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STATUTORY INSTRUMENTS

2021 No. 513

CLIMATE CHANGE

The Recognised Auction Platforms and Greenhouse Gas Emissions Trading Scheme Auctioning (Amendment) Regulations 2021

<i>Made</i>	- - - -	<i>27th April 2021</i>
<i>Laid before the House of Commons</i>	- - - -	<i>28th April 2021</i>
<i>Coming into force</i>	- -	<i>19th May 2021</i>

The Treasury, in exercise of the powers conferred by section 96 of the Finance Act 2020⁽¹⁾, makes the following Regulations.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Recognised Auction Platforms and Greenhouse Gas Emissions Trading Scheme Auctioning (Amendment) Regulations 2021.

(2) They come into force on 19th May 2021.

(3) They extend to the whole of the United Kingdom.

Amendments to the Recognised Auction Platforms Regulations 2011

2.—(1) Regulation 20 of the Recognised Auction Platforms Regulations 2011⁽²⁾ is amended as follows.

(2) In paragraph (4)—

(a) in sub-paragraph (a), omit “established in the United Kingdom”;

(b) after sub-paragraph (a), insert—

“(aa) investment firms which—

⁽¹⁾ 2020 c. 14.

⁽²⁾ S.I. 2011/2699. Regulation 20 has been amended by S.I. 2013/3115, and 2021/494. There are other amendments to S.I. 2011/2699 which are not relevant to these Regulations.

- (i) satisfy the condition in sub-paragraph (a)(i); and
- (ii) are authorised under [Directive 2014/65/EU](#) of the European Parliament and of the Council on markets in financial instruments⁽³⁾ as amended from time to time;”;
- (c) in sub-paragraph (b), omit “established in the United Kingdom”;
- (d) after sub-paragraph (b), insert—
 - “(ba) credit institutions which—
 - (i) satisfy the condition in sub-paragraph (b)(i); and
 - (ii) are authorised under [Directive 2013/36/EU](#) of the European Parliament and of the Council on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms⁽⁴⁾ as amended from time to time;”;
- (e) in the closing words of paragraph (4), omit the words from “on the same terms” to the end.

Amendments to the Greenhouse Gas Emissions Trading Scheme Auctioning Regulations 2021

3. The Greenhouse Gas Emissions Trading Scheme Auctioning Regulations 2021⁽⁵⁾ are amended in accordance with regulations 4 to 14.

Regulation 2 (interpretation)

- 4.—(1) Regulation 2 is amended as follows.
- (2) In paragraph (1)—
 - (a) in the definition of “appointed auction platform” for “Treasury” substitute “auctioneer”;
 - (b) in the definition of “nominated holding account”—
 - (i) for “for paragraphs 11 to 13” substitute “for in paragraphs 10 to 14”;
 - (ii) after “Trading Scheme Order” insert “designated”.
- (3) Omit paragraph (2).

Regulation 5 (submission and withdrawal of bids)

- 5. In regulation 5, after paragraph (8), insert—
 - “(9) For the purposes of this regulation, a person is established in the United Kingdom if that person’s place of residence or permanent address is in the United Kingdom.”.

Regulation 6 (auction clearing price and resolution of tied bids)

- 6. In regulation 6, after paragraph (10) insert—
 - “(11) This regulation is subject to regulation 7(1A).”.

Regulation 7 (auction clearing price)

- 7.—(1) Regulation 7 is amended as follows.
- (2) In paragraph (1), for sub-paragraphs (b) and (c) substitute—

(3) OJ L173, 12.6.2014, p.349.
 (4) OJ L176, 27.6.2013, p.338.
 (5) [S.I. 2021/484](#).

- “(b) where the sum of the volumes bid is less than the volume of allowances auctioned, the price of the lowest bid; or
- (c) where paragraph (2) applies, the price of the lowest bid that is not significantly below the prevailing secondary market price.”.
- (3) After paragraph (1), insert—
 - “(1A) But where paragraph (2) applies and every bid is significantly below the prevailing secondary market price—
 - (a) an auction clearing price must not be determined; and
 - (b) the allowances intended for auction must be dealt with in accordance with regulation 6(8).”.
- (4) In paragraph (2)—
 - (a) after “paragraph (1)(a)” insert “or (b)”;
 - (b) after “preceding the auction” insert “, as determined in accordance with the methodology decided on under paragraph (4).”
- (5) Omit paragraph (3).
- (6) In paragraph (4), for “whether paragraph (2) applies, and if so, what the prevailing secondary market price is,” substitute “for the purposes of paragraph (2) the prevailing secondary market price and whether a given price is significantly below the prevailing secondary market price”.

Regulation 9 (annual volume of allowances)

- 8. In regulation 9, in paragraph (1)(e) after “UK ETS” insert “authority”.

Regulation 12 substituted

- 9. For regulation 12 substitute—

“Cost containment mechanism

12.—(1) Where paragraph (3) applies, the Treasury may authorise one or more of the following measures—

- (a) changing the distribution of allowances to be auctioned at auctions within a calendar year;
- (b) increasing the volume of allowances to be auctioned in a calendar year—
 - (i) by bringing forward part of the volume of allowances to be auctioned in a subsequent calendar year;
 - (ii) by the release for auction of up to 25% of the allowances held in the new entrants’ reserve provided for in article 34G of the Trading Scheme Order;
 - (iii) by the release for auction of allowances from the market stability mechanism account held by the UK ETS authority.

(2) Where the Treasury authorises increasing the volume of allowances to be auctioned in a calendar year under paragraph (1)(b), the UK ETS authority may create additional allowances for auction in that year.

(3) This paragraph applies where the monthly average carbon price is more than—

- (a) 2 x the 2-year average carbon price for 3 consecutive months, if the last consecutive month is in 2021;

- (b) 2.5 x the 2-year average carbon price for 3 consecutive months, if the last consecutive month is in 2022; or
 - (c) 3 x the 2-year average carbon price for 6 consecutive months, if the last consecutive month is in 2023 or any subsequent year.
- (4) For the purposes of paragraph (3)—
- (a) the “monthly average carbon price” for any month must be calculated—
 - (i) by dividing the sum of the end of day settlement prices of the relevant December futures contract as traded on the relevant carbon market exchange for each relevant day in the month by the number of relevant days in the month, or
 - (ii) if the relevant December futures contract was not traded on the relevant carbon market exchange in the month, by dividing the sum of the end of day settlement prices of the relevant December futures contract as traded on the largest carbon market exchange (as determined by volume of sales of relevant December futures contracts during the month) for each relevant day in the month by the number of relevant days in the month;
 - (b) the “2-year average carbon price” must be calculated by dividing the sum of the end of day settlement prices of the relevant December futures contract as traded on the relevant carbon market exchange for each relevant day in the 24 months ending with the last month before the first month of the period of 3 or, as the case may be, 6 months referred to in paragraph (3) by the number of relevant days in the 24-month period.
- (5) In this regulation—
- “end of day settlement price”, in relation to the relevant December futures contract, means the end of day settlement price per tonne of carbon dioxide equivalent published by the carbon market exchange on which the relevant December futures contract is traded expressed in pounds sterling or, where expressed in Euros, converted to pounds sterling by reference to the Bank of England daily spot exchange rate for that day;
- “EU emissions allowance” means an allowance to emit 1 tonne of carbon dioxide equivalent during a specified period that is valid for the purposes of meeting the requirements of [Directive 2003/87/EC](#) of the European Parliament and of the Council of 13th October 2003 establishing a system for greenhouse gas emission allowance trading within the Union⁽⁶⁾ and is transferable in accordance with the provisions of that directive;
- “relevant carbon market exchange”—
- (a) in relation to the trading of the relevant December futures contract on a day in 2019, 2020 or 2021 means the carbon market exchange operated by ICE Futures Europe (company no. 01528617);
 - (b) in relation to the trading of the relevant December futures contract on a day in any subsequent year (the “relevant year”), the largest carbon market exchange as determined by volume of sales of relevant December futures contract during the calendar year preceding the relevant year;
- “relevant day” means a day for which an end of day settlement price is published;
- “relevant December futures contract”, in relation to a day in the month referred to in paragraph (4)(a) or the 24-month period referred to in paragraph (4)(b), means—

(6) OJ L 275, 25.10.2003, p. 32.

- (a) if the day falls in January to November of 2019 or 2020, a futures contract for EU allowances deliverable in December of the year in which the day falls;
- (b) if the day falls in December of 2019 or 2020, a futures contract for EU allowances deliverable in December of the year after the year in which the day falls;
- (c) if the day falls in January to November of 2021 or a subsequent year, a futures contract for allowances deliverable in December of the year in which the day falls;
- (d) if the day falls in December of 2021 or a subsequent year, a futures contract for allowances deliverable in December of the year after the year in which the day falls.”.

Regulation 16 (persons eligible to apply for admission to bid)

10.—(1) Regulation 16 is amended as follows.

(2) In paragraph (1)—

(a) after sub-paragraph (b), insert—

“(ba) investment firms which—

(i) satisfy the condition in sub-paragraph (b)(i); and

(ii) are authorised under [Directive 2014/65/EU](#) of the European Parliament and of the Council on markets in financial instruments as amended from time to time;”;

(b) in sub-paragraph (c)—

(i) in the opening words, after “institution” insert “which”;

(ii) in paragraph (i), at the beginning, omit “which”;

(c) after sub-paragraph (c), insert—

“(ca) a credit institution which—

(i) satisfies the condition in sub-paragraph (c)(i); and

(ii) is authorised under [Directive 2013/36/EU](#) of the European Parliament and of the Council on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms as amended from time to time;”.

(3) In paragraph (2), for “they are established” substitute “the registered office, or if it has no registered office, the head office, of the person covered by that exemption is situated”.

Regulation 17 (requirements for admission to bid)

11.—(1) Regulation 17 is amended as follows.

(2) In paragraph (2)—

(a) omit sub-paragraph (a);

(b) in sub-paragraph (g), for “regulation 40;” substitute “regulation 40; and”.

(3) In paragraph (3), in the opening words, for “16(1)(b) or (c)”, substitute “16(1)(b), (ba), (c) or (ca)”.

Regulation 19 (refusal, revocation or suspension of admission)

12. In regulation 19(4)(c), for “16(1)(b) or (c)”, substitute “16(1)(b), (ba), (c) or (ca)”.

Regulation 29 (transfer of the auctioned allowances)

13. In regulation 29, for “registry administrator” substitute “UK ETS authority”.

Regulation 44 (announcement and notification of the auction results)

14. In regulation 44(5), in the words before sub-paragraph (a) for “(1)(a) and (b)” substitute “(1)(c) to (f)”.

27th April 2021

Maggie Throup
James Morris
Two of the Lords Commissioners of Her
Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers conferred by section 96 of the Finance Act 2020 (c. 14).

These Regulations amend the Recognised Auction Platform Regulations 2011 (S.I. 2011/2699) to clarify those persons who must be permitted by rules made by the auction platform to apply for access to bid in emissions auctions. They also amend the Greenhouse Gas Emissions Trading Scheme Auctioning Regulations 2021 (S.I. 2021/484), which provide for the auctioning of allowances created for the purposes of the UK Emissions Trading Scheme, to correct errors and to adjust the provision made in relation to the auction clearing price, the cost containment mechanism which applies where the monthly average carbon price exceeds the limits specified in regulation 12, and the persons eligible to apply for admission to bid.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.