
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement the obligations in Articles 35, 36 and 43 of Commission Regulation (EU) 1031/2010 of 12 November 2010 on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances (OJ L 302/1, 18.11.2010) (“the emission allowance auctioning regulation”) to ensure that UK law implementing provisions of the Directive [2004/39/EC](#) of the European Parliament and of the Council on markets in financial instruments of 21 April 2004 (OJ L 145, 20.4.2004, p1) in relation to regulated markets, and of Directive [2003/6/EC](#) of the European Parliament and of the Council on insider dealing and market manipulation of 28 January 2003 (OJ L 96, 12.4.2003, p16), and EU measures on money laundering and terrorist financing apply to auction platforms auctioning emission allowances under the emission allowance auctioning regulation.

Regulation 2 sets out the procedure for applications to be recognised as a recognised auction platform. Only recognised investment exchanges will be eligible to make such an application. Regulation 3 gives the Financial Services Authority (“the Authority”) power to make directions in relation to a recognised auction platform where that platform appears to the Authority to be failing to comply with the auction recognition requirements or other obligations applying to it.

Regulation 4 provides for the revocation of a recognition order made under regulation 2.

Regulation 5 provides for the procedure to be followed where the Authority refuses to make a recognition order, or proposes to give a direction under regulation 3 or to make a revocation order under regulation 4.

Regulation 6 of, and Schedule 1 to, the Regulations apply the provisions of Part 8 (penalties for market abuse) of the Financial Services and Markets Act 2000 (“the Act”) to auction platforms with the modifications set out in the Schedule.

Regulation 7 of, and Schedule 2 to, the Regulations ensure that the provisions in Part 18 (recognised investment exchanges and clearing houses) of the Act will apply to a recognised investment exchange which is also a recognised auction platform with the modifications which are set out in Schedule 2.

Regulation 8 of, and Schedule 3 to, the Regulations modify the provisions of Chapter 3A (passport rights) of Part 18 of the Act in their application to recognised auction platforms, and EEA operators of auction platforms.

Regulation 9 ensures that any reference in legislation to functions of the Authority under the Act is understood to include the functions given to the Authority under these Regulations or under the emission allowance auctioning regulation. This ensures that the powers given to the Authority for the performance of its functions under the Act will also apply in relation to the performance of its functions under these Regulations or under the emission allowance auctioning regulation.

Regulation 10 amends the Financial Services and Markets Act 2000 (Prescribed Markets and Qualifying Investments) Order 2001 to prescribe auction platforms and make emission allowances qualifying investments for the purposes of Part 8 (penalties for market abuse) of the Act.

Regulation 11 amends the Money Laundering Regulations 2007 (“the 2007 Regulations”) so that specific provisions of the 2007 Regulations apply to an auction platform auctioning certain emissions allowances. The effect of the amendments is that an auction platform is a “relevant person” for the purposes of regulations 20 and 21 of the 2007 Regulations, and must have in place policies and procedures in order to prevent activities related to money laundering and terrorist financing, and take appropriate measures to train employees in that regard. An auction platform is also a “relevant person” for the purposes of Parts 4 (supervision) and 5 (enforcement) of the 2007 Regulations, so that the powers of the relevant supervisory authority and enforcement authorities may be exercised in relation to a platform. The Authority is the supervisor for auction platforms,

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responsible for monitoring their compliance with certain provisions of the emission allowance auctioning regulation and of the 2007 Regulations. It may impose a civil penalty on an auction platform which breaches the anti-money laundering and terrorist financing requirements of the emission allowance auctioning regulation the requirements of the 2007 Regulations to which it is subject. It is also an offence for an auction platform to breach those requirements.

Part 5 of the Regulations set out the requirements which will have to be satisfied by any recognised investment exchange which wishes to be recognised as a recognised auction platform. Regulation 12 contains definitions relevant to Part 5. Regulation 13 indicates the factors which the Authority may take into account in assessing compliance with the requirements in Part 5. Those requirements are set out in detail in regulations 14 to 23, and cover matters ranging from the financial resources required by an auction platform to the arrangements it must have for investigating complaints.

Regulation 24 requires the Treasury to review the operation and effect of these Regulations within five years after they come into force and within every five years after that. Following a review it will fall to the Treasury to consider whether the Regulations should remain as they are, or be revoked or be amended. A further instrument would be needed to revoke the Regulations or to amend them.

An Impact Assessment of the effect that these Regulations will have on the costs of business and the voluntary sector is available on HM Treasury's website (hm-treasury.gov.uk) and is published with the Explanatory Memorandum alongside these Regulations on the legislation.gov.uk website.

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Changes and effects yet to be applied to :

- Regulations revoked by [2023 c. 29 Sch. 1 Pt. 2](#)
- Regulations revoked by [S.I. 2019/710 reg. 25\(b\)](#) (This amendment not applied to [legislation.gov.uk](#). Reg. 25(b) omitted immediately before IP completion day by virtue of S.I. 2020/1385, regs. 1(4), 64(2))