
STATUTORY INSTRUMENTS

2021 No. 494

**EXITING THE EUROPEAN UNION
FINANCIAL SERVICES**

**The Recognised Auction Platforms (Amendment
and Miscellaneous Provisions) Regulations 2021**

Made - - - - *21st April 2021*
Coming into force - - *22nd April 2021*

The Treasury, in exercise of the powers conferred by sections 21, 22, 39, 286, 349 and 428 of the Financial Services and Markets Act 2000⁽¹⁾, and section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018⁽²⁾, make the following Regulations:

A draft of these Regulations has been laid before and approved by a resolution of each House of Parliament in accordance with paragraph 1(3) of Schedule 7 to the European Union (Withdrawal) Act 2018.

Citation and commencement

1.—(1) These Regulations may be cited as the Recognised Auction Platforms (Amendment and Miscellaneous Provisions) Regulations 2021.

(2) They come into force on the day after the day on which they are made.

The Financial Services and Markets Act 2000

2.—(1) The Financial Services and Markets Act 2000 is amended as follows.

(2) In section 122IA⁽³⁾ (power to suspend auctioning of auctioned products on a recognised auction platform)—

- (a) in subsection (1), for “a supplementary EU regulation” substitute “any supplementary market abuse legislation”;
- (b) in subsection (7), for the words from “(as defined)” to the end, substitute “, within the meaning of regulation 4 of the Greenhouse Gas Emissions Trading Scheme Auctioning Regulations 2021⁽⁴⁾”.

(1) 2000 c. 8.

(2) 2018 c. 16

(3) Section 122IA was inserted by S.I. 2017/701.

(4) S.I. 2021/484.

(3) In section 131AB(1) (interpretation)(5), in the definition of “emission allowance”, for the words from “has the meaning” to the end, substitute “means emission allowance as described in paragraph 11 of Part 1 of Schedule 2 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(6).”.

The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001

3.—(1) The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 is amended as follows.

(2) In article 3(1)(7)—

(a) in the appropriate places, insert—

““trading scheme order” means the Greenhouse Gas Emissions Trading Scheme Order 2020(8);”;

““UK auctioning regulations” means the Greenhouse Gas Emissions Trading Scheme Auctioning Regulations 2021;”;

(b) for the definition of “aircraft operator”, substitute—

““aircraft operator” has the meaning given in article 6 of the trading scheme order;”;

(c) in the definition of “auction platform”, at the end insert “or the UK auctioning regulations”;

(d) in the definition of “greenhouse gas emissions allowances”, after “directive” insert “or in article 4(1) of the trading scheme order”;

(e) in the definition of “operator”, for “emission allowance trading directive” substitute “trading scheme order”;

(f) in the definition of “reception”, “transmission” and “submission”, after “emission allowance auctioning regulation” insert “or the UK auctioning regulations”.

(3) In article 24A(9), in paragraph (1)—

(a) in sub-paragraph (a), after “platform” insert “in accordance with the UK auctioning regulations”;

(b) in sub-paragraph (b)—

(i) for “any other” substitute “an”,

(ii) at the end insert “in accordance with that regulation”.

(4) In article 24B—

(a) in paragraph (1)—

(i) in sub-paragraph (a), for “affiliate undertaking” substitute “affiliated undertaking”;

(ii) in sub-paragraph (c), after “Member States” insert “or of the United Kingdom”;

(b) omit paragraph (2);

(c) in paragraph (3)—

(i) for “affiliate undertaking” substitute “affiliated undertaking”;

(ii) for “emission allowance auctioning regulation” substitute “UK auctioning regulations”.

(5) Section 131AB was inserted by [S.I. 2016/680](#) and amended by [S.I. 2017/701](#) and [2019/310](#).

(6) [S.I. 2001/544](#), Schedule 2 was substituted by [S.I. 2006/3384](#). Paragraph 11 was inserted by 2017/488 and is amended by these Regulations.

(7) The definitions of “aircraft operator”, “auction platform”, “greenhouse gas emissions allowances”, “operator”, “reception”, “transmission” and “submission” were inserted by [S.I. 2012/1906](#).

(8) [S.I. 2020/1265](#), amended by [S.I. 2020/1557](#).

(9) Article 24A was inserted, with Articles 24B, 82A and 82B, by [S.I. 2012/1906](#).

(5) In article 82A, after “auctioning regulation” insert “or regulation 2(1) of the UK auctioning regulations”.

(6) In article 82B, for paragraph (1), substitute—

“(1) Subject to paragraph (2)—

- (a) emission allowances consisting of any units recognised for compliance (by an EEA State) with the requirements of the emission allowance trading directive; and
- (b) allowances created under article 18 of the trading scheme order and transferable in accordance with that order.”.

(7) In Part 1 of Schedule 2, in paragraph 11, at the end, insert “or allowances created under article 18 of the trading scheme order”.

The Financial Services and Markets Act 2000 (Financial Promotion) Order 2005

4. In paragraph 23A of Schedule 1 to the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005(10), for sub-paragraph (1), substitute—

“(1) Subject to sub-paragraph (2)—

- (a) emission allowances consisting of any units recognised for compliance (by an EEA State) with the requirements of the emission allowance trading directive; and
- (b) allowances created under article 18 of the Greenhouse Gas Emissions Trading Scheme Order 2020 and transferable in accordance with that order.”.

The Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001

5. The Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001(11) are amended as follows—

- (a) in Schedule 1, Part 1, after the entry relating to “The Chartered Institute of Legal Executives”, in the first column insert “The registry administrator of the registry of emissions trading scheme registers established for the purposes of paragraph 23 of Schedule 2 to the Climate Change Act 2008(12)”, and in the second column insert “its functions as such”;
- (b) in Schedule 2, after the entry beginning “A recognised clearing house”, in the first column insert “The registry administrator of the registry of emissions trading scheme registers established for the purposes of paragraph 23 of Schedule 2 to the Climate Change Act 2008”, and in the second column insert “its functions as such”.

The Recognised Auction Platforms Regulations 2011

6.—(1) The Recognised Auction Platforms Regulations 2011(13) are amended as follows.

(2) In regulation 1—

(a) in paragraph (3)—

- (i) in the definition of “auction platform” for “emission allowance auctioning regulation”, substitute “UK auctioning regulations”;

(10) [S.I. 2005/1529](#). Paragraph 23A was inserted by [S.I. 2017/488](#), and amended by [S.I. 2019/632](#).

(11) [S.I. 2001/2188](#). There are a number of amendments to Schedule 1, Part 1, and Schedule 2 which are not relevant to this instrument.

(12) [2008 c. 27](#).

(13) [S.I. 2011/2699](#).

- (ii) in the definition of “auction recognition requirements”, for the words from “emission allowance auctioning” to the end of the definition, substitute “UK auctioning regulations”;
- (iii) in the definition of “emission allowance”—
 - (aa) renumber the words from “which is valid” to the end as sub-paragraph (a);
 - (bb) at the end of sub-paragraph (a), as renumbered, insert—
 - “, or
 - (b) created under article 18 of the trading scheme order and transferable in accordance with that order;”;
- (iv) after the definition of “recognition order”, insert—
 - ““trading scheme order” means the Greenhouse Gas Emissions Trading Scheme Order 2020;
 - “UK auctioning regulations” means the Greenhouse Gas Emissions Trading Scheme Auctioning Regulations 2021;”;
- (b) in paragraph (4)(b)—
 - (i) for “emission allowance trading directive” substitute “trading scheme order”;
 - (ii) for “emission allowance auctioning regulation” substitute “UK auctioning regulations”;
 - (iii) for “or regulation” substitute “or regulations”.
- (3) In regulation 5A(1)(**14**) for “Article 19, 20(7), 21(1) or (2), or 54 of the emission allowance auctioning regulation” substitute “regulation 17, 18(8), 19(1) or (2), or 37 of the UK auctioning regulations”.
- (4) Omit regulations 6 and 8.
- (5) In regulation 9, for “emission allowance auctioning regulation”, both times it appears, substitute “UK auctioning regulations”.
- (6) Omit regulations 10 and 11.
- (7) In regulation 20—
 - (a) in paragraph (3), for “Article 18 of the emission allowance auctioning regulation”, substitute “regulation 16 of the UK auctioning regulations”;
 - (b) in paragraph (4)—
 - (i) for sub-paragraphs (a) and (b), substitute—
 - “(a) investment firms established in the United Kingdom, which—
 - (i) have permission under Part 4A of the Financial Services and Markets Act 2000(**15**) to carry on regulated activities relating to investment services and activities, bidding on their own account or on behalf of their clients; and
 - (ii) would require authorisation under [Directive 2014/65/EU](#) of the European Parliament and of the Council on markets in financial instruments if they had their head office in an EEA state;
 - (b) credit institutions established in the United Kingdom, which—

(14) Regulation 5A was inserted by S.I. 20112/1906.

(15) Part 4A was substituted for Part 4 by s. 11(2) of the Financial Services Act [2012 \(c. 21\)](#).

- (i) have permission under Part 4A of the Financial Services and Markets Act 2000 to carry on the regulated activity of accepting deposits, bidding on their own account or on behalf of their clients; and
 - (ii) would require authorisation 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 if they had their head office in an EEA state,”;
- (ii) in the words after sub-paragraph (b)—
- (aa) omit “by the competent authority of another EEA State (including a branch established in the United Kingdom of such a firm or institution)”;
 - (bb) at the end, insert “and for the purposes of this paragraph, a firm or institution is established in the United Kingdom if its registered office, or if it has no registered office, its head office, is situated in the United Kingdom”.
- (8) In regulation 24, omit paragraph (2).
- (9) Omit Schedule 1.
- (10) In Schedule 2—
- (a) in paragraph 2, for “emission allowance auctioning regulation” substitute “UK auctioning regulations”;
 - (b) in paragraph 9, for “290A, 300A to 300E, and sections 302 to 310”, substitute “290A and 300A to 300E”.
- (11) Omit Schedule 3.

The Financial Services and Markets Act 2000 (Qualifying Provisions) Order 2013

7.—(1) The Financial Services and Markets Act 2000 (Qualifying Provisions) Order 2013(16) is amended as follows.

- (2) In article 1(2), after the definition of “recovery and resolution directive”, insert—
- ““UK auctioning regulations” means the Greenhouse Gas Emissions Trading Scheme Auctioning Regulations 2021;”.
- (3) In article 2—
- (a) in paragraph (2), after sub-paragraph (c), insert—
“(ca) the UK auctioning regulations;”;
 - (b) in paragraph (8), after sub-paragraph (b), insert—
“(ba) the UK auctioning regulations;”.
- (4) In article 3—
- (a) in paragraph (2), after sub-paragraph (c), insert—
“(ca) the UK auctioning regulations;”;
 - (b) in paragraph (3)(b), after “auctioning regulation” insert “, the UK auctioning regulations”.
- (5) In article 4—
- (a) in paragraph (3), after sub-paragraph (b), insert—

(16) [S.I. 2013/419](#), amended by [S.I. 2019/632](#), which also amends the title of the S.I. to the Financial Services and Markets Act 2000 (Qualifying Provisions) Order 2013. There are other amendments which are not relevant to this instrument.

- “(ba) the UK auctioning regulations;”;
- (b) in paragraph (5), after sub-paragraph (b), insert—
 - “(ba) the UK auctioning regulations;”.
- (6) In article 5—
 - (a) in paragraph (2), after sub-paragraph (c), insert—
 - “(ca) the UK auctioning regulations;”;
 - (b) in paragraph (5)(b), after “auctioning regulation” insert, “, the UK auctioning regulations”.
- (7) In article 6(2), after sub-paragraph (c), insert—
 - “(ca) the UK auctioning regulations;”.

The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017

8.—(1) The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017⁽¹⁷⁾ are amended as follows.

- (2) In regulation 3(1), after the definition of “trust or company service provider”, insert—
 - ““UK auctioning regulations” means the Greenhouse Gas Emissions Trading Scheme Auctioning Regulations 2021;”.
- (3) In regulation 10—
 - (a) in paragraphs (1) and (2)(c) and (d), after “the emission allowance auctioning regulation”, each time it appears, insert “or the UK auctioning regulations”;
 - (b) in paragraph (2)(d), for “Article 2.1(j) of the markets in financial instruments directive” substitute “paragraph 1(k) of Part 1 of Schedule 3 to the Regulated Activities Order⁽¹⁸⁾”.
- (4) In regulation 14(1)(c), for “Article 3.4 and 3.5 of the emission allowance auctioning regulation”, substitute “regulation 2(1) of the UK auctioning regulations”.
- (5) In regulation 46(8)(a)—
 - (a) in paragraph (i), for “Articles 19 and 20.6 of the emission allowance auctioning regulation” substitute “regulation 17 of the UK auctioning regulations”;
 - (b) in paragraph (ii), for “Article 54 of that regulation”, substitute “regulation 37 of those Regulations”;
 - (c) in paragraph (iii), for “Article 55.2 and 55.3 of that regulation” substitute “regulation 38(4) and (5) of those Regulations”.
- (6) In paragraph 1(c) of Schedule 6—
 - (a) in paragraph (i), for “Article 19 or 20.6 of the emission allowance auctioning regulation” substitute “regulation 17 of the UK auctioning regulations”;
 - (b) in paragraph (ii), for “Article 54 of the emission allowance auctioning regulation”, substitute “regulation 37 of the UK auctioning regulations”.

Market Abuse Regulation

9.—(1) [Regulation \(EU\) No 596/2014](#) of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation)⁽¹⁹⁾ is amended as follows.

⁽¹⁷⁾ [S.I. 2017/692](#).

⁽¹⁸⁾ [S.I. 2001/544](#). Schedule 3 was substituted by [S.I. 2017/488](#).

⁽¹⁹⁾ [EUR 2014/596](#).

- (2) In paragraph 1 of Article 2 (scope), in the second subparagraph—
- (a) for “authorised as a regulated market” substitute “in relation to which a recognition order is in force under the Recognised Auction Platforms Regulations 2011(20)”;
 - (b) omit “, including when auctioned products are not financial instruments,”;
 - (c) for “[Regulation \(EU\) No 1031/2010](#)” substitute “the Greenhouse Gas Emissions Trading Scheme Auctioning Regulations 2021”.
- (3) In Article 3 (definitions)—
- (a) after point (19), insert—
 - “(19a) ‘UK emission allowance’ means an allowance created under the Greenhouse Gas Emissions Trading Scheme Order 2020;
 - (19b) ‘EU emission allowance’ means an emission allowance recognised for compliance with the requirements of [Directive 2003/87/EC](#);
 - (19c) ‘UK installation’, ‘UK aviation activities’, ‘EU installation’ and ‘EU aviation activities’ have the meanings given in Article 7(4);”;
 - (b) for point (20), substitute—
 - “(20) ‘emission allowance market participant’ means—
 - (a) a UK emission allowance market participant, and
 - (b) any person who would be treated as an emission allowance market participant under Article 3(20) of Regulation (EU) 596/2014(21) as it applies in the European Union;”;
 - (c) after point (20), insert—
 - “(20A) ‘UK emission allowance market participant’ means any person who—
 - (a) enters directly or indirectly into transactions, including the placing of orders to trade, in UK emission allowances, auctioned products based thereon, or derivatives thereof and
 - (b) does not benefit from an exemption based on the second subparagraph of Article 17(2) of this Regulation.”;
 - (d) in point (25), for “an emission” substitute “a UK emission”.
- (4) In Article 6 (exemption for monetary and public debt management activities and climate policy activities), after paragraph 2A, insert—
- “**2B.** This Regulation does not apply to the activities of the Secretary of State, the Scottish Ministers, the Welsh Ministers, a Northern Ireland department or any other officially designated body, or of any person acting on their behalf, which concern UK emission allowances and are undertaken in pursuit of the climate policies of the United Kingdom or of any part of the United Kingdom or in accordance with any international agreement to which the United Kingdom is a party.”.
- (5) In Article 7(4) (inside information)—
- (a) in the second subparagraph—
 - (i) for “emission allowance market” substitute “market for UK emission allowances”;
 - (ii) after “physical operations”, insert “relating to UK installations or UK aviation activities”;
 - (b) after the second sub-paragraph, insert—

(20) S.I. 2011/2699.

(21) O.J. L173, 12.6.2014, p.1.

“In the case of participants in the market for EU emission allowances with aggregate emissions or rated thermal input at or below the threshold set in accordance with the second subparagraph of Article 17(2) of Regulation (EU) 596/2014 as that Regulation applies in the European Union, information about their physical operations relating to an EU installation or EU aviation activities shall be deemed not to have a significant effect on the price of emission allowances, or auctioned products based thereon, or of derivative financial instruments.”;

(c) after paragraph 4, insert—

“**4A.** For the purposes of this Article—

- (a) an installation is a “UK installation” if activities at that installation resulting in the emission of carbon dioxide, perfluorocarbons or nitrous oxide (“greenhouse gases”) are regulated under the Greenhouse Gas Emissions Trading Scheme Order 2020;
- (b) an installation is an “EU installation” if activities at that installation resulting in emissions of greenhouse gases are regulated under the national law of an EEA State which implements [Directive 2003/87/EC](#);
- (c) aviation activities are “UK aviation activities” if emissions of greenhouse gases resulting from those activities must be monitored under the Greenhouse Gas Emissions Trading Scheme Order 2020;
- (d) aviation activities are “EU aviation activities” if the emissions of greenhouse gases resulting from those activities must be monitored under the national law of an EEA State implementing [Directive 2003/87/EC](#).”.

(6) In paragraph 1 of Article 8 (insider dealing), for “[Regulation \(EU\) No 1031/2010](#)” substitute “the Greenhouse Gas Emissions Trading Scheme Auctioning Regulations 2021”.

(7) In Article 17 (public disclosure of inside information)—

(a) for point (c) of the third subparagraph of paragraph 1, substitute—

“(c) UK emission allowance market participants;”;

(b) after paragraph 1, insert—

“**1A.** A UK emission allowance market participant is only required to disclose inside information concerning EU emission allowances if that participant enters into transactions, including the placing of orders to trade, directly or indirectly, in EU emission allowances, or in auctioned products based thereon, or derivatives based thereof.”;

(c) for the first sub-paragraph of paragraph 2, substitute—

“A UK emission allowance market participant shall publicly, effectively and in a timely manner disclose inside information concerning emission allowances which it holds in respect of its business, including—

- (a) aviation activities as specified in Annex I to [Directive 2003/87/EC](#) or in paragraph 1 of Schedule 1 to the Greenhouse Gas Emissions Trading Scheme Order 2020 (“the Order”), or
- (b) installations within the meaning of Article 3(e) of that Directive or paragraph 2 of Schedule 2 to the Order,

which the participant concerned, or its parent undertaking or related undertaking, owns or controls, or for the operational matters for which the participant, or its parent undertaking or related undertaking, is responsible, in whole or in part.

With regard to installations, such disclosure shall include information relevant to the capacity and utilisation of installations, including planned or unplanned unavailability of such installations.”;

- (d) in the second sub-paragraph of paragraph 2, for “the installations or aviation activities” substitute “the UK installations or UK aviation activities”;
 - (e) after the second sub-paragraph of paragraph 2, insert—
 - “For the purposes of the second sub-paragraph—
 - (a) during the period beginning on the date on which the Recognised Auction Platforms (Amendment and Miscellaneous Provisions) Regulations 2021 come into force and ending with 30th April 2022 (“the initial period”), the “preceding year” means the year ending with 31st December 2020;
 - (b) after the initial period, during any period beginning with 1st May and ending with 30th April, “the preceding year” means the year ending with the 31st December which falls before the 1st of May in the period in question.”;
 - (f) in paragraph 4—
 - (i) for “issuer or an emission”, each time it occurs, substitute “issuer or a UK emission”;
 - (ii) for “issuer or emission”, each time it occurs, substitute “issuer or UK emission”;
 - (g) in paragraph 7, for “the emission allowance” substitute “the UK emission allowance”;
 - (h) in paragraph 8, for “issuer or an emission” substitute “issuer or a UK emission”.
- (8) In Article 18 (insider lists), in paragraph 8—
- (a) in point (a)—
 - (i) at the beginning, insert “UK”;
 - (ii) omit “registered in the United Kingdom”;
 - (iii) for “that emission” substitute “that UK emission”;
 - (b) for point (b), substitute—
 - “(b) any auction platform and auctioneer in relation to auctions of emission allowances or other auctioned products based thereon that are held pursuant to the Greenhouse Gas Emissions Trading Scheme Auctioning Regulations 2021.”;
 - (c) after paragraph 8, insert—
 - “**8A.** A UK emission allowance market participant (“P”) is only required to draw up a list of persons who have access to inside information relating to EU emission allowances if—
 - (a) P enters into transactions, including the placing of orders to trade, directly or indirectly, in EU emission allowances, auctioned products based thereon or derivatives thereof, and
 - (b) the emissions from P’s EU installations and EU aviation activities exceed the minimum threshold referred to in the second sub-paragraph of Article 17(2) of Regulation (EU) 596/2014 as that Regulation applies in the European Union.”.
- (9) In Article 19 (managers’ transactions)—
- (a) in paragraph 1—
 - (i) in the opening words, before “emission allowance”, insert “UK”;
 - (ii) for point (b) of the first subparagraph, substitute—

Regulation (EU) 2016/1011

11. In Article 3(1) (definitions) of Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds⁽²²⁾, in point (24)(a) (the definition of “regulated-data benchmark”), for point (vi), substitute—

“(vi) an auction platform in relation to which a recognition order is in force under the Recognised Auction Platforms Regulations 2011;”.

21st April 2021

David Rutley
Maggie Throup
Two of the Lords Commissioners of Her
Majesty’s Treasury

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in the exercise of powers in the Financial Services and Markets Act 2000, and the power in section 8 of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union (including deficiencies under paragraphs (a), (b) and (e) of section 8(2)), reflecting in particular the introduction of a UK Emissions Trading Scheme which, for the UK, will replace the EU Emissions Trading Scheme (except in relation to Northern Ireland, under the terms of the Northern Ireland Protocol, an Annex to the Withdrawal Agreement between the UK and the European Union which allows Northern Ireland to continue to access the EU single market for goods, and which requires Northern Ireland to continue to abide by certain EU regulations).

These Regulations amend financial services legislation so far as it relates to the auctioning of emissions allowances, to ensure that the rules which applied to the auctioning of emissions allowances created as part of the EU Emissions Trading Scheme will continue to work in the United Kingdom in relation to the auctioning of allowances created under the UK Emissions Trading Scheme established under the Greenhouse Gas Emissions Trading Scheme Order 2020 ([S.I. 2020/1265](#)).

An impact assessment of the effect that this instrument will have on the costs of business, the voluntary sector and the public sector is available from HM Treasury, 1 Horse Guards Road, London SW1A 2HQ and is published alongside this instrument at www.legislation.gov.uk.