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## DRAFT STATUTORY INSTRUMENTS

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**2021 No.**

# The Greenhouse Gas Emissions Trading Scheme Auctioning Regulations 2021

## PART 4

### Access to Auctions

#### **Persons who may submit bids directly in an auction**

**13.** Only a person who is eligible to apply for admission to bid pursuant to regulation 16 and is admitted to bid pursuant to regulations 17 and 18 may submit bids directly in an auction.

#### **Means of access**

**14.—(1)** An appointed auction platform must provide the means to access its auctions on a non-discriminatory basis.

(2) Admission to the auctions must not be dependent on becoming a member of or a participant in the secondary market organised by the appointed auction platform or any other trading place operated by the appointed auction platform or by any third party.

(3) The appointed auction platform must ensure that its auctions can be accessed remotely by means of an electronic interface accessible securely and reliably through the internet.

(4) In addition, the appointed auction platform may offer bidders the option of accessing its auctions through dedicated connections to the electronic interface.

(5) The appointed auction platform may offer, and the Treasury may by direction require the auction platform to offer, one or more alternative means of accessing its auctions, should the main means of access be inaccessible for whatever reason, provided that such alternative means of access are secure and reliable and their use does not lead to any discrimination between bidders.

#### **Training and helpline**

**15.—(1)** The appointed auction platform must offer a practical web-based training module on the auction process it is conducting, including guidance on how to complete and submit any forms and a simulation of how to bid in an auction.

(2) It must also make available a helpline service accessible by telephone, internet and electronic mail at least during the working hours of each trading day.

#### **Persons eligible to apply for admission to bid**

**16.—(1)** The following persons are eligible to apply for admission to bid directly in auctions—

- (a) an operator or an aircraft operator having an operator holding account or an aircraft operator holding account, bidding on its own account, including any parent undertaking,

subsidiary undertaking or affiliated undertaking forming part of the same group as the operator or the aircraft operator;

(b) investment firms which—

- (i) have permission under Part 4A of the Financial Services and Markets Act 2000<sup>(1)</sup> 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<sup>(2)</sup> (as that directive applied in the European Union immediately before IP completion day) if they had their head office in an EEA state;

(c) a credit institution—

- (i) which has 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 (as that directive applied in the European Union immediately before IP completion day) if they had their head office in an EEA state;

(d) business groupings of persons listed in sub-paragraph (a) bidding on their own account and acting as an agent on behalf of their members;

(e) public bodies or state-owned entities of the United Kingdom that control any of the persons listed in sub-paragraph (a).

(2) Without prejudice to the exemption in paragraph 1(k) of Schedule 3 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001<sup>(3)</sup>, persons covered by that exemption who comply with rules set out in regulation [42](#) are eligible to apply for admission to bid directly in the auctions either on their own account or on behalf of clients of their main business provided that they are established in the United Kingdom.

(3) Where the persons referred to in paragraph (1)(b) and (c) and paragraph (2) bid on behalf of their clients, they must ensure that those clients are themselves eligible to apply for admission to bid directly under paragraphs (1) or (2).

(4) Where the clients of the persons referred to in paragraph (3) are themselves bidding on behalf of their own clients, they must ensure that—

- (a) those clients, and
- (b) any direct or indirect clients of those clients down the chain bidding indirectly in the auctions,

are also eligible to apply for admission to bid directly under paragraphs (1) or (2).

(5) The following persons are not eligible to apply for admission to bid directly in auctions nor may they participate in auctions through one or more persons admitted to bid pursuant to regulation [17](#) and [18](#), whether for their own account or on behalf of any other person, where they fulfil their role with respect to the auctions in question—

- (a) the auctioneer;
- (b) the appointed auction platform including any clearing system and any settlement system connected to it;

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(1) [2000 c. 8](#). Part 4A was substituted for the original Part 4 by s. 11(2) of the Financial Services Act [2012 \(c. 21\)](#).

(2) OJ L173, 12.6.2014, p.349.

(3) [S.I.2001/544](#). Schedule 3 was inserted by [S.I. 2018/1403](#).

- (c) persons who are in a position to exercise, directly or indirectly, significant influence over the management of the persons under sub-paragraphs (a) and (b);
  - (d) persons working for persons under sub-paragraphs (a) and (b).
- (6) The option made available pursuant to regulations 27 to 32 for the appointed auction platform, including any clearing system or settlement system connected to it, to accept payment, make delivery or take collateral, from a successor in title to a successful bidder may not undermine the application of this regulation, or regulations 17 to 19.

### **Requirements for admission to bid**

17.—(1) Members or participants of the secondary market organised by the appointed auction platform that are eligible persons pursuant to regulation 16(1) or (2) must be admitted to bid directly in the auctions conducted by the auction platform without any further admission requirements, provided that both of the following conditions are fulfilled—

- (a) the requirements for admission of the member or participant to trade allowances through the secondary market organised by the appointed auction platform are no less stringent than those listed under paragraph (2);
- (b) the appointed auction platform receives any additional information necessary to verify the fulfilment of any requirements referred to in paragraph (2) that have not been previously verified.

(2) Persons, who are not members or participants of the secondary market organised by the appointed auction platform, and who are eligible persons pursuant to regulation 16(1) or (2) must be admitted to bid directly in the auctions conducted by that auction platform provided that they—

- (a) are an operator or an aircraft operator established in the United Kingdom;
- (b) hold a nominated holding account;
- (c) hold a nominated bank account;
- (d) appoint at least one bidder's representative as defined in regulation 5(5);
- (e) subject to paragraph (3), satisfy the appointed auction platform pursuant to the customer due diligence measures required under the Money Laundering Regulations as to—
  - (i) their identity,
  - (ii) the identity of their beneficial owners,
  - (iii) their integrity, business and trading profile having regard to the means of establishing the relationship with the bidder,
  - (iv) the type of bidder,
  - (v) the nature of the auctioned product,
  - (vi) the size of prospective bids, and the means of payment and delivery;
- (f) satisfy the appointed auction platform of their financial standing, in particular, that they are able to meet their financial commitments and current liabilities as they fall due;
- (g) have in place or are able to put in place when requested, the internal processes, procedures and contractual agreements necessary to give effect to a maximum bid-size imposed pursuant to regulation 40;
- (h) fulfil the requirements of regulation 32(1).

(3) Persons within regulation 16(1)(b) or (c) or regulation 16(2), who are submitting bids on behalf of their clients, are responsible for ensuring that all of the following conditions are fulfilled—

- (a) their clients are eligible persons pursuant to regulation 16(1) or (2);

- (b) they have or will have in good time before the opening of the bidding window adequate internal processes, procedures and contractual agreements necessary to—
  - (i) enable them to process bids from their clients including the submission of bids, collection of payment and transfer of allowances;
  - (ii) prevent the disclosure of confidential information from that part of their business responsible for receiving, preparing and submitting bids on behalf of their clients to that part of their business responsible for preparing and submitting bids on their own account;
  - (iii) ensure that their clients who themselves are acting on behalf of clients bidding in the auctions apply the requirements set out in paragraph (2) and in this paragraph and that they require the same of their clients and of the clients of their clients as provided for in regulation 16(4).
- (4) The appointed auction platform may rely on reliable checks carried out by the persons referred to in the opening words of paragraph (3), their clients, or the clients of their clients as provided for in regulation 16(3) and (4).
- (5) Persons referred to in paragraph (3) are responsible for ensuring that they are able to demonstrate to the appointed auction platform whenever requested to do so by the auction platform pursuant to regulation 18(7)(d) that the conditions in sub-paragraphs (a) and (b) of paragraph (3) are fulfilled.

### **Submission and processing of applications for admission to bid**

- 18.**—(1) Subject to paragraph (2), persons eligible under regulation 16(1) or (2) must apply to the auction platform for admission to bid before submitting their first bid directly through the appointed auction platform.
- (2) Members of or participants in the secondary market organised by the appointed auction platform fulfilling the requirements of regulation 17(1) must be admitted to bid without applying under paragraph (1).
- (3) An application for admission to bid made under paragraph (1) is made by submitting a completed application form to the auction platform.
- (4) The application form must be provided by the appointed auction platform, and made available through the internet.
- (5) An application for admission to bid must—
- (a) be supported by duly certified copies of all supporting documents required by the appointed auction platform to show that the applicant satisfies the requirements of regulation 17(2) and (3);
  - (b) include at least the elements listed in the Schedule.
- (6) An application for admission to bid, including any supporting documents, must on request be made available for inspection by any law enforcement authorities conducting an investigation referred to in regulation 45(3)(e).
- (7) The appointed auction platform may refuse admission to bid in its auctions if the applicant refuses—
- (a) to comply with requests made by the auction platform for additional information or clarification or substantiation of information provided;
  - (b) to attend an invitation made by the auction platform to interview any officers of the applicant including at its business premises or elsewhere;
  - (c) to allow investigations or verifications, requested by the auction platform including on-site visits or spot-checks at the applicant's business premises;

- (d) to comply with requests made by the auction platform for any information required from an applicant, the clients of an applicant or the clients of their clients as provided for in regulation 16(3) and (4) to check compliance with the requirements of regulation 17(3);
  - (e) to comply with requests made by the auction platform for any information required to check compliance with the requirements of regulation 17(2).
- (8) The appointed auction platform must require an applicant for admission to bid in its auctions to ensure that clients of the applicant comply with any request made pursuant to paragraph (7) and that any client of the applicant's clients as provided for in regulation 16(4) does the same.
- (9) An application for admission is deemed to be withdrawn if the applicant fails to submit information requested by the auction platform within a reasonable period specified in a request for information made pursuant to sub-paragraph (a), (d) or (e) of paragraph (7), by the appointed auction platform, which must not be less than five trading days from the date of the request for information, or fails to respond or submit to or cooperate in an interview or any investigations or verifications under sub-paragraph (b) or (c) of paragraph (7).
- (10) An applicant—
- (a) must not provide the appointed auction platform with false or misleading information; and
  - (b) must notify the appointed auction platform concerned fully, frankly and promptly of any changes in its circumstances that could affect its application for admission to bid in auctions conducted by the auction platform or any admission to bid already granted to it.
- (11) The appointed auction platform must decide on an application submitted to it and notify its decision to the applicant in writing.
- (12) The appointed auction platform may—
- (a) grant unconditional admission to the auctions, subject to regulation 37(3)(b), for a period not exceeding the term of its appointment, including any extension or renewal of that appointment;
  - (b) grant conditional admission to the auctions for a period not exceeding the term of its appointment, subject to fulfilment of the specified conditions, by a given date, which must be duly verified by the auction platform concerned;
  - (c) refuse to grant admission.
- (13) For the purposes of this regulation, “duly certified copy” means an authentic copy of an original document that is certified as being a true copy of the original by a qualified lawyer, accountant, notary public or similar professional who is recognised under the law of any part of the United Kingdom to attest officially as to whether a copy is in fact a true copy of its original.

### **Refusal, revocation or suspension of admission**

- 19.—**(1) The appointed auction platform must refuse to grant admission to bid in its auctions, revoke or suspend any admission to bid already granted to any person who—
- (a) is not or is no longer eligible to apply for admission to bid under regulation 16(1) or (2);
  - (b) does not or no longer meets the requirements of regulations 16, 17 or 18;
  - (c) is wilfully or repeatedly in breach of these Regulations, the terms and conditions of its admission to bid in the auctions conducted by the appointed auction platform or any other related instructions or agreements.
- (2) The appointed auction platform must refuse to grant admission to bid in its auctions, revoke or suspend any admission to bid already granted, if it suspects money laundering, terrorist financing, or other criminal activity or market abuse in relation to an applicant, unless such refusal, revocation or suspension is likely to frustrate efforts by law enforcement authorities (within the meaning of

regulation 44(10) of the Money Laundering Regulations), or the FCA, to pursue or apprehend the perpetrators of such activities.

(3) In such a case, the appointed auction platform must report to a person nominated for this purpose by the Director General of the National Crime Agency<sup>(4)</sup> in accordance with regulation 38(4), and to the FCA in accordance with regulation 39(1).

(4) The appointed auction platform may refuse to grant admission to bid in its auctions, revoke or suspend any admission to bid already granted, to any person—

- (a) who is negligently in breach of these Regulations, the terms and conditions of its admission to bid in the auctions conducted by the appointed auction platform or any other related instructions or agreements;
- (b) who has otherwise behaved in a manner that is prejudicial to the orderly or efficient conduct of an auction;
- (c) who is referred to in regulation 16(1)(b) or (c) or regulation 16(2) and has not bid in any auction during the preceding 220 trading days.

(5) Persons referred to in paragraph (4) must be notified of the refusal to grant admission, or the proposal to revoke or suspend admission, and be given a reasonable period, specified in that notification, to respond in writing.

(6) After considering the person's written response, the appointed auction platform must if warranted—

- (a) grant or reinstate admission with effect from a given date;
- (b) grant conditional admission or conditional reinstatement of admission subject to fulfilment of the specified conditions by a given date, which must be duly verified by the auction platform concerned;
- (c) confirm the refusal to grant admission, the revocation or suspension of admission with effect from a given date.

(7) The auction platform must notify the person in question of its decision.

(8) Persons whose admission to bid is revoked or suspended pursuant to paragraphs (1), (2) or (4) must take reasonable steps to ensure that their removal from the auctions—

- (a) is orderly;
- (b) does not prejudice the interests of their clients or interfere with the efficient functioning of the auctions;
- (c) does not affect their obligations to comply with any payment provisions, the terms and conditions of their admission to bid in the auctions or any other related instructions or agreements;
- (d) does not compromise their obligations regarding the protection of confidential information pursuant to regulation 17(3)(b)(ii) which is to remain in force for 20 years following their removal from the auctions.

(9) The notification of refusal to grant admission, revocation or of suspension of admission, referred to in paragraphs (1), (2) and (4), must specify any measures needed to comply with paragraph (8) and the auction platform must verify compliance with such measures.

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(4) The National Crime Agency was established under the Crime and Courts Act 2013 (c. 22).