

EXPLANATORY MEMORANDUM TO
THE GREENHOUSE GAS EMISSIONS TRADING SCHEME AUCTIONING
(AMENDMENT) REGULATIONS 2021

2021 No. 561

1. Introduction

1.1 This explanatory memorandum has been prepared by Her Majesty's Treasury ("HMT") and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument amends the Greenhouse Gas Emissions Trading Scheme Auctioning Regulations 2021 ("the Auctioning Regulations"). The Auctioning Regulations make provision for the auctioning of emissions allowances to emit 1 tonne of carbon dioxide equivalent under the UK Emissions Trading Scheme (the "UK ETS") and introduce mechanisms to support market stability in this new scheme. The UK ETS was established by the Greenhouse Gas Emissions Trading Scheme Order 2020 (the "UK ETS Order").

2.2 This amending instrument clarifies the policy intent in the Auctioning Regulations as regards the establishment of those who are permitted to represent bidders in UK ETS auctions. The amendment needs to be in force in advance of the first UK ETS auction on the 19th May 2021.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The Treasury apologises to the House of Commons that this Order, which comes into force on 19th May 2021, is laid in breach of the 21-day rule.

3.2 On 28 April 2021, the Recognised Auction Platforms and Greenhouse Gas Emissions Trading Scheme Auctioning (Amendment) Regulations 2021 (the "First Amending Instrument") were laid. The First Amending Instrument clarifies the position in the Recognised Auction Platform Regulations 2011 and clarifies the position and corrects errors in the Auctioning Regulations. In particular, amendments were made to regulation 16 of the Auctioning Regulations which makes provision as to auction eligibility. The First Amending Instrument is due to come into force on 19 May 2021 with this instrument set to come into force immediately after.

3.3 Since the First Amending Instrument was laid, the auction platform provider has continued to work with prospective auction participants to determine their compliance with the requirements to be admitted to bid. It was only as part of this process that the implication of the provision in the Auctioning Regulations restricting those who can represent those eligible to bid in auctions to natural persons established in the United Kingdom became apparent. Through feedback from the auction platform provider, it became clear that this geographical restriction would significantly impact upon the initial success of the UK ETS markets as many key prospective market participants would not be able to engage in the first auction.

- 3.4 The Government therefore considers it is essential for this instrument to come into force before the first auction on the 19th May 2021 to facilitate the smooth launch of the UK ETS primary and secondary markets by enabling persons eligible to bid under regulation 16 of the Auctioning Regulations (which imposes no equivalent geographical restrictions) to be able to nominate a natural person to bid on their behalf regardless of where that natural person is located. This ensures the legislation accurately reflects the policy decisions of Ministers. It also supports that transition from EU ETS to UK ETS auctions for UK businesses. It also provides operational continuity for participants with the way that they engaged with EU Emissions Trading System auctions.
- 3.5 As this instrument has been made to correct errors in the Auctioning Regulations it will be issued free of charge to all known recipients of the Auctioning Regulations. The Government regrets that these errors occurred.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.6 As the instrument is subject to the negative resolution procedure, there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the whole of the United Kingdom.
- 4.2 The territorial application of this instrument is the whole of the United Kingdom.

5. European Convention on Human Rights

- 5.1 As this instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 This instrument is made under the power in section 96 of the Finance Act 2020 to make regulations providing for the allocation in exchange for payment of emissions allowances under trading schemes established under Part 1 of Schedule 2 to the Climate Change Act 2008. It relates to the rules for auctioning emission allowances created under the UK ETS, which is such a trading scheme.

7. Policy background

What is being done and why?

- 7.1 The primary objective of the Auctioning Regulations is to provide the rules covering auctions and the secondary market for emissions allowances.
- 7.2 This amending instrument will correct errors in the Auctioning Regulations.

Submission and withdrawal of bids

- 7.3 Regulation 5(5) of the Auctioning Regulations provides that only a natural person established in the United Kingdom can submit, modify, or withdraw a bid on behalf of a person who is eligible to bid under Regulation 16 of the Auctioning Regulations.

- 7.4 To clarify the policy intent and to support early auction functionality, regulation 2(3) of this instrument amends regulation 5(5) of the Auctioning Regulations to remove the requirement that a natural person be established in the United Kingdom in order to submit, modify or withdraw a bid.
- 7.5 This instrument also amends a number of other provisions of the Auctioning Regulations to reflect this change and to ensure that those eligible to be admitted to bid who may be outside of the United Kingdom are able to comply with the information requirements which form part of the application process under Regulation 18(5) of the Auctioning Regulations (the “application requirements”).
- 7.6 Regulation 2(6)(a) of this instrument amends Paragraph 8 of the Schedule to the Auctioning Regulations (which contains further details of the application requirements) to provide that in respect of natural person such as bidder’s representatives proof of place of residence or permanent address must be provided rather than a proof of a permanent address in the United Kingdom.
- 7.7 Paragraph 12 and 13 of the Schedule to the Auctioning Regulations provides that applicants may need to provide a VAT return, VAT registration number or another means of identifying the applicant to HM Revenue and Customs (“HMRC”). To enable entities based outside of the UK, who may not need to interact with HMRC, to meet the application requirements, regulation 2(6)(b) and (c) of this instrument provides that only participants that have a United Kingdom VAT return or registration need provide that information.
- 7.8 A small number of technical errors have also been identified which have been corrected at the same time.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument is being made under powers in the Finance Act 2020.
- 8.2 This instrument amends legislation that was part of a legislative package which introduced a policy replacement for the UK’s participation in the EU ETS. Except in relation to certain electricity generators in Northern Ireland, the UK ceased to participate in the EU ETS at the end of the Transition Period (from 1st January 2021), as a direct consequence of the UK’s withdrawal from the EU.

9. Consolidation

- 9.1 This instrument is the second time that the Auctioning Regulations have been amended. The Government currently has no plans to consolidate the relevant legislation.

10. Consultation outcome

- 10.1 Between 2nd May 2019 and 12th July 2019, the UK Government and Devolved Administrations ran a public consultation seeking views on the UK's future carbon pricing policy. The consultation set out policy proposals for a UK ETS and sought views on these proposals from stakeholders. The public consultation included policy proposals for auctioning and market stability mechanisms in a standalone UK ETS. This instrument amends one aspect of the legislation in relation to one of the proposals to correct the error described above.

- 10.2 Alongside the consultation, the UK Government and Devolved Administrations jointly commissioned the Committee on Climate Change (CCC) for advice on both a standalone and linked UK ETS.
- 10.3 The public consultation received over 130 responses, from a range of stakeholders including current EU ETS participants and NGOs, with the majority supporting most of the proposals on the design of a UK ETS.
- 10.4 The Government Response to the consultation was published on 1st June 2020.
- 10.5 Full details of the consultation and the response can be found at:
<https://www.gov.uk/government/consultations/the-future-of-uk-carbon-pricing>
- 10.6 The Energy White Paper was published on 14th December 2020. This paper confirmed that the UK would introduce the UK ETS to replace participation in the EU ETS following the end of the Transition Period. It also stated that ‘the UK is open to linking the UK ETS internationally in principle and we are considering a range of options, but no decision on our preferred linking partners has yet been made.’

11. Guidance

- 11.1 Guidance for UK ETS auction participants has been published on gov.uk.¹

12. Impact

- 12.1 The UK ETS will affect businesses in the power, aviation and industry sectors. The UK ETS Impact Assessment has considered the impacts on businesses of this scheme in more detail. Alongside this, the government compensates energy-intensive businesses for up to 75% of the costs in their electricity bills due to the UK ETS and Carbon Price Support (CPS).
- 12.2 There is no significant impact on charities or voluntary bodies.
- 12.3 There is no significant impact on the public sector.
- 12.4 Although Government policy does not require an Impact Assessment for this instrument because it is not a regulatory provision, an Impact Assessment of the UK ETS policy was produced. This Impact Assessment considered the expected costs and benefits of the UK ETS in its initial years of operation (from 2021 to 2024) in an unlinked context. It covers UK ETS policy contained within the UK ETS Order and the Auctioning Regulations.
- 12.5 This UK ETS is expected to deliver a net benefit to society in its initial years of operation compared to a counterfactual of continued UK participation in Phase IV of the EU ETS.
- 12.6 The Impact Assessment was published on the gov.uk website, alongside the Government Response to the Future of UK Carbon Pricing consultation on 1st June 2020.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 To minimise any disproportionate impact of UK ETS requirements on small businesses, operators and aircraft operators with relatively low levels of emissions are

¹ <https://www.gov.uk/government/publications/participating-in-the-uk-ets/participating-in-the-uk-ets>

either not caught by the scheme or can take advantage of derogations under the UK ETS.

14. Monitoring & review

- 14.1 The operation of the Auctioning Regulations will be reviewed along with other aspects of the UK ETS under Article 17 of the UK ETS Order. This article commits the UK Government (and Devolved Administrations) to reviewing the operation of the UK ETS in 2023 and in 2028.

15. Contact

- 15.1 Joseph Spencer, at Her Majesty's Treasury (joseph.spencer@hmtreasury.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Alanna Barber, Deputy Director for the Energy and Transport Tax team can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Kemi Badenoch MP, Exchequer Secretary of the Treasury, can confirm that this Explanatory Memorandum meets the required standard.