

# Response to the Consultation on the Proposed List of Conditions in Aviation Emissions Plans under the EU Emissions Trading System

June 2011

This response is a joint response issued by the Environment Agency for England and Wales, together with the Northern Ireland Environment Agency and the Scottish Environment Protection Agency.

Information about this publication and further copies are available from:

EU Emissions Trading  
Environment Agency  
Richard Fairclough House  
Knutsford Road  
Warrington  
WA4 1HT

Email: [etaviationhelp@environment-agency.gov.uk](mailto:etaviationhelp@environment-agency.gov.uk)

This document is available on the following websites at:

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

[http://www.sepa.org.uk/climate\\_change/solutions/eu\\_emissions\\_trading\\_system/eu\\_ets\\_-\\_aviation.aspx](http://www.sepa.org.uk/climate_change/solutions/eu_emissions_trading_system/eu_ets_-_aviation.aspx)

[http://www.ni-environment.gov.uk/pollution-home/emissionstrading/emission\\_trading\\_aviation\\_system.htm](http://www.ni-environment.gov.uk/pollution-home/emissionstrading/emission_trading_aviation_system.htm)

## Contents

Background.....	3
1. Purpose of this Document.....	3
2. What we consulted on .....	3
Condition 1.....	3
Condition 2.....	6
Condition 3.....	8
Condition 4.....	10
Condition 5.....	12
3. Summary .....	13
Appendix 1 Final emissions plan conditions. ....	14
Appendix 2 – Definitions .....	16

## Background

Regulation 23 of The Aviation Greenhouse Gas Emissions Trading Scheme Regulations 2010<sup>1</sup> (“the Regulations”) places a duty on regulators to include conditions in Emissions Plans to ensure compliance with those requirements of the Monitoring and Reporting Decision<sup>2</sup> (“the MRD”) that are not covered by the Regulations. The regulators<sup>3</sup> may co-operate to draw up a list of proposed conditions, and must then consult specified government bodies, plus “any other person it considers may be affected” on the list, and take any responses into consideration when finalising it for publication.

## 1. Purpose of this Document

This document summarises the responses to each of the conditions that were the subject of the consultation that was held from the 13<sup>th</sup> December 2010 to the 7<sup>th</sup> February 2011. Thank you to all respondents who took time out to feedback their comments on the proposed conditions.

This document also gives the joint regulators’ explanation of how have taken these comments into consideration and the purposed of the conditions. At the end of the document, we have listed the final conditions that will appear in aviation emissions plans.

## 2. What we consulted on

We are including a list of conditions Aircraft Operators are required to comply with in an emissions monitoring plan. We have listed below each of the conditions that we consulted on, a summary of the comments received against each condition and the name of the organisation that submitted the comment.

### Condition 1

*The Aircraft Operator must retain all information as specified in Section 9 of Annex I of the Monitoring and Reporting Decision for a period of at least 10 years after the submission of the relevant annual report required under regulation 21 of the 2010 Regulations.*

Comment submitted	Respondent
It should also be stated in what form information would be acceptable, i.e. paper or electronic copies, database records.	Air New Zealand
We consider 10 years to be rather onerous. As an example, in the UK corporate environment 6-7 years appears to be normal practice for the retention of financial data. It's highly likely that data kept for periods over 5 years are archived and the detail and quality of recovered archive data can vary.	Flybe

<sup>1</sup> SI 2010 No. 1996.

<sup>2</sup> Decision 2007/589/EC of the European Commission establishing guidelines for the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87/EC of the European Parliament and of the Council.

<sup>3</sup> The Environment Agency, the Scottish Environment Protection Agency, and the Chief Inspector (Northern Ireland).

<b>Comment submitted</b>	<b>Respondent</b>
<p>We request clarification on the accepted format for the retention of information specified in Section 9 of Annex I of the Monitoring and Reporting Decision.</p> <p>We highly recommend that operators are permitted to store documents in this electronic format. The alternatives will be too onerous.</p>	Cathay Pacific
<p>We request more clarity regarding the statement “the activity data used for any calculation of the emissions for each source stream, categorised by process and fuel, or material type”.</p> <p>Specifically condition 1 asks for “all” information. Are documents such as original journey logs included? These are traditionally disposed of after 3 months alongside fuel tickets and flight envelopes once the information has been transferred to a central database.</p>	CICS Global
<p>The document retention burden over a period of at least 10 years is not one to be taken up lightly due to the number of flights we undertake each year. In this case we would like to see more specific and detailed guidance as to what is acceptable. Clearly for this volume/period of record retention, paper storage presents huge problems, therefore electronic storage is the only practicable method. The guidance needs to cover this aspect in some detail.</p>	Jet2.com
<p>We oppose the requirement to keep records for the prescribed 10-year period as unnecessary and overly burdensome. Data retention requirements should not extend beyond the period required for verification of the submitted data. In any event, the UK should make clear in the “plan condition provisions” that the document retention requirement can be satisfied by records kept in an electronic format.</p> <p>Not allowing records may be maintained electronically, will result in significant additional expense and additional environmental footprint associated with storing and maintaining vast amounts of documents in paper form.</p>	Air Transport Association

#### Regulators Joint Review of the Comments

Having reviewed the comments made in relation to condition 1, our response is as follows:

- It is a requirement of Section 9 of Annex I of the MRD that specified information is kept for at least 10 years. We are therefore unable to reduce the retention requirement.
- We have produced guidance on what information Aircraft Operators must retain, which can be found in our “Frequently Asked Questions” document. For ease of reference, we have included a summary of this guidance below. We do not intend to prescribe what format Aircraft Operators must retain their records in as this can be in either paper and/ or electronic format. This is a decision for each individual Aircraft Operator to take based on what suits them best.
- Aircraft Operators must retain information that has been used to calculate the reportable emissions for the relevant reporting year. It is the Aircraft Operator’s responsibility to ensure that the information is available and auditable should this information be required in future.

#### Outcome

As the requirement to retain information for 10 years is specified in the monitoring and reporting decision, we do not propose to alter the condition. Furthermore, we do not intend to prescribe what format the information is retained in as this is a decision for each Aircraft Operator, subject to the explanation above.

Extract from Frequently Asked Questions, April 2011

13	Information retention
Question	<b>Why does information have to be retained for 10 years?</b>
Answer	<p>The requirement to retain information for 10 years is specified in Section 11 of Commission Decision <a href="#">2009/339/EC</a> of 16 April 2009 which amends Section 9 of Commission Decision <a href="#">2007/589/EC</a> of 18 July 2007 (Monitoring and Reporting Guidelines), to include aviation activities.</p> <p>The documented and archived monitoring data shall be sufficient to allow for the verification of the annual emissions report of an aircraft operator's emissions submitted by the operator pursuant to Article 14(3) of Directive 2003/87/EC, in accordance with the criteria set out in Annex V to that Directive.'</p>
Question	<b>What information must be retained?</b>
Answer	<p>The following additional information shall be retained for aviation activities:</p> <ol style="list-style-type: none"> <li>1. the list of aircraft owned and leased-in, and necessary evidence for the completeness of that list;</li> <li>2. the list of flights covered in each reporting period, and necessary evidence for the completeness of that list;</li> <li>3. data used for determination of payload and distance relevant for the years for which tonne-kilometre data is reported; and</li> <li>4. documentation on the approach for data gaps if applicable, and the data used for closing the data gaps where they have occurred.' <p>(Source: Section 11, 2009/339/EC)</p> </li></ol>
Question	<b>How should information be retained?</b>
Answer	<p>The Directive does not specify how information should be retained.</p> <p>The critical issue is that the required information is retained for 10 years. Should this be via an IT system, adequate procedures must be in place to ensure that the relevant information can be retained and be accessible for the required period of time.</p>

## Condition 2

*In relation to all Non-conformities and Mis-statements identified by a Verifier in relation to monitoring in the previous year and specified by the Verifier in the verification required under regulation 21 of the 2010 Regulations (“the Verifier’s specifications”), the Aircraft Operator must:*

*(a) submit a report to the Regulator, by 30 June each year, setting out its proposed improvements to address the Verifier’s specifications. The proposals must set out full details, including timescales, for implementing the improvements. If no improvement is proposed in response to a Verifier’s specification, the Aircraft Operator must justify why no action is to be taken.*

*(b) implement all improvements to address the Verifier’s specifications set out by the Regulator in the timescales specified by the Regulator.*

*(c) notify the Regulator when the improvements have been implemented.*

<b>Comment Received</b>	<b>Respondent</b>
The regulator should clearly define the meaning of “Non-conformities” and “Mis-statements”	Air New Zealand
Consider revising condition 2 (b) as follows. “(b) implement all improvements to address the Verifier’s specifications set out by the Regulator in the timescales specified by the Regulator in consideration of the detailed Aircraft Operator plan and timelines set forth in condition 2 (a)	Air Canada
We feel the 3 month period for reporting plans to tackle any nonconformity is reasonable	Flybe
Further to the monitoring and reporting of activity and emissions data, the additional reporting requirements will add to operators’ administrative burden, which we do not support. We seek clarification and information on these additional requirements such as the need to submit an Emissions Plan assessment at the end of 2012, despite this being the first year the aviation industry participates in the EU ETS.  We highly recommend the UK Government to ensure that the additional reporting requirements are clear and unambiguous and with a view to minimising the administrative burden on impacted carriers. Any new requirements should not be onerous.	Cathay Pacific
Is there an arbitration process in event of disagreement between Verifier and operator? Will there be a format/template for this report? We would not want to go to the trouble of setting out our proposed improvements to find that some element required by the Regulator was missing and required a re-format or re-filing. Our own quality system covers Corrective and Preventative actions, but the format/content may not match the regulators needs.	Jet2.com

<b>Comment Received</b>	<b>Respondent</b>
<p>As an initial matter, we object to this reporting requirement as unnecessary and overly burdensome. Both (a) and (c) require reports and notifications to the Regulator, and (a) requires a report whether or not action by the Aircraft Operator is needed. The reporting provisions stipulated in this proposed condition will add further, significant costs to the scheme, costs that were not identified when the EU adopted the Directive or in the UK's consultations on transposition of it. Rather than a system requiring reports at every juncture, the UK should allow Aircraft Operators to self-certify that they have taken actions consistent with their approved Emissions Plans to address any data issues that arise in the verification process. In any event, Subparagraphs (a) and (b) are contradictory. Subparagraph (a) suggests that the Aircraft Operator will decide the steps to rectify a mis-statement or non-conformity while Subparagraph (b) suggests that the Regulator will dictate these steps.</p> <p>The description in Table 1 of the Consultation, citing the relevant provision in Annex I to the MRD suggests something more constructive – a dialogue between the Aircraft Operator and the Regulator as initiated by the Aircraft Operator's proposed approach. We urge the UK to make clear in the "plan conditions provisions" that this more constructive approach will be followed. Finally, as drafted, this condition implies that all items deemed "mis-statements" and "non-conformities" must be reported, even if they are not material. This could lead to unnecessary reporting of non-material, trivial matters, adding to the administrative costs and burdens of the system. To avoid this, the UK should clarify that this condition applies to only those "mis-statements" and "non-conformities that are "material" to compliance with the ultimate accounting for and surrender of emissions allowances.</p>	<p>Air Transport Association</p>

#### **Regulators joint review of the comments**

Having reviewed the comments made in relation to condition 2, our response is as follows:

- The definitions of mis-statement and non-conformities are taken from the monitoring and reporting decision. The definitions of mis-statements and non-conformities will appear in an Aircraft Operator's emissions monitoring plan (and a list of definitions can also be found in Appendix 2 to this document).
- Section 10.4.2(e) of Annex I to the MRD requires that the Aircraft Operator addresses any mis-statements and non-conformities identified in the annual emissions report after consultation with the competent authority and this condition is how we start this consultation process. We would like to clarify that the reporting requirement is triggered only if mis-statements or non-conformities are identified. Where none are, then an Aircraft Operator will not be required to submit a report.
- In order to minimise the burden on Aircraft Operators a standard reporting form will be available for Aircraft Operators to use in the ETSWAP Emissaire web portal in order for them to submit their proposals for addressing any mis-statements and non-conformities. The report will identify the information Aircraft Operators need to supply.
- The submission of the report opens up a dialogue between Aircraft Operators and Regulators, where the Aircraft Operator will propose what action they intend to take, if any, and when they intend to complete this action by, and the regulator will respond.
- In the event that an Aircraft Operator disagrees with its verifier and does not intend to address an issue, the Regulator will consider the Aircraft Operator's explanation and discuss this with the Aircraft Operator.
- Once the assessment process is complete, the regulator will send confirmation to the Aircraft Operator of what actions they need to take and when the action is to be completed by. Aircraft Operators will need to confirm to the Regulator once they

have completed these actions. This is essential to ensure that all the issues raised by the verifier have been addressed and completed as required by the monitoring and reporting decision.

- We would like to highlight that there are no charges associated with the submission of the report.

Outcome

We do not propose amending the condition as we feel that the condition fulfils the requirements of the monitoring and reporting decision appropriately, and facilitates discussion between Aircraft Operators and regulators on what action is required to address any mis-statements and non-conformities appropriately.

**Condition 3**

*Where the Aircraft Operator makes a change to its monitoring methodology (with the exception of the change referred to in condition 5), it must, within 14 days of making the change or, where not practicable, as soon as possible thereafter:*

*(a) apply to the Regulator for a variation of its Emissions Plan where the change affects the information contained in its Emissions Plan; or*

*(b) notify the Regulator where the change does not affect the information contained in its Emissions Plan.*

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

Comment Received	Respondent
<p>In accordance with MRG requirements, only substantial changes, as defined therein, should require an application for variation. Condition 3 implies that an operator must apply for a variation or notify the authority each time any “change” is made. This could lead to multiple variations/notifications a year and potentially result in unjustified costs to the operator given that the UK Regulations 2010 include a provision to charge £ 430 each time a regulator amends the Emission Plan of an operator pursuant to regulation 23 (emission plan conditions) of the UK Regulations 2010. We are of the opinion that it is important to clarify how variation and notification will be handled in the context of regulations 23 and 25 of the UK Regulations 2010.</p> <p>Comment 2: Pending clear definitions of the type of changes, variations and notifications should not be subjected to the same reporting timeframe. For example, notifications could be consolidated and submitted once or twice a year and applications for a variation to an Emission Plan could be submitted within 30 days (and instead of 14 days) or, where not practicable, as soon as possible thereafter for substantial changes.</p>	<p>Air Canada</p>
<p>Flybe is comfortable with the process for application of a change.</p>	<p>Flybe</p>
<p>Would it not be better to normally require an operator to make application to the regulator for a variation of its Emissions Plan prior to making the change? That way the operator can gain assurance of acceptability of the change prior to making (potentially expensive) changes in methodology.</p>	<p>Jet2.com</p>

<p>The requirement to provide notice of all changes to the monitoring methodology and within 14 days or “as soon as possible” is unnecessary and overly burdensome. Moreover, the requirement for an Aircraft Operator to file for a variance to its Emissions Plan “where the change affects the information contained in the Emissions Plan” also is unnecessary and overly burdensome.</p> <p>First, there simply is no rationale provided for such a short window of time and overall compliance with the scheme can be assured with a longer notice period.</p> <p>Second, as drafted, this proposed condition implies that an Aircraft Operator must give such notice for any and all changes to the monitoring methodology, even if the change is minor and “does not affect the information contained in its Emissions Plan.” Third, given that Annex I of the MRD requires Regulator approval only for “substantial changes to the monitoring methodology,” the requirement to apply for a variance for changes that may require a revision of the Emissions Plan, even conforming changes that are not “substantial changes” to the monitoring methodology itself, is regulatory overkill. This proposed “plan condition” provision should be revised in two ways to address these infirmities. Specifically, the time period for notice of substantial changes to the monitoring methodology should be extended to a 90-day notice requirement, and it should be clarified that only such substantial changes trigger a requirement to apply for an Emissions Plan variance. Further, the plan condition should provide that non-substantial changes do not have to be reported or subject to an Emissions Plan variance.</p> <p>Specifically, the time period for notice of substantial changes to the monitoring methodology should be extended to a 90-day notice requirement, and it should be clarified that only such substantial changes trigger a requirement to apply for an Emissions Plan variance. Further, the plan condition should provide that non-substantial changes do not have to be reported or subject to an Emissions Plan variance.</p>	<p>Air Transport Association</p>
--	----------------------------------

**Regulators joint review of the comments**

Having reviewed the comments made in relation to condition 3, our response is as follows:

- This condition requires the Aircraft Operator to apply to vary its Emissions Plan where the change affects the information contained in its plan. Where there is no change to the content of the plan, an Aircraft Operator is required merely to notify us.
- To ensure that Aircraft Operator plans are kept as up to date as possible, any change that affects the content of the plan therefore requires an application for variation to be submitted. However, we have identified the changes that are classed as substantial and therefore have an associated charge as follows:
  - A change of the average reported emissions which require the Aircraft Operator to apply a different tier.
  - A change in the number of flights or total annual emissions, crossing the threshold for small emitters.
  - Substantial changes to the types of fuel used.
- Section 4.3 of Annex I of the MRD states that a competent authority must check and approve monitoring plans after any substantial changes to the monitoring methodology are applied by an Aircraft Operator. As such, an Aircraft Operator is only required to advise us of the change after the event has occurred.
- All other changes and proposed changes in monitoring methodology or the underlying data sets must be notified to the competent authority without undue delay.

- To ensure that Aircraft Operators are plans are kept as up to date as possible for both the Aircraft Operator and verifier, any change that affects the content of the monitoring plan is to result in a variation to plan.
- The application to vary the plan must be made without undue delay, and we have interpreted this to be 14 days, in order to allow Aircraft Operators time to submit the information, but also to ensure there a significant delay between making the change and receiving a response from your regulator as to whether or not the change is acceptable. In the event that submission within 14 days is not practicable the application is to be submitted to your regulator as soon as possible thereafter. This allows for the scope given in the Monitoring and reporting decision where submission within 14 days was not possible.
- Any other changes which do not affect the content of the plan must still be notified to us as this is also a requirement of the monitoring and reporting decision for practical reasons, to keep us informed and enable us to take action if appropriate. For simplicity reasons, we have used the same timescales as for the variations and consider the timescales to be reasonable whilst ensuring that Aircraft Operator and plan details are kept up to date.
- The monitoring and reporting decision requires that all changes are submitted to the competent authority, irrespective of whether they are substantial changes or not. In order to deliver the requirements of the decision, we must require all changes to be submitted to us.

Outcome

We do not propose amending the condition. It is a requirement of the monitoring and reporting decision for Aircraft Operators to submit proposed changes and we consider that 14 days is an appropriate timescale, giving the Aircraft Operator time to submit the necessary information to make the change. This timescale also ensures that the Aircraft Operator seeks approval from the regulator at the earliest opportunity as to whether or not the proposed change is acceptable.

**Condition 4**

*Before the end of each Trading Period, the Aircraft Operator must review its Emissions Plan and assess, to the satisfaction of the Regulator, if its monitoring methodology can be changed in order to improve the quality of the reported data without leading to unreasonably high costs. As a result of the review, the Aircraft Operator must, by 31 December of the last year of each Trading Period:*

- (a) submit a report of the review to the Regulator; and*
- (b) identify its proposed changes to the monitoring methodology as a result of its review; and*
  - (i) where the changes affect the information contained in its Emissions Plan, apply to the Regulator to vary its Emissions Plan accordingly; or*
  - (ii) where the changes do not affect the information contained in its Emissions Plan, notify the Regulator.*

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

Comment Received	Respondent
Notification to the regulator that an internal review has been performed should be provided, however to reduce the burden on airlines the submission of a full report should be dependent on whether approval of a revised monitoring methodology/plan is sought.	Air New Zealand

<p>Whilst Flybe is not uncomfortable with the notion of internal self assessment of quality performance monitoring, and establishing improvement plans, it would be useful to assess both how the regulator will test its satisfaction with the situation annually and what role, if any, the verifier will have in this.</p>	<p>Flybe</p>
<p>Moving the operator’s review of their own systems would be better placed before September of each year so as to allow the competent authority to issue new reports before the operator actively engages the Verifier.  This would also allow operators to evaluate and assess their own systems without the temptation to use feedback from the verifier site visit.  The proposed end of year period may also impact on the verification period between when end of year data is available and when the verified report must be submitted i.e., Jan 1st – March 31st. If this is the case, the operator may lead to procrastination over how to progress with the verification, as they may be awaiting a response from the competent authority before actively engaging the verifier in what will be a short period between Jan –March annually.  Also, it is unclear if the Competent Authority expects all operators who have submitted reports which identified changes or ‘no change’ reports to await a confirmation. Awaiting changes and confirmation during the verification window would squeeze the time available to verify reports as well as increase pressure on both operators and Verifiers. The verifier would effectively have to wait for the issue of a new MRP before the verification could commence in an already tight time period.  Is there an exemption for small emitters?</p>	<p>CICS</p>
<p>Is there an arbitration process in event of disagreement between Regulator and operator – this should also cover the question of what are considered to be reasonable costs?</p>	<p>Jet2.com</p>
<p>While the requirement to do an annual review of the Emissions Plan to assess the monitoring methodology appears in the MRD, this proposed “plan condition” goes too far in not only requiring the review, but requiring the Aircraft Operator to “submit a report of the review to the Regulator” regardless of whether there are any substantial changes to the monitoring methodology identified. The report provision stipulated in this proposed condition will add further, significant costs to the scheme, costs that were not identified when the EU adopted the Directive or in the UK’s consultations on transposition of it. Rather than requiring a report, the UK should allow Aircraft Operators to self-certify that they have undertaken an annual review if no substantial changes to the monitoring methodology are needed.   Moreover, given that Annex I of the MRD requires Regulator approval only for “substantial changes to the monitoring methodology,” the requirement to apply for a variance for changes that may require a revision of the Emissions Plan, even conforming changes that are not “substantial changes” to the monitoring methodology itself, is regulatory overkill.</p>	<p>Air Transport Association</p>

### Regulators joint review of the comments

Having reviewed the comments made in relation to condition 4, our response is as follows:

- It is important to highlight that this requirement relates to the submission of a report before the end of the trading period. The trading period is defined in the 2010 Regulations. The first trading period is 2012, the second runs from 2013 to 2020 and following this, the subsequent period of 8 calendar years. As such, the submission of the report is not an annual requirement, however there is a requirement to submit a report before the end of 2012. This is a requirement of Section 6 of Annex XIV of the monitoring and reporting decision.
- The submission of the report to the Regulator is required to evidence that the review has been carried out in accordance with the requirement of the monitoring and reporting decision.

- The purpose of this report is to identify any improvements to the quality of the reporting process that will not lead to unreasonably high costs. The monitoring and reporting decision specifies what are considered unreasonably high costs, and Regulators will use this accordingly.
- Any changes that result in an amendment to plan being necessary will require a variation to be submitted to the Regulator. This is the same situation that any other change as identified in condition 3 would require a variation. In the event that the change is classed as substantial, a payment for the change will be required and will be subject to approval by the competent authority.
- All operators are required to carry out this process, including small emitters. We will assess any submissions in accordance with the relevant legislation and the monitoring and reporting decisions.
- If an Aircraft Operator disagrees with any requirements that we impose, they are entitled to appeal against these requirements to the Secretary of State.

#### Outcome

We do not propose to amend the condition. It is a requirement of the monitoring and reporting decision that a review is undertaken, and a revised plan is to be submitted as appropriate. Regulators are unable to assess whether this has been completed unless they receive a report demonstrating that the review has been carried out.

Whilst there is a requirement to submit a report at the end of 2012, to update plans in light of any amendments implemented through the Monitoring and Reporting Regulation for Phase III. Following this, the next report not be required until 2020 and therefore we do not consider that this imposes a significant burden on Aircraft Operators.

#### **Condition 5**

*Where an Aircraft Operator applying the simplified procedure to estimate fuel consumption in accordance with Section 4 of Annex XIV of the Monitoring and Reporting Decision exceeds the threshold for Small Emitters, the Aircraft Operator must within 14 days of exceeding the threshold (or such longer period as the Regulator considers to be reasonable in the circumstances):*

- (a) notify the Regulator and demonstrate to the satisfaction of the Regulator that the threshold will not be exceeded again from the following calendar year onwards; or*
- (b) apply to vary its Emissions Plan to meet the monitoring requirements in Section 2 and 3 of Annex XIV of the Monitoring and Reporting Decision.*

Comment Received	Respondent
<p>The UK's proposed Plan Condition for small emitters fails to recognize the flexibility accorded by the European Commission for use of the "small emitters tool" (SET). The EC has approved the SET as a tool that can be used by all airline operators to fill data gaps.<sup>2</sup> The UK proposed Plan Condition fails to recognize this potential use and further appears to imply an ongoing reporting obligation for the SET's use. The proposed Plan Condition should be revised to expressly note the availability of the SET to all Aircraft Operators and state that use of the SET by Airline Operators – of any size – does not trigger the reporting and variance requirement.</p>	<p>Air Transport Association</p>

#### **Regulators joint review of the comments**

Having reviewed the comments made in relation to condition 5, our response is as follows:

- The purpose of this condition is to require Aircraft Operators who consider that they are a small emitter and are using the simplified methodology for monitoring and reporting emissions actually exceed the small emitter criteria. It is not intended to

specify who can and cannot use the small emitter tool as this is addressed in the monitoring and reporting decision.

- This condition also requires Aircraft Operators to confirm whether or not they expect to exceed the threshold to ensure that as far as possible, the Aircraft Operators are monitoring their emissions in accordance with the monitoring and reporting decision, that their approved plan reflects this, and to ensure that compliance with the legislation is achieved.
- This condition delivers the requirements of Section 4 of Annex XIV of the MRD, which specifies the notification / variation requirements in such circumstances as outlined in the condition. In relation to the timings, Section 4 requires applications for variation “without undue delay”. To ensure that compliance can be monitored, we have included an indicative timescale of 14 days but also flexibility as judged by the regulator to recognise the fact that Aircraft Operators may not be monitoring against the threshold on a daily basis.

### **Outcome**

We do not propose to amend the wording of this condition. The condition is required to ensure that only those Aircraft Operators that actually meet the small emitter criteria have approval to use a simplified methodology as the primary method for determining their annual reportable emissions. Aircraft Operators no longer meeting the small emitter criteria are required to vary their plan to ensure it meets the requirements of the monitoring and reporting decision.

### **3. Summary**

We thank respondents who submitted comments on the consultation. As the conditions are there largely implement the requirements of the monitoring decision, we only have a limited scope over what we can amend.

After having reviewed the comments, we consider that there are no changes necessary to any of the conditions. Any points for clarification raised in the consultation can be handled through the appropriate guidance, which we will make available on our websites.

Appendix I contains the final list of conditions that will appear in the aviation emissions plans.

## Appendix 1 Final emissions plan conditions.

1. The Aircraft Operator must retain all information as specified in Section 9 of Annex I of the Monitoring and Reporting Decision for a period of at least 10 years after the submission of the relevant annual report required under regulation 21 of the 2010 Regulations.

2. In relation to all Non-conformities and Mis-statements identified by a Verifier in relation to monitoring in the previous year and specified by the Verifier in the verification required under regulation 21 of the 2010 Regulations (“the Verifier’s specifications”), the Aircraft Operator must:

(a) submit a report to the Regulator, by 30 June each year, setting out its proposed improvements to address the Verifier’s specifications. The proposals must set out full details, including timescales, for implementing the improvements. If no improvement is proposed in response to a Verifier’s specification, the Aircraft Operator must justify why no action is to be taken.

(b) implement all improvements to address the Verifier’s specifications set out by the Regulator in the timescales specified by the Regulator.

(c) notify the Regulator when the improvements have been implemented.

3. Where the Aircraft Operator makes a change to its monitoring methodology (with the exception of the change referred to in condition 5), it must, within 14 days of making the change or, where not practicable, as soon as possible thereafter:

(a) apply to the Regulator for a variation of its Emissions Plan where the change affects the information contained in its Emissions Plan; or

(b) notify the Regulator where the change does not affect the information contained in its Emissions Plan.

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

4. Before the end of each Trading Period, the Aircraft Operator must review its Emissions Plan and assess, to the satisfaction of the Regulator, if its monitoring methodology can be changed in order to improve the quality of the reported data without leading to unreasonably high costs. As a result of the review, the Aircraft Operator must, by 31 December of the last year of each Trading Period:

(a) submit a report of the review to the Regulator; and

(b) identify its proposed changes to the monitoring methodology as a result of its review; and

(i) where the changes affect the information contained in its Emissions Plan, apply to the Regulator to vary its Emissions Plan accordingly; or

(ii) where the changes do not affect the information contained in its Emissions Plan, notify the Regulator.

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

5. Where an Aircraft Operator applying the simplified procedure to estimate fuel consumption in accordance with Section 4 of Annex XIV of the Monitoring and Reporting Decision exceeds

the threshold for Small Emitters, the Aircraft Operator must within 14 days of exceeding the threshold (or such longer period as the Regulator considers to be reasonable in the circumstances):

- (a) notify the Regulator and demonstrate to the satisfaction of the Regulator that the threshold will not be exceeded again from the following calendar year onwards; or
  
- (b) apply to vary its Emissions Plan to meet the monitoring requirements in Section 2 and 3 of Annex XIV of the Monitoring and Reporting Decision.

## Appendix 2 – Definitions

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

Except where otherwise provided in this Emissions Plan, words and expressions which are defined in the 2010 Regulations shall have the same meaning as in those regulations.

Definitions set out below which repeat definitions in the 2010 Regulations are repeated for ease of reference only.

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

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

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

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

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

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

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

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

“Small Emitter” means an aircraft operator operating fewer than 243 flights per period for three consecutive four-month periods or operating flights with total annual emissions lower than 10,000 tonnes CO<sub>2</sub>.

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

“UKAS” means the United Kingdom Accreditation Service.

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

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