
DRAFT STATUTORY INSTRUMENTS

2008 No.

ENVIRONMENTAL PROTECTION

EMISSIONS TRADING

**The Community Emissions Trading Scheme (Allocation of
Allowances for Payment) Regulations 2008**

Made - - - - - ***

Coming into force - - - - - ***

These Regulations are made in exercise of the powers conferred by section 16(2), (3) and (4) of the Finance Act 2007(a).

A draft of these Regulations has been approved by a resolution of the House of Commons pursuant to section 16(8) of the Finance Act 2007.

The Treasury make the following Regulations:

PART 1

INTRODUCTORY

Citation and commencement

1. These Regulations may be cited as the Community Emissions Trading Scheme (Allocation of Allowances for Payment) Regulations 2008 and come into force on the day after the date on which they are made.

Interpretation

2. In these Regulations—

“account holder” means an account holder, as defined in Article 2 of the Registries Regulation;

“allowance” means a Community tradeable emissions allowance;

“auction” means the process of allocation of allowances for payment by means of submission of bids as provided for by these Regulations and the Scheme;

“auction clearing price” is the price required to be paid by an account holder for an allowance at an auction and is determined in accordance with the Scheme;

“bid” means an offer to acquire allowances in such form as is required by the Scheme;

“the Directive” means Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC(a);

“Environment Agency” means the agency established under Chapter I of the Environment Act 1995(b), designated under Article 8 of the Registries Regulation and acting as the United Kingdom’s registry administrator;

“holding account” means an operator holding account created under Article 15 of the Registries Regulation, or a person holding account created under Article 19 of the Registries Regulation;

“nominated bank account” means such bank account as is nominated by the person conducting an auction, or by the person conducting an allocation for payment otherwise than by auction, for the receipt of a payment from an account holder;

“nominated holding account” means the holding account nominated by an account holder for the receipt of allowances;

“Party holding account” means the United Kingdom’s Party holding account created in accordance with Article 12 of the Registries Regulation;

“the person conducting an allocation for payment otherwise than by auction” means the Treasury, or, where the Treasury has made an appointment under regulation 10(b), the person so appointed;

“the person conducting an auction” means the Treasury, or, where the Treasury has made an appointment under regulation 3(b), the person so appointed;

“the Registries Regulation” means Commission Regulation 2216/2004/EC for a standardised and secured system of registries pursuant to the Directive and Decision 280/2004/EC of the European Parliament and the Council(c);

“relevant interest rate” means—

- (a) where payment is made in sterling, one per cent above the rate announced from time to time by the Monetary Policy Committee of the Bank of England (the “Bank”) as the official dealing rate, being the rate at which the Bank is willing to enter into transactions for providing short term liquidity in the money markets;
- (b) where payment is made in euros, one per cent above the rate announced from time to time by the Governing Council of the European Central Bank as the main refinancing operations rate, being the minimum rate at which the European Central Bank is willing to enter into transactions for providing short-term liquidity in the money markets.

“Scheme” means a scheme made by the Treasury under section 16(5) of the Finance Act 2007;

“settlement date” means the date, determined in accordance with the Scheme, by which payment in full for allowances is required to be made by an account holder.

(a) OJ No. L275, 25.10.2003, p.32.
(b) c. 25.
(c) OJ No. L 386, 29.12.2004, p.1.

PART 2

AUCTIONS

Persons who may conduct auctions

3. The Treasury may—
- (a) conduct auctions to allocate allowances, or
 - (b) appoint the Secretary of State, the Scottish Ministers, the Welsh Ministers or the Department of the Environment in Northern Ireland, or any other person, or any of them acting jointly, to conduct auctions to allocate allowances, subject to conditions (including as to fees charged) and limitations as the Treasury see fit.

Deposits

- 4.—(1) The person conducting an auction—
- (a) may require an account holder to pay a deposit into a nominated bank account on account of payment for allowances,
 - (b) may retain a deposit as payment for allowances allocated, and
 - (c) must repay to an account holder any part of a deposit not used to satisfy payment for allowances as soon as reasonably practicable after the close of the bidding window.
- (2) In paragraph (1) “bidding window” means such period as is specified in the Scheme during which an account holder may submit a bid in an auction for the allocation of an allowance.

Payment

- 5.—(1) An account holder to whom allowances are allocated at an auction must pay, by the settlement date, the total amount due for payment for the allowances allocated.
- (2) Payment must be made—
- (a) into a nominated bank account,
 - (b) in sterling or euros, as determined in accordance with the Scheme.
- (3) In paragraph (1) “total amount due” means the amount notified to the account holder by the person conducting the auction.

Transfer of allowances

- 6.—(1) On receipt of payment in full from an account holder for the allocation of allowances, the person conducting an auction must provide to the Environment Agency such information as is necessary to effect the transfer referred to in paragraph (2).
- (2) As soon as reasonably practicable following receipt of the information referred to in paragraph (1), the Environment Agency must transfer from the Party holding account to the nominated holding account of each account holder the number of allowances which are allocated to that account holder at auction.

Allocation following review

- 7.—(1) If, following an auction, an account holder requests a review under regulation 13 and the decision of the Treasury in respect of that review is to allocate allowances to an account holder, the account holder must pay the auction clearing price for those allowances.
- (2) Payment must be made into a nominated bank account by the date specified by the Treasury.
- (3) On receipt of payment in full from that account holder the person conducting the auction must provide to the Environment Agency such information as is necessary to effect the transfer referred to in paragraph (4).

(4) As soon as reasonably practicable on receipt of the information referred to in paragraph (3), the Environment Agency must transfer the number of allowances from the Party holding account to the account holder's nominated holding account as is specified by the Treasury in their decision under regulation 13.

(5) Where payment for allowances is not received into the nominated bank account from an account holder by the date specified under paragraph (2), any outstanding amount is payable by the account holder on demand, and the Treasury may—

- (a) require that account holder to pay interest for each day beginning with the settlement date and ending on the date on which payment is made, at the relevant interest rate, calculated on a daily basis, or
- (b) decide not to provide to the Environment Agency such information as is necessary to effect the transfer under paragraph (4).

(6) The Treasury must give an account holder notice of a decision under sub-paragraph (5)(b) as soon as reasonably practicable after making that decision.

Consequences of late or non-payment

8.—(1) Where payment for allowances is not received from an account holder by the settlement date, any outstanding amount is payable by the account holder on demand, and the person conducting an auction may—

- (a) require that account holder to pay interest for each day beginning with the settlement date and ending on the date on which payment is made at the relevant interest rate, calculated on a daily basis, or
- (b) decide not to provide to the Environment Agency such information as is necessary to effect the transfer under regulation 6(2).

(2) The person conducting an auction must give an account holder notice of a decision under sub-paragraph (1)(b) as soon as reasonably practicable after making that decision.

Transfer of excess allowances

9.—(1) If, following an auction, the Environment Agency transfers a number of allowances to a nominated holding account in excess of the number of allowances which should have been transferred to that account ("excess allowances"), when the transfer of excess allowances comes to the account holder's notice, that account holder must, as soon as reasonably practicable—

- (a) give notice to the Environment Agency and to the person conducting the auction;
- (b) where the nominated holding account is administered by the Environment Agency, request that the Environment Agency transfers the excess allowances from that account to the Party holding account.

(2) When an excess transfer comes to the notice of the Environment Agency, whether by notification from an account holder under sub-paragraph (1)(a) or otherwise, and if—

- (a) the Environment Agency is not in receipt of a request under sub-paragraph (1)(b); and
- (b) the nominated holding account is administered by the Environment Agency,

then the Environment Agency must transfer the excess allowances from that account to the Party holding account as soon as reasonably practicable.

(3) In the event that an account holder sells or otherwise deals in the excess allowances or any interest in the excess allowances the person conducting the auction may require the account holder to pay—

- (a) the auction clearing price, or
- (b) if the auction clearing price is, in accordance with the Scheme, replaced by the reserve price, the reserve price,

in each case multiplied by the number of excess allowances transferred to the account holder.

(4) Payment required to be made under paragraph (3) must be made into the nominated bank account by the date specified by the person conducting the auction.

(5) If payment required under paragraph (3) is not received in full by the date specified by the person conducting the auction, any outstanding amount is payable by the account holder on demand.

(6) In paragraph (3), “reserve price” has the meaning given to it by the Scheme.

PART 3

OTHER ALLOCATIONS FOR PAYMENT

Persons who may conduct other allocations for payment

10. The Treasury may—

- (a) conduct allocations of allowances for payment otherwise than by auction, or
- (b) appoint the Secretary of State, the Scottish Ministers, Welsh Ministers or the Department of the Environment in Northern Ireland, or any other person, or any of them acting jointly, to conduct allocations of allowances for payment otherwise than by auction, subject to such conditions (including as to fees charged) and limitations as the Treasury see fit.

PART 4

GENERAL PROVISIONS

Public censure

11.—(1) If the Treasury consider that an account holder has breached these Regulations or the Scheme, the Treasury may publish a statement containing such information as they see fit regarding the breach, including the name of the account holder and the nature of the breach.

(2) If the Treasury propose to publish such a statement, they must give the account holder a notice setting out the terms of the statement and must specify a period of no less than 28 days within which the account holder may make written representations by notice to the Treasury.

(3) The Treasury must then decide, within a reasonable time, whether or not to publish a statement (whether or not in the terms proposed) and must give the account holder, without delay, a notice setting out the terms of the statement.

(4) After a statement under paragraph (1) has been published, the Treasury must send a copy of it to the account holder.

Appointment of an independent observer

12.—(1) The Treasury must appoint an independent observer to oversee any allocation or allocations under these Regulations.

(2) The terms of appointment and remuneration (if any) of the independent observer shall be determined by the Treasury.

(3) The independent observer must provide a report to the Treasury on the conduct of an allocation.

(4) The report must be provided to the Treasury as soon as reasonably practicable after an allocation has taken place.

(5) The person conducting an auction or the person conducting an allocation for payment otherwise than by auction must provide access to any information relating to the allocation that is

reasonably required by the independent observer for the purpose of carrying out his functions under this regulation.

Review of decisions

13.—(1) A person in receipt of any decision of the Treasury or of a person conducting an auction or of a person conducting an allocation for payment otherwise than by auction under these Regulations may request a review of the decision.

(2) Such request for a review must be sent by notice to the Treasury within 28 days of notification of the decision.

(3) On receipt of such request the Treasury must carry out a review.

(4) When carrying out a review the Treasury must ensure that the individual responsible for the original decision is not responsible for carrying out the review.

(5) Before determining the outcome of any review under this regulation, the Treasury may appoint an independent person to make a report in writing to them.

(6) If a report is made by the independent person, it must include the independent person's conclusions and recommendations, if any, or the independent person's reasons for not making any recommendations.

(7) The terms of appointment and remuneration (if any) of the independent person shall be determined by the Treasury.

(8) On receipt of a report from an independent person, or following its own review of the matter, the Treasury must notify the person requesting the review of their decision in respect of the review.

Notices

14.—(1) Any notice to be given under these Regulations to the Treasury, to a person conducting an auction or to a person conducting an allocation for payment otherwise than by auction—

- (a) must be given in writing,
- (b) where the Scheme specifies the person to whom the notice is to be addressed, must be marked for the attention of that person,
- (c) must be delivered—
 - (i) by electronic mail to an electronic mail address specified in the Scheme,
 - (ii) by personal delivery to such address as is specified in the Scheme, or
 - (iii) by fax to a number specified in the Scheme.

(2) Any notice to be given to the Environment Agency under regulation 9(1)(a) must be given in writing, marked for the attention of the person specified in the Scheme and delivered by electronic mail to an electronic mail address specified in the Scheme.

(3) Any request to be given to the Environment Agency under regulation 9(1)(b) must be given by electronic communication using the automated processes established in accordance with Article 3 of the Registries Regulation.

(4) Any notice to be given under these Regulations by the Treasury or by the person conducting an auction or by the person conducting an allocation for payment otherwise than by auction must be given in writing and may be given to a person—

- (a) by leaving it at that person's address;
- (b) by sending it by post to that person at that address; or
- (c) where an address for service using electronic mail has been given by that person, by sending it using electronic mail to that person at that address.

(5) Any notice referred to in paragraph (4) may—

- (a) in the case of a body corporate (other than a limited liability partnership) be served on the secretary or clerk of that body;
- (b) in the case of a limited liability partnership, be served on a member; or
- (c) in the case of a partnership (other than a limited liability partnership), be served on or given to a partner or person having the control or management of the partnership business.

Financial provisions

15.—(1) Any sums received by the Treasury or the Secretary of State under or by virtue of these Regulations shall be paid into the Consolidated Fund.

(2) Any sums received by an appointee under or by virtue of these Regulations shall be paid to the Secretary of State who shall pay them into the Consolidated Fund.

(3) In this regulation “appointee” means a person, other than the Secretary of State, appointed by the Treasury under regulation 3(b) or 10(b).

Date

Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for the Treasury to impose charges by providing for Community tradeable emissions allowances to be allocated in return for payment. The Regulations set out provision as to who will conduct allocations, the payment for and transfer of emissions allowances, the consequences of late or non-payment and of breaches of the Regulations or of the Treasury's Scheme, the consequences of a transfer of excess allowances, the appointment of an independent observer, the opportunity to obtain a review of decisions made under the Regulations and provisions relating to the giving of notice.

Part 2 of the Regulations sets out the provisions relating to allocation of allowances in return for payment by auction.

Regulation 3 provides that the Treasury may conduct auctions, or may appoint another person to conduct auctions.

Regulation 4 provides that the person conducting an auction may collect a deposit and may use it to satisfy payment for the allowances.

Regulation 5 provides that an account holder must pay for allowances in full by the settlement date. Payment must be made to a bank account nominated by the person conducting the auction.

Regulation 6 provides that once full payment has been received and the Environment Agency has received such information from the person conducting the auction as is necessary to effect transfer, the Environment Agency must transfer allowances to the nominated holding account of an account holder.

Regulation 7 provides that if, following a review under regulation 13, the decision of the Treasury is to allocate allowances to an account holder, the account holder must pay the auction clearing price for those allowances. The account holder must pay for those allowances in full by the date specified by the Treasury. Upon late or non-payment by the account holder, the Treasury may charge interest on the late payment, or decide not to transfer the allowances to the account holder.

Regulation 8 provides that, upon late or non-payment by an account holder, the person conducting the auction may charge interest on the late payment, or decide not to provide to the Environment Agency such information as is necessary to effect the transfer of allowances to the account holder.

Regulation 9 requires the account holder to notify the Environment Agency of any excess allowances that are transferred. If a transfer of excess allowances comes to the notice of the Environment Agency and the nominated holding account is administered by the Environment Agency, then the Environment Agency must transfer the excess allowances from that account to the Party holding account. If the account holder has dealt in the excess allowances, or in an interest in them, the person conducting the auction may require the account holder to pay the auction clearing price for those allowances.

Part 3 of the Regulations sets out provision relating to allocation of allowances in return for payment where the allocation method is not an auction.

Regulation 10 provides that the Treasury may conduct allocations other than auctions, or may appoint another person to conduct allocations other than auctions.

Part 4 of the Regulations sets out general provisions relating to all types of allocation of allowances in return for payment.

Regulation 11 permits the Treasury to publish details of any breaches of the Regulations or of the Treasury's Scheme.

Regulation 12 sets out provision relating to the appointment of an independent observer to oversee allocations and includes a requirement for the independent observer to provide a report to the Treasury on the conduct of allocations.

Regulation 13 provides for the review of any decision of the Treasury under the Regulations or a decision of the person conducting an auction or other allocation. Provision is made permitting the Treasury to appoint an independent person to make a report before the review decision is made.

Regulation 14 sets out provision relating to notices.

Regulation 15 provides that any money received under or by virtue of the Regulations is to be paid into the Consolidated Fund.

These Regulations provide the framework for allocating Community tradeable emissions allowances in return for payment, and as such no administrative impact in the private sector is foreseen. The administrative impact of allocations in return for payment will depend on the detailed design of the auction or other allocation method. The Government consulted on auction design and other allocation methods at the end of 2007 and that consultation was accompanied by a full Impact Assessment, which can be found at www.defra.gov.uk. Treasury will publish a Scheme, which will cover the conduct and terms of allocation, along with the detailed design of the auctions or other sales methods, and the requirements in order to participate. An updated impact assessment will be published along with the Scheme.

*Draft Regulations laid before the House of Commons under section 16(8) of the Finance Act 2007
for approval by resolution of the House of Commons*

D R A F T S T A T U T O R Y I N S T R U M E N T S

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