necessary resubmit an application for an emissions plan on time or provide a satisfactory explanation as to why it cannot. GGETS Regulation 60 sets the civil penalty for failing to do this - they are both of the following:

- £1,500
- an additional £150 for each day the application or resubmission of an application is not provided following the service of an initial notice of civil penalty, up to a maximum of £13,500

Our nature of the breach assessment

A UK administered operator performing aviation activities must obtain an emissions plan. This is to make sure its emissions are accurately monitored and reported. We will normally impose a penalty for this breach if:

- the application affects the UK administered operator's ability to report accurately and on time for the first scheme year in which it becomes a UK aircraft operator
- the UK administered operator submits an emissions report without first applying for an emissions plan

This breach impacts the integrity of the scheme. We will normally use the statutory maximum as the initial penalty amount.

B3.12: Failure to notify the regulator if an emissions plan is not applied for

GGETS Regulation 61 sets the civil penalty for this breach - it is £5,000.

Our nature of the breach assessment

We will normally impose a penalty for this breach because it impacts the integrity of the scheme. We will normally use the statutory maximum as the initial penalty amount.

This requirement is important as it enables us to monitor the UK administered operators on the European's Commission list that have not yet performed aviation activities. We can also check that all UK administered operators that should be complying are doing so.

B3.13: Failure to comply with a condition of an emission plan

GGETS Regulation 62 sets the penalty amount for this breach - they are both of the following:

- £1,500
- an additional £150 for each day the UK administered operator fails to comply with the condition following the service of the initial notice of civil penalty, up to a maximum of £13,500

Emission plan condition 1

Where the emissions plan holder proposes to make a significant modification to its emissions plan under Article 15, the emissions plan holder must apply to the regulator for a variation of its emissions plan at least 14 days prior to making the change or, where this is not practicable, as soon as possible thereafter and such application must:

- include a description of the change
- set out how it affects the information contained in the emissions plan
- explain how the change is in accordance with the MRR

Our nature of the breach assessment

We will not normally impose a penalty if the UK administered operator submits an application to vary its emission plan in time to enable verification of its annual emissions report by 31 March. Doing this will not significantly impact the integrity of the scheme.

Our additional enforcement position

We will normally impose a penalty for this breach if a UK administered operator repeatedly breaches this condition. We will normally use the statutory maximum as the initial penalty amount.

The UK administered operator may be in breach of GGETS regulation 35(1) if the change to its monitoring plan is not in line with the MRR. An early application will help resolve any issues and avoid potential breach.

Emission plan condition 2

Where the emissions plan holder makes a change to its emissions plan under Article 14 or 58(4) that is not a significant modification, the emissions plan holder must notify the regulator by 31 December in the year in which the change occurred and such notification must:

- include a description of the change
- set out how it affects the information contained in the emissions plan
- explain how the change is in accordance with the MRR

Our nature of the breach assessment

We will not normally impose a penalty if a UK administered operator fails to notify us of a 'non-significant' change to its emissions plan as this will not significantly impact the integrity of the scheme.

Emission plan condition 3

Where the name of the emission plan holder changes, the emission plan holder must apply to the regulator for a variation of its emissions plan in order to reflect

the change as soon as practicable following the change.

Our nature of the breach assessment

We will not normally impose a penalty for this breach as it does not significantly impact the integrity of the scheme. A name change is not a change in legal entity.

Emission plan condition 4

Where the emissions plan holder uses any of the tools referred to in Article 54(2) and exceeds the threshold referred to in Article 54(1), the emissions plan holder must notify the regulator within 14 days of exceeding the threshold or, where this is not practicable, as soon as possible thereafter.

Our nature of the breach assessment

We will normally impose a penalty for this breach. We will normally use the statutory maximum as the initial penalty amount. It will impact the integrity of the scheme if a UK administered operator does not notify us it has exceeded the small emitter's threshold.

Emission plan condition 5

Where a verification report states outstanding non-conformities or recommendations for improvements as specified in Article 69(4), the emissions plan holder must submit a report to the regulator in accordance with the requirements of that Article by 30 June of the year in which the verification report is issued.

Our nature of the breach assessment

Verifiers can state 2 types of improvements, a:

- non-conformity - this must be rectified because the UK administered operator has not conformed with its plan or the MRR
- recommendation for improvement - the UK administered operator must consider the improvement but does not have to implement it because it is a suggestion on how to improve methodology

There is less impact on the integrity of the scheme if a UK administered operator fails to submit an improvement report relating to a recommendation for improvement at all or by 30 June than if it fails to submit one relating to a non-conformity.

We will normally impose a penalty for these breaches. We will normally set the initial penalty amount for the fixed sum (or waive the penalty) as shown in this table:

Type of breach	Normal initial penalty amount
First failure to submit an improvement report relating to a non-conformity if submitted within 10 working days of the deadline	waived
Failure to submit an improvement report relating to a non-conformity	£1,500
First failure to submit an improvement report relating to a recommendation	waived
Subsequent failure to submit an improvement report relating to a recommendation	£1,500

If an UK administered operator fails to submit an improvement report relating to a non-conformity in one year and then fails to submit a report relating to a recommendation in a future year, we will normally impose a penalty for the later failure. We will normally set the initial penalty amount as £1,500.

Our assessment will:

- not take account of the level of emissions or size of the UK administered operator because it is difficult to identify the proportion of emissions affected by the stated improvements - however, we will consider the UK administered operator's size and financial circumstances in steps 3 and 4 of our stepped penalty setting approach
- reflect the extent of the lateness of the report in the additional daily penalty - the normal additional daily penalty amount will be £150 per day

We will issue an 'initial notice of civil penalty' (see [paragraph B5](#)) as soon as possible after 10 working days from the deadline.

Emission plan condition 6

The emissions plan holder must keep records of all relevant data and information in accordance with Article 66.

Our nature of the breach assessment

We will normally impose a penalty for this breach. We will normally use the statutory maximum as the initial penalty amount. The UK administered operator must be able to provide adequate records. The quality of the UK administered operator's data and information impacts the integrity of the scheme.

B3.14: Failure to monitor aviation emissions

GGETS Regulation 63 sets the civil penalties for this breach - they are both of the following:

- £1,500
- an additional £150 for each day that the UK administered operator fails to monitor aviation emissions following the service of an initial notice of civil penalty, up to a maximum of £13,500

Our nature of the breach assessment

The monitoring obligations underpin the reporting and surrender requirements and are vital to the integrity of the scheme.

Our nature of the breach assessment will consider how many emissions have not been correctly monitored and the percentage of the UK administered operator's annual reportable emissions this number represents.

We will determine the UK administered operator category and the relevant threshold using the figures in this table:

Category of UK administered operator	Annual reportable emissions (tCO₂)	Threshold
A	≤50,000	≥ 1,000 tCO ₂ or 10% of annual reportable emissions, whichever is the higher

Category of UK administered operator	Annual reportable emissions (tCO ₂)	Threshold
B	>50,000 - 500,000	≥ 5,000 tCO ₂ or 5% of annual reportable emissions, whichever is the higher
C	>500,000	≥ 50,000 tCO ₂ or 2% of annual reportable emissions, whichever is higher

The term 'annual reportable emissions' means the emissions that a UK administered operator is required to report - this may differ from its total annual emissions.

Whether we impose a penalty will depend on whether the emissions affected by a breach are above or below the threshold for that category of UK administered operator. If they are below the threshold we will not normally impose a penalty because we will not regard the breach as undermining the integrity of the scheme. If they are above the threshold we will normally impose a penalty. We will use the statutory maximum as the initial penalty amount.

Our nature of the breach assessment will check whether a UK administered operator has back-up methodologies for monitoring failures. This is likely to determine whether a UK administered operator can submit a verified emissions report. If, despite the monitoring breach, a UK administered operator is able to submit a verified emissions report, there will be less of an impact on the integrity of the scheme. We will normally:

- for a monitoring breach leading to a 'not verified' emissions report, impose a penalty for the monitoring breach and a penalty for failure to submit a verified emissions report
- for a monitoring breach with a verified emissions report, set the initial penalty amount at 50% of the statutory maximum - we will take account of the time taken to restore compliance and may use an additional daily penalty to do so

B3.15: Failure to report aviation emissions

GGETS Regulation 64 sets the civil penalties for this breach - they are both of the following:

- £3,750
- an additional £375 for each day that the UK administered operator fails to monitor aviation emissions following the service of an initial notice of civil penalty, up to a maximum of £33,750

Our nature of the breach assessment

Reporting accurately and on time is vital to the effective operation of the scheme. The deadline for reporting is 31 March. Meeting this deadline allows time to obtain allowances and surrender them by 30 April.

A UK administered operator will be in breach of this requirement if it:

- does not submit an emissions report - the most serious breach, which significantly impacts the integrity of the scheme
- submits a 'not verified' emissions report - a serious breach which also significantly impacts the integrity of the scheme because there are likely to be material errors or missing data
- submits a 'verified' emissions report late (after 31 March) - a less serious breach but it still impacts the scheme
- submits a 'verified' emissions report which is later found to be inaccurate - see our approach in paragraph B3.3

We will normally impose a penalty for the first 3 breaches.

We will normally set the initial penalty amount for the fixed sum and additional daily penalty (if applicable) as shown in this table:

Type of breach	Normal initial penalty amount	Normal additional daily penalty (where applicable)
No report submitted	£3,750	£375
Submission of a 'not verified' report	£3,750	£375

Type of breach	Normal initial penalty amount	Normal additional daily penalty (where applicable)
Submission of a late verified report	£2,750	£275

Our assessment will not take account of the level of emissions or size of the UK administered operator because this does not affect how seriously the breach impacts the integrity of the scheme. However, we will consider the UK administered operator's size and financial circumstances in steps 3 and 4 in our stepped penalty setting approach.

Our enforcement position

For aviation EU ETS, we will not normally issue an 'initial notice of civil penalty' (see [paragraph B5](#)) immediately after an UK administered operator commits this breach. Instead, we will usually determine its emissions using Eurocontrol Data. We will then serve a notice of determination as soon as possible after the breach. This is to help the UK administered operator comply with the surrender obligation by 30 April.

In these circumstances we will normally impose a fixed sum penalty. We will set the amount to ensure no financial gain is made by not submitting a verified report on time. We will use the statutory maximum as the initial penalty amount because of the cost of verification. We will consider 'financial gain' at step 4 of our stepped penalty setting approach. We may also impose penalties for related breaches, such as a failure to monitor.

In exceptional cases we may use an additional daily penalty, for example, if we are unable to accurately determine the emissions of an UK administered operator that performs large-scale aviation activities using Eurocontrol Data.

B3.16: Failure to provide advice and assistance

GGETS Regulation 65 sets the civil penalty for an aerodrome operator failing to provide reasonable advice and assistance - it is £50,000.

Our nature of the breach assessment

We will only impose a penalty for this breach if an aerodrome operator's

behaviour was clearly so unreasonable that it impacted the integrity of the scheme.

B3.17: Failure to comply with a direction relating to an operating ban

GGETS Regulation 66 sets the civil penalty for this breach - it is £50,000.

Our nature of the breach assessment

We will normally impose a penalty for this breach. We will normally use the statutory maximum as the initial penalty amount. Non-compliance with a European Union operating ban is very serious and severely impacts the integrity of the scheme.

B3.18: Failure to return allowances

If an operator or UK administered operator fails to return allowances to which they are not entitled, GGETS Regulation 67 sets the civil penalty - they are both of the following:

- £20,000
- an additional £1,000 for each day the operator or UK administered operator fails to return the allowances following the service of an initial notice of civil penalty

Our nature of the breach assessment

We will normally impose a penalty for this breach. We will normally use the statutory maximum as the initial penalty amount. It significantly impacts the integrity of the scheme.

B3.19: Failure to comply with an information notice

GGETS Regulation 69 sets the civil penalties for this breach - they are both of the following:

- £1,500
- an additional £150 for each day that a person fails to comply with the requirements of the information notice, following service of an initial notice of civil penalty, up to a maximum of £13,500

Our nature of the breach assessment

We will normally impose a penalty for this breach. We will normally use the statutory maximum as the initial penalty amount. Not complying with a request for information impacts the integrity of the scheme.

B3.20: Providing false or misleading information

GGETS Regulation 70 sets the civil penalty for this breach - it is £1,000.

Our nature of the breach assessment

We will normally impose a penalty for this breach. We will normally use the statutory maximum as the initial penalty amount as it impacts the integrity of the scheme.

B4: Requirement to monitor emissions for installations

An operator must monitor its emissions for each reporting year in line with its specific monitoring plan (including the written procedures supplementing that plan) and the MRR.

Meeting the requirements of both the plan and MRR can cause conflict.

For example, sometimes an operator may need to deviate from monitoring at the tier stated in its approved plan. The MRR allows for the operator, where it is not technically feasible to apply its required tier, to apply the highest achievable tier until the conditions for applying the approved tier are restored. If the operator takes action to promptly restore to the approved tier then the MRR

does not consider this to be a breach, even though the temporary deviation is not strictly in line with the monitoring plan.

In these circumstances we agree that the MRR overrides the monitoring plan and will not consider there to be a breach of GHG or EIE permit condition 1.

B5: Procedure for imposing penalties

Our general procedure for imposing penalties is set out in our [ESP \(https://webarchive.nationalarchives.gov.uk/ukgwa/20221122031726mp_/https://www.gov.uk/government/publications/environment-agency-enforcement-and-sanctions-policy\)](https://webarchive.nationalarchives.gov.uk/ukgwa/20221122031726mp_/https://www.gov.uk/government/publications/environment-agency-enforcement-and-sanctions-policy).

We follow a different procedure when we impose additional daily penalties. See [paragraph B1](#) to find out the breaches for which we can impose these and why we use them.

Where an additional daily penalty applies, we will first serve an initial notice of civil penalty. This will state the:

- particular breach
- fixed sum amount the operator or UK administered operator is liable for
- additional daily penalty amount and that it will escalate from the day this notice is served until the operator or UK administered operator returns to compliance or the maximum amount is reached, if any

This notice is not the final decision, no payment is required and we will not publicise it. We do not apply our discretion at this stage. Once we have determined the total penalty (fixed sum and additional daily penalty amount) we will serve a notice of intent to impose the penalty. At this point the operator or UK administered operator can make representations. Once in receipt of these, we will consider them and set the final penalty amount.

B6: Enforcement notices

We can serve an enforcement notice where we consider any provision of the GGETS Regulations, MRR, permit or aviation emissions plan:

- has been contravened
- is being contravened
- is likely to be contravened

We will generally use these notices:

- to restore compliance
- where the Regulations provide no specific financial penalty for the breach
- to specify actions required to restore compliance
- when the maximum additional daily penalty has been reached and the operator or UK administered operator still fails to comply

We are not likely to use them:

- where we can use an additional daily penalty
- to repeat a deadline to submit an application, report or notification

GGETS Regulation 68 sets the civil penalty amount for failing to comply with an enforcement notice - they are both of the following:

- £20,000
- an additional £1,000 for each day that a person fails to comply with the notice, following the service of an initial notice of civil penalty, up to a maximum of £30,000

Our nature of the breach assessment

We will normally impose a penalty for this breach as it impacts the integrity of the scheme. We will normally use the statutory maximum as the initial penalty amount.

B7: Revocation of permits

We must revoke a permit where an operator fails to apply to surrender its permit in line with the timescales set out in the GGETS Regulations.

We can revoke a permit (for any other reason) at any time but will only do so in exceptional circumstances.

When an operator of an excluded installation commits a sufficiently serious breach of the conditions of its permit or fails to pay the penalty under GGETS Regulation 56 within one month, we may:

- revoke the permit in exceptional circumstances
- vary the EIE permit to a GHG permit

We will only revoke a permit in such cases in very exceptional circumstances.

Section C: CRC Energy Efficiency Scheme (CRC)

Section C explains:

- how we normally assess the nature of the breach for each CRC breach
- our additional CRC enforcement positions

You must read this with [section A](#) which explains our general civil penalty setting principles for the climate change schemes.

C1 When and how the Environment Agency will apply discretion to CRC penalties

CRC Energy Efficiency Order 2010, Article 94

We may apply our discretion to waive or modify a penalty that we have imposed on a participant. We must be satisfied that the participant has provided us with evidence within a reasonable time and that it took all reasonable steps to do one of the following:

- comply with the relevant provision of the CRC Order
- rectify any failure in compliance as soon as it came to the participant's notice

In addition, in all the other circumstances it is reasonable to waive or modify the civil penalty.

CRC Energy Efficiency Order 2013, Article 72

We may apply our discretion to waive, impose, modify or withdraw a penalty where we consider it appropriate. We will apply our discretion as explained in [section A](#).

C2 Civil penalties for CRC

Paragraphs C2.1 to C2.7 list the breaches within the CRC legislation and state the maximum civil penalty available for each breach.

Each paragraph states the breach and explains our normal 'nature of the breach' assessment and other enforcement positions (if there is one) for that breach.

Our nature of the breach assessment may state that we will not normally impose a penalty (waive the civil penalty) or it will state the normal 'initial penalty' (as explained in [section A](#)).

However, before we set the initial penalty amount we will take account of any representations we receive - see [section 6.2 ESP \(https://webarchive.nationalarchives.gov.uk/ukgwa/20221122031726mp_/https://www.gov.uk/government/publications/environment-agency-enforcement-and-sanctions-policy\)](https://webarchive.nationalarchives.gov.uk/ukgwa/20221122031726mp_/https://www.gov.uk/government/publications/environment-agency-enforcement-and-sanctions-policy).

C2.1 Failure to maintain records in respect of the information used to compile an annual report or relevant to any designated change

The maximum penalties are set by article 102, CRC Order 2010; article 79, CRC Order 2013 - they are both of the following:

- a financial penalty of £40 per tCO₂, of so much of the CRC emissions of the participant in the annual reporting year immediately preceding the year in which the non-compliance is discovered

- publication

Our nature of the breach assessment

We will normally impose a penalty for this breach. We will normally set the initial penalty as follows:

- a financial penalty of £12 per tCO₂ (2012/13 compliance year), £24 per tCO₂ (2013/14 compliance year), and £40 per tCO₂ (2014/15 compliance year onwards)
- publication to GOV.UK For new entrants (those newly joining at the start of a phase), we will normally set the initial penalty at £12 per tCO₂ (first compliance year), £24 per tCO₂ (second compliance year), and £40 per tCO₂ (third compliance year onwards).

C2.2 Failure to register or late registration

The maximum penalties are set by article 95(2), CRC Order 2010; article 73(2), CRC Order 2013) - they are both of the following:

- £5,000, plus £500 for each working day until the application for registration is made, subject to a maximum of 80 working days
- publication

Our nature of the breach assessment

We will normally impose a penalty for this breach. We will normally set the initial penalty as follows:

- a fixed penalty of £5,000
- a daily penalty of £500 for each working day until the application for registration is made, subject to a maximum of 80 working days
- publication to GOV.UK

C2.3 Failure to include all the meters for which an organisation is responsible when applying for registration

The maximum penalties are set by article 95(4), CRC Order 2010; article 73(3), CRC Order 2013 - they are both of the following:

- £500 for each meter not reported
- publication

Our nature of the breach assessment

We will normally impose a penalty for this breach. We will normally set the initial penalty as follows:

- £500 for each meter not reported
- publication to GOV.UK

C2.4 Failure to provide complete and accurate information when registering

The maximum penalties are set by article 98(2), CRC Order 2010; article 75(2), CRC Order 2013) - they are both of the following:

- £5,000
- publication

Our nature of the breach assessment

We will normally impose a penalty for this breach. We will normally set the initial penalty as follows:

- £5,000
- publication to GOV.UK

C2.5 Failure to provide an annual report or late submission of the report

The due date for the submission of annual reports is by the end of the last working day in July after the end of the annual reporting year.

Our overall nature of the breach assessment

We will normally waive the penalty for a participant with zero emissions in the relevant year.

Our assessment will take account of a very low level of emissions.

C2.5.1 Reports provided no more than 40 working days after the due date

The maximum penalties are set by article 97, CRC Order 2010; article 74, CRC Order 2013 - they are all of the following:

- £5,000
- £500 for each working day the report is provided after the due date
- publication

Our nature of the breach assessment

If a participant submits an annual report late but not more than 40 working days late, we will normally impose a penalty. We will set the initial penalty as follows:

- a fixed penalty of £5,000
- a daily penalty of £100 for each working day the report is provided after the due date (2012/13 compliance year), £300 daily rate (2013/14 compliance year) and £500 daily rate (2014/15 compliance year onwards)
- publication to GOV.UK

When we apply the daily penalty to new entrants, we will normally set the daily penalty as:

- £100 for each working day the report is provided after the due date (first compliance year)
- £300 daily rate (second compliance year)
- £500 daily rate (third compliance year onwards)

Our additional enforcement position

We will not normally impose a penalty if it is a participant's first breach and a report is submitted less than 10 working days late.

C2.5.2 Reports more than 40 working days after the due date (CRC Order 2010 - Phase 1 April 2010 to March 2014), after the last working day of October (CRC Order 2013 - Phase 2 onwards starting April 2014) or not provided at all

The maximum penalties are:

- £45,000
- the CRC emissions of that participant for the year to which the annual report relates are either:
 - double the CRC emissions reported in the annual report of the previous year
 - where no such report exists, double the CRC emissions which we calculate the participant made in the year for which the annual report is not provided
- the participant must immediately acquire and surrender sufficient allowances equal to the CRC emissions which apply under (a) or (b) (or such additional allowances having regard to any allowances surrendered on time for the annual reporting year)
- £40 per tCO₂ of so much of the CRC emissions which apply under (a) and (b) but -
- deducting the emissions represented by those allowances (if any) surrendered by the participant on time for the year to which the annual report

relates, and

- before the doubling is applied
- blocking - this means to prevent or restrict the operation of a compliance account so the participant can only purchase and surrender allowances - they will not be able to sell allowances until the failure is remedied and any financial penalty is paid
- publication

Where a participant:

- fails to acquire and surrender sufficient allowances equal to the CRC emissions which apply under (a) or (b) (or such additional allowances having regard to any allowances surrendered on time for the annual reporting year) and
- continues in the scheme

those allowances required to be surrendered are to be added to the quantity of allowances required to be surrendered in the next compliance year.

Our nature of the breach assessment

We will normally impose a penalty for this breach. We will normally set the initial penalty as follows:

- a fixed penalty of £45,000
- an additional financial penalty of £12 per tCO₂ (2012/13 compliance year), £24 per tCO₂ (2013/14 compliance year), £40 per tCO₂ (2014/15 compliance year onwards)
- blocking
- publication to GOV.UK

For the additional financial penalty, the amount of tCO₂ is:

- 1.1 x actual or determined CRC emissions (2012/13 compliance year)
- 1.3 x actual or determined CRC emissions (2013/14 compliance year)
- 1.6 x actual or determined CRC emissions (2014/15 compliance year)

- 2 x actual or determined CRC emissions thereafter

We will only require participants to surrender allowances equal to their actual CRC emissions.

When we apply the additional financial penalties to new entrants, we will normally use the following:

- 1.1 x actual or determined CRC emissions (first compliance year), 1.3 x actual or determined CRC emissions (second compliance year), 1.6 x actual or determined CRC emissions (third compliance year), or 2 x actual or determined CRC emissions (subsequent compliance years)
- the penalty of £12 per tCO₂ (first compliance year), £24 per tCO₂ (second compliance year), £40 per tCO₂ (third compliance year onwards)

C2.6 Failure to provide an accurate annual report

The maximum penalties are set by article 99, CRC Order 2010; article 76, CRC Order 2013 - they are both of the following:

- £40 per tCO₂ of so much of those supplies or emissions which were inaccurately reported
- publication

This breach only applies where a participant submits an inaccurate report. The term 'inaccurate', in the CRC Order 2013, means where any of the supplies or emissions reported differ by more than 5% from the supplies or emissions that should have been reported, ignoring any estimation adjustment under Schedule 1 of the CRC Order.

Our nature of the breach assessment

We will normally only impose a penalty where the error in reporting equates to more than 2,000 tCO₂. For participants whose total energy use equates to less than 8,000 tCO₂, this figure of 2,000 tCO₂ will be at least 25% of the total.

For applicable reporting failures, we will normally impose a penalty. We will set the initial penalty as follows:

- £12 per tCO₂ of so much of those supplies or emissions which were inaccurately reported (2012/13 compliance year), £24 per tCO₂ (2013/14 compliance year), £40 per tCO₂ (2014/15 compliance year onwards)
- publication to GOV.UK

When we apply the penalty to new entrants, we will normally set the initial penalty as:

- £12 per tCO₂ of so much of those supplies or emissions which were inaccurately reported (first compliance year)
- £24 per tCO₂ (second compliance year)
- £40 per tCO₂ (third compliance year onwards)

Our additional enforcement position

We will normally waive the penalty for participants who identified the error themselves, corrected the error and were co-operative.

C2.7 Failure to surrender sufficient allowances

From 2013 onwards, the due date for surrender of allowances is the last working day of October after the end of the applicable reporting year.

The maximum penalties are set by article 100, CRC Order 2010; article 77, CRC Order 2013 - they are all of the following:

- the participant must immediately acquire and surrender the allowances shortfall
- £40 per tCO₂ of so much of the emissions represented by the allowances shortfall
- blocking
- publication

Our nature of the breach assessment

Where a participant fails to surrender sufficient allowances and that failure is

apparent at the time compliance is required, we will normally impose a penalty. We will set the initial penalty as follows:

- require the participant to immediately acquire and surrender the allowances shortfall
- apply a penalty of £12 per tCO₂ of so much of the emission represented by the allowances shortfall (2012/13 compliance year), £24 per tCO₂ (2013/14 compliance year), £40 per tCO₂ (2014/15 compliance year onwards)
- blocking
- publication to GOV.UK

When we apply the penalties to new entrants, we will normally set the initial penalty as:

- £12 per tCO₂ of so much of the emission represented by the allowances shortfall (first compliance year)
- £24 per tCO₂ (second compliance year)
- £40 per tCO₂ (third compliance year onwards)

Our additional enforcement position

If a participant fails to surrender sufficient allowances by the last working day in October, we must serve an enforcement notice so they can buy allowances under a special allocation. We will normally waive the penalty where any of the following apply:

- the participant has complied with the conditions of the enforcement notice and it is a first breach of this requirement
- we have determined the maximum penalty to be less than £1,000

We think that the cost of imposing a penalty of this amount outweighs the public interest in imposing it.

We have not set a £1,000 or less level as a set threshold. We will consider all the circumstances and will regard it:

- not to be in the public interest to pursue if the late surrender did not result from a serious management failure, the participant then did surrender the

allowances and co-operated with us

- may be in the public interest to pursue despite the cost to the public purse if there is a serious management failure, a second or subsequent breach or lack of co-operation

C3 Publication

For the purposes of the CRC Order, 'publication' means we will publish details of [civil penalties imposed \(https://webarchive.nationalarchives.gov.uk/ukgwa/20221122031726mp_/https://www.gov.uk/government/publications/climate-change-regimes-civil-penalties-imposed\)](https://webarchive.nationalarchives.gov.uk/ukgwa/20221122031726mp_/https://www.gov.uk/government/publications/climate-change-regimes-civil-penalties-imposed) on GOV.UK.

As set out in our [ESP \(https://webarchive.nationalarchives.gov.uk/ukgwa/20221122031726mp_/https://www.gov.uk/government/publications/environment-agency-enforcement-and-sanctions-policy\)](https://webarchive.nationalarchives.gov.uk/ukgwa/20221122031726mp_/https://www.gov.uk/government/publications/environment-agency-enforcement-and-sanctions-policy) where we impose a financial civil penalty, we will normally publish details of it.

C4 Criminal offences

CRC Order 2010 (article 106)

Criminal offences apply when a person:

- makes a statement which that person knows to be false or misleading or recklessly made
- fails to comply with an enforcement notice
- fails or refuses to provide facilities or assistance or to permit any inspection when required to do so by an authorised person
- prevents any other person from appearing before an authorised person or answering a question from an authorised person
- pretends to be an authorised person
- refuses to allow the Environment Agency or an authorised person access to premises for inspection purposes

CRC Order 2013 (article 82)

From 1 April 2014, the only criminal offences that apply are when a person:

- makes a statement which that person knows to be false or misleading or recklessly made
- fails to comply with an enforcement notice
- pretends to be an authorised person
- refuses to allow the Environment Agency or an authorised person access to premises for inspection purposes

We will consider the use of criminal sanctions as explained in our [ESP \(https://webarchive.nationalarchives.gov.uk/ukgwa/20221122031726mp_/https://www.gov.uk/government/publications/environment-agency-enforcement-and-sanctions-policy\)](https://webarchive.nationalarchives.gov.uk/ukgwa/20221122031726mp_/https://www.gov.uk/government/publications/environment-agency-enforcement-and-sanctions-policy).

These could be:

- a warning
- a formal caution
- prosecution

Section D: Energy Savings Opportunity Scheme (ESOS)

Section D explains our:

- normal 'nature of the breach' assessment for each ESOS breach
- our additional ESOS enforcement positions

You must read this with section A, which explains our general civil penalty setting principles for the climate change schemes.

D1 When and how the Environment Agency will apply discretion to ESOS penalties

We will apply discretion as explained in [section A](#).

D2 Civil penalties for ESOS

Paragraphs D2.1 to D2.5 list the breaches within the Energy Savings Opportunity Scheme Regulations 2014 (ESOS Regulations) and state the maximum civil penalties available for each breach. Unless otherwise stated, references to regulations are to the ESOS Regulations.

Each paragraph states the breach and explains our normal 'nature of the breach' assessment for that breach.

Our nature of the breach assessment may state that we will not normally impose a penalty (waive the civil penalty) or it will state the normal 'initial penalty amount' (as explained in [section A](#)).

However, before we set the initial penalty amount we will take account of any representations we receive - see [sections 6.2 ESP](#) (https://webarchive.nationalarchives.gov.uk/ukgwa/20221122031726mp_/https://www.gov.uk/government/publications/environment-agency-enforcement-and-sanctions-policy) and [D4](#).

D2.1 Failure to notify

A UK organisation that qualifies for ESOS must notify the Environment Agency that it has complied with its ESOS obligations (regulation 29). Regulation 43 sets the maximum penalties for failing to do this - they are all of the following:

- an initial penalty of up to £5,000
- a daily penalty of up to £500 for each working day the responsible undertaking remains in breach, starting on the day after the service of the penalty notice, subject to a maximum of 80 working days
- the publication penalty

Our nature of the breach assessment

We will normally impose a penalty for failure to notify, whether an organisation

has also failed to undertake an energy audit (see section D2.3) or not. Notification is a key requirement of the ESOS, and failure to comply impacts the scheme's integrity. We will normally take the statutory maximum as the initial penalty amount.

If the organisation has also failed to undertake an energy audit, we will normally impose a penalty for that failure as well.

D2.2 Failure to maintain records

Regulation 28 requires responsible undertakings to maintain records. Regulation 44 sets the maximum penalties for failing to do so - they are all of the following:

- an initial penalty of up to £5,000
- a sum representing the cost to the compliance body of confirming that the responsible undertaking has complied with the Scheme
- the publication penalty
- any steps the compliance body requires the responsible undertaking to take to remedy the breach

Our nature of the breach assessment

We will normally impose a penalty for this breach as it impacts the integrity of the scheme. We will normally use the statutory maximum as the initial penalty amount.

D2.3 Failure to undertake an energy audit

Chapter 3 of Part 4 requires responsible undertakings to undertake an energy audit, where alternative routes to compliance (in Part 6) do not apply. Regulation 45 sets the maximum penalties - they are all of the following:

- an initial penalty of up to £50,000
- a daily penalty of up to £500 for each working day the responsible

undertaking remains in breach, starting on the day after the service of the compliance notice, subject to a maximum of 80 working days

- the publication penalty
- any steps the compliance body requires the responsible undertaking to take, including conducting or completing an ESOS assessment, to remedy the breach

Our nature of the breach assessment

Undertaking an energy audit is a key requirement of ESOS. This breach impacts on the integrity of the ESOS, and we will therefore normally issue a penalty for failure to undertake an energy audit. Subject to the next paragraph, we will normally use the statutory maximum as the initial penalty amount.

For new entrants to ESOS, in the compliance period in which they first enter the scheme, we will normally impose a lower initial penalty of up to £5,000 for failure to undertake an energy audit. (In subsequent compliance periods the responsible undertaking will no longer be a new entrant, and we will therefore normally use the statutory maximum as the initial penalty amount.)

D2.4 Failure to comply with a notice

This breach means failing to provide information or take the steps required by a compliance, enforcement or penalty notice.

Regulation 46 sets the maximum penalties - they are all of the following:

- an initial penalty of up to £5,000
- a daily penalty of up to £500 for each working day the responsible undertaking remains in breach, starting on the day after the service of the penalty notice, subject to a maximum of 80 working days
- the publication penalty

Our nature of the breach assessment

We will normally impose a penalty for this breach as it impacts the integrity of the scheme. We will normally use the statutory maximum as the initial penalty

amount.

D2.5 False or misleading statement

This breach means, providing a false or misleading statement when:

- notifying information to the Environment Agency or a compliance body
- providing information required by a compliance, enforcement or penalty notice

Regulation 47 sets the maximum penalties - they are both of the following:

- up to £50,000
- the publication penalty

Our nature of the breach assessment

We will normally impose a penalty for this breach as it significantly impacts the integrity of the scheme. We will normally use the statutory maximum as the initial penalty amount.

D3 Specific Environment Agency enforcement positions

D3.1 Zero energy consumption

Organisations that qualify for ESOS but have zero energy consumption need to declare this by the compliance deadline. If we receive a satisfactory declaration, we will not normally enforce other elements of the scheme.

D3.2 Low energy users

We accept that an organisation needs to make sure its compliance work is proportionate to the potential benefits of the scheme.

If an organisation's energy use is at a domestic level we will not normally enforce the requirement to:

- produce a fully compliant energy audit or alternative route to compliance
- complete a lead assessor review

But the organisation will need to:

- notify us by the compliance deadline and confirm its energy use is at a domestic level or lower
- consider and document opportunities to reduce energy consumption, such as a green deal assessment or display energy certificate
- record its compliance approach in its evidence pack

D4 Procedure for imposing ESOS penalties

We will normally impose a penalty for each separate breach of the ESOS Regulations. Our general procedure for imposing penalties is set out in our [ESP](https://webarchive.nationalarchives.gov.uk/ukgwa/20221122031726mp_/https://www.gov.uk/government/publications/environment-agency-enforcement-and-sanctions-policy) (https://webarchive.nationalarchives.gov.uk/ukgwa/20221122031726mp_/https://www.gov.uk/government/publications/environment-agency-enforcement-and-sanctions-policy).

Where an additional daily penalty applies for the breaches in D2.1 and D2.4, we follow a different procedure. We will first serve an initial notice of civil penalty which will state all of the following, the:

- particular breach
- the maximum initial penalty for which the responsible undertaking is liable
- the amount of the additional daily penalty, and that it will accumulate from the day after the date of the notice, until the responsible undertaking returns to compliance, or it reaches the statutory maximum number of days (80)

The notice is not the final decision, no payment is required at this point and we will not publicise it. We will not apply our discretion at this stage. Once we have determined the total penalty (initial and daily penalties) we will serve a notice of intent to impose the penalty, setting out our proposed final penalty amount. At this point the organisation can make representations, which we will take into account in determining the final penalty.

For breach D2.3, the additional daily penalty starts accumulating on the day

after service of a compliance notice. We do not issue an initial penalty notice, so our normal procedure applies.

Section E: Fluorinated Greenhouse Gases (F Gas)

Section E explains our:

- normal 'nature of the breach' assessment for all F Gas breaches
- additional F Gas enforcement positions

You must read this with [section A](#), which explains our general civil penalty setting principles for the climate change schemes.

E1 When and how the Environment Agency will apply discretion to F Gas penalties

We will apply discretion as explained in [section A](#).

E2 Civil penalties for F Gas

We may impose civil penalties for numerous breaches referred to in Regulation 31A of the Fluorinated Greenhouse Gas Regulations 2015 (the F Gas Regulations). They are all of the following:

- failing to comply with any of the provisions of Regulation (EU) No 517/2014 of the European Parliament of the Council on fluorinated greenhouse gases (the 2014 Regulation) set out in Schedule 2 to the F Gas Regulations with the exception of Article 17(1) of the 2014 Regulation
- causing or permitting another person to breach specified provisions of the 2014 Regulation

- failing to comply with specified provisions of certain European Commission Regulations relating to certification, attestation, labelling, fire protections systems and stationary equipment
- failing to comply with various specified provisions of the F Gas Regulations

In total we can impose civil penalties for around 80 breaches. They relate to:

- intentional release of F gas
- placing F gas on the market
- the F gas quota
- the use of F gas
- reporting and record keeping
- fire protection checking
- failure to comply with relevant requirements or notices or to provide assistance
- F gas leakage and recovery

Schedule 4 to the F Gas Regulations sets out the civil penalty that applies to each breach.

Our normal 'nature of the breach assessment' (see E2.1) and additional enforcement position (see E2.2) apply to all F Gas breaches.

Our nature of the breach assessment states when we will not normally impose a penalty (waive the penalty) or it explains how we will determine the normal 'initial penalty amount' (as explained in [section A](#)).

However, before we set the initial penalty amount we will take account of any representations we receive - see [section 6.2 ESP \(https://webarchive.nationalarchives.gov.uk/ukgwa/20221122031726mp_/https://www.gov.uk/government/publications/environment-agency-enforcement-and-sanctions-policy\)](https://webarchive.nationalarchives.gov.uk/ukgwa/20221122031726mp_/https://www.gov.uk/government/publications/environment-agency-enforcement-and-sanctions-policy).

E2.1 Our nature of the breach assessment

We will normally impose a civil penalty for all breaches referred to in Regulation 31A of the F Gas Regulations subject to the additional enforcement position (see E2.2).

We will normally use the statutory maximum as the initial penalty amount. This

is because the civil penalties in the F Gas Regulations have been set based on the seriousness of the breach taking into account the:

- impact the breach has on the integrity of the scheme
- environmental effect of the breach, where relevant

However, we may decide to use an initial penalty amount lower than the statutory maximum where we consider the breach warrants this, for example when:

- a breach is serious because of its potential for environmental harm but the actual harm caused is much less
- we impose a civil penalty for failure to comply with an enforcement notice and we don't think the statutory maximum of £200,000 is justified

E2.2 Additional enforcement position

We may not impose a civil penalty where:

- we consider giving advice and guidance will be sufficient to rectify the breach
- punishment or future deterrent is not necessary

If after we have given advice and guidance the breach is not rectified, we may then impose a civil penalty.

Section F: Climate Change Agreements (CCAs)

Section F explains our penalty setting approach for CCA financial civil penalties.

CCAs are voluntary agreements between operators and the Environment Agency. They are an incentive to operators to reduce energy use and carbon dioxide emissions. We will always work with operators to achieve compliance. We will only impose a financial civil penalty if the breach undermines the integrity of the scheme.

F1: When and how the Environment Agency will apply discretion to CCA penalties

We may impose a financial civil penalty for the breaches set out in regulation 15(1) of the Climate Change Agreement (Administration) Regulations 2012 (the CCA Regulations). We may decide not to impose a penalty and will apply our discretion by considering:

- the nature of the breach - explained in the introduction of [section A](#)
- culpability (blame) - assessed in line with the categories described in section A, step 3
- the 4 aggravating and mitigating factors - set out in section A, step 4

We do not apply the stepped approach to penalty setting (as explained in [section A](#)) to CCA penalties.

Where we do decide to impose a penalty we cannot apply discretion on the level of the penalty - the CCA Regulations state how they must be calculated.

F2: How the Environment Agency calculates the penalty amount

For breaches set out in CCA Regulation 15(1)(a), (c) and (d) the penalty will be the greater of £250 or $0.1 \times (X - Y)$, where:

- X is the amount of climate change levy that would have been payable on supplies of taxable commodities to the target unit during the base year if the supplies were not reduced rate supplies
- Y is the amount of levy that would have been payable on supplies of taxable commodities to the target unit during the base year if the supplies were reduced rate supplies

For target units that include greenfield facilities, if we serve a penalty notice within 12 months of the start of an agreement, we will estimate the amount of levy payable.

We will first calculate the penalty amount using the:

- energy use information in the CCA Register for the base year
- rate of the climate change levy and discount for that base year

We will then check if there has been any structural or other changes to the target unit since the agreement was made. See the technical annex of the agreement for a definition of 'structural change'. We will recalculate the amount of the penalty if necessary.

To calculate the penalty we will use the best information we have on the target unit set up at the time of the breach rather than at the time the penalty is imposed.

Operators have the opportunity to provide further information about the target unit in line with the procedure for imposing penalties, as outlined in our [ESP](https://webarchive.nationalarchives.gov.uk/ukgwa/20221122031726mp_/https://www.gov.uk/government/publications/environment-agency-enforcement-and-sanctions-policy) (https://webarchive.nationalarchives.gov.uk/ukgwa/20221122031726mp_/https://www.gov.uk/government/publications/environment-agency-enforcement-and-sanctions-policy).

For breaches set out in CCA Regulation 15(1)(b) the penalty will be the greater of £250 or £12 per tCO₂ equivalent of the difference between the actual emissions and the reported emissions for the target period.

F3: Civil penalties for CCAs

Paragraphs F3.1 to F3.5 list breaches within the CCA Regulations and explain our normal initial assessment for each breach.

However, before we make our final decision we will take account of any representations we receive - see [section 6.2 ESP](https://webarchive.nationalarchives.gov.uk/ukgwa/20221122031726mp_/https://www.gov.uk/government/publications/environment-agency-enforcement-and-sanctions-policy) (https://webarchive.nationalarchives.gov.uk/ukgwa/20221122031726mp_/https://www.gov.uk/government/publications/environment-agency-enforcement-and-sanctions-policy).

F3.1 Failure to report progress against CCA targets at all or by the specific date

CCA Regulation 15(1)(a) applies if an operator fails to report performance of its target unit on or before 1 May following the end of a target period.

Our assessment

We will normally impose a penalty for this breach. Not reporting performance

impacts the integrity of the scheme because there is no evidence of progress towards targets.

If an operator submits a report:

- 10 working days or less late and it is a first breach of this requirement, we will not normally impose a penalty
- more than 10 working days late but before 1 July, there is no history of non-compliance and there are strong mitigating circumstances, we will not normally impose a penalty
- on or after 1 July, we will normally impose a penalty

We will not normally impose a penalty if an operator fails to report its performance when it has terminated its agreement after the end of a target period and before a certification period. But the relevant facilities cannot re-enter the scheme until we are satisfied the target unit has progressed against its target.

We will not certify facilities in target units whose operator does not report its performance for the new certification period.

F3.2 Failure to provide information about progress against a target or compliance with an underlying agreement

CCA Regulation 15(1)(a) applies if an operator does not provide information when requested (such as during an audit) so that we can determine progress for its target unit against its target or compliance with the terms of its underlying agreement.

Our assessment

We will normally impose a penalty for this breach.

This breach impacts the integrity of the scheme, as there is insufficient evidence of the performance of the target unit against the target or compliance with the agreement.

F3.3 Failure to notify that a facility is no longer eligible

CCA Regulation 15(1)(d) applies if an operator does not notify us within 20 working days that a facility may no longer be eligible to be included in the agreement.

Our assessment

This breach is fundamental and significantly impacts the integrity of the scheme. The operator is potentially gaining the benefits of certification to which it is not entitled.

If an operator:

- notifies us more than 20 working days late and it is a first breach of this requirement, we will not normally impose a penalty
- notifies us more than 20 working days late and it is a second or subsequent breach of this requirement, we will normally impose a penalty, unless both of the following apply:
 - there are strong mitigating circumstances for the failure
 - the operator satisfies us that it has not claimed the CCA discount on the climate change levy (CCL) since the facility ceased to be eligible or it pays any CCL due
- does not notify us and we discover the breach through another means more than 20 working days after the facility becomes ineligible, we will normally impose a penalty unless one of the following applies:
 - the operator provides us with evidence that it has ceased trading
 - there are strong mitigating circumstances and the operator satisfies us that it has not claimed the CCA discount on the CCL levy

We will terminate an agreement (or part of the agreement) when we are aware that a facility has ceased to be eligible.

F3.4 Failure to notify us of an error in the base year data

CCA Regulation 15(1)(d) applies if an operator does not notify us within 20

working days that there is an error in their base year data.

Our assessment

If an operator breaches this requirement, their target unit's target will be incorrect and it may have gained benefits to which it is not entitled. It may therefore significantly impact the integrity of the scheme.

If an operator does not benefit from the error, we will not normally impose a penalty.

If an operator benefits from the error, we will normally impose a penalty, subject to the following positions. If an operator:

- notifies us more than 20 working days late and it is a first breach of this requirement, we will not normally impose a penalty
- notifies us more than 20 working days late, it is a second or subsequent breach of this requirement and there are strong mitigating factors, we will not normally impose a penalty

In all other circumstances, we will normally impose a penalty.

F3.5 Providing inaccurate information in a target period report

CCA Regulation 15(1)(b) applies where an operator provides inaccurate information about progress of its target unit towards its targets in its target period report.

Our assessment

This breach impacts the integrity of the scheme. Inaccurate information may lead to an operator gaining benefits to which it is not entitled.

When an operator discovers an error in its report, it must notify us, correct the error and pay any extra buy-out.

Generally, if an operator has over-reported its target unit's emissions, we will not normally impose a penalty. If an operator has under-reported its target unit's emissions, we will normally impose a penalty.

However, we will apply the following positions - where:

- an under-report of emissions is a first breach of this requirement, we will not normally impose a penalty
- either an over or under-report of emissions relating to one target period is notified to us more than one target period later, we will normally impose a penalty, even if it is a first breach of the requirement - for example, if we are notified in target period 3 or later of an error in target period 1 data, we will normally impose a penalty

F4: Remedial action

As well as the financial penalty we may require the operator to remedy the breach. In the notice of financial civil penalty we serve we must include the steps that need to be taken to remedy the breach and the deadline for doing so.

F5: Failure to comply with a penalty notice

We will normally terminate the underlying agreement, if the operator fails, by the specified deadline to:

- pay the penalty
- remedy the breach

The operator will:

- lose its entitlement to the Climate Change Levy discount until it enters into a new underlying agreement
- not be entitled to recover any discount it has lost in the meantime

If a new operator takes over a facility with unpaid penalties, it will not be able to enter into a new agreement until all outstanding penalties are paid.

F6 Removing access to the CCA register

The Environment Agency can suspend, restrict or terminate access to the CCA Register. See the terms of conditions of use of the Register for when we can do this.

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