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STATUTORY INSTRUMENTS

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**2008 No. 1939**

**ENVIRONMENTAL PROTECTION**

**EMISSIONS TRADING**

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

<i>Made</i>	- - - -	<i>22nd July 2008</i>
<i>Laid before the House of Commons</i>	- - - -	<i>22nd July 2008</i>
<i>Coming into force</i>	- -	<i>12th August 2008</i>

These Regulations are made in exercise of the powers conferred by section 16(2), (4) and (6A) of the Finance Act 2007<sup>(1)</sup>.

The Treasury make the following Regulations:

**Citation, commencement and interpretation**

1. These Regulations may be cited as the Community Emissions Trading Scheme (Allocation of Allowances for Payment) (Amendment) Regulations 2008 and come into force on 12th August 2008.

2. In these Regulations the “principal Regulations” means the Community Emissions Trading Scheme (Allocation of Allowances for Payment) Regulations 2008<sup>(2)</sup>.

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

3. The principal Regulations are amended as follows.

4.—(1) Regulation 2 (interpretation) of the principal Regulations is amended as follows.

(2) After the definition of “bid” insert:

““bid instruction” means information (in any form) comprising—

- (a) the number of allowances which an account holder wishes to acquire in an auction,
- (b) the price which an account holder is willing to pay for those allowances, and

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(1) 2007 c.11. Subsection (4) was amended by s.164 of the Finance Act 2008 (c.9) and subsection (6A) was inserted by s.164 of the Finance Act 2008.

(2) S.I. 2008/1825.

- (c) the identity of that account holder,  
but which has not been submitted as a bid.

“confidential information” means—

- (a) the contents of a bid,
- (b) the contents of a bid instruction,
- (c) information which discloses or from which can be deduced either—
  - (i) the number of allowances which an account holder wishes to acquire in an auction;  
or
  - (ii) the price which an account holder is willing to pay for those allowances,  
and the identity of that account holder;
- (d) information about or derived from a bid instruction or bid instructions or a bid or bids or any of them together which would be likely to—
  - (i) give an indication as to the demand for allowances at any auction,
  - (ii) give an indication as to the auction clearing price at any auction, or
  - (iii) have an effect on the auction clearing price at any auction.”

**5. Regulation 7 (allocation following review) of the principal Regulations is amended as follows.**

- (1) For paragraph (1) substitute the following—

“(1) Where following an auction an account holder requests a review—

- (a) under regulation 13 and the decision of the Treasury in respect of that review is to allocate allowances to an account holder,
- (b) of a specified decision under the Scheme and the decision of the person conducting an auction 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) At the end of paragraph (2) add “or by the person conducting the auction.”

- (3) In paragraph (4)—

- (a) after “the Environment Agency must transfer” omit “the number of allowances”,
- (b) after “Party holding account to the”, omit “account holder’s”,
- (c) after “nominated holding account” omit “as is specified by the Treasury in their decision under regulation 13” and add “the number of allowances allocated following the review”.

- (4) In paragraphs (5) and (6) after “and the Treasury” insert “or the person conducting the auction”.

- (5) After paragraph (6) add “(7) In paragraph (1) “specified decision” means such decision of the person conducting the auction as is specified in the Scheme”.

**6. After regulation 9 (transfer of excess allowances) of the principal Regulations insert—**

**“Wrongful disclosure**

**9A.—**(1) Confidential information must not be disclosed by any person who obtained that information, whether directly or indirectly, from an account holder except in accordance with paragraph (2).

- (2) Paragraph (1) does not prevent the disclosure of confidential information which—

- (a) has already lawfully been made available to the public;

- (b) is made with the written consent of the account holder;
  - (c) is required by a Community obligation;
  - (d) is made in pursuance of an order of the court;
  - (e) is made for the purposes of a criminal investigation or criminal proceedings (whether or not in the United Kingdom);
  - (f) is disclosed to the Treasury or the person conducting the auction for the purpose of enabling or assisting the Treasury or the person conducting an auction to carry out their functions;
  - (g) is disclosed to the Environment Agency for the purpose of enabling or assisting the Environment Agency to carry out its functions under these Regulations and the Scheme;
  - (h) is required by an independent observer appointed by the Treasury for the purpose of enabling the independent observer to carry out the functions of the independent observer under these Regulations;
  - (i) is required by an independent person appointed by the Treasury as part of their determination of a review under these Regulations for the purpose of enabling that independent person to carry out his functions under these Regulations;
  - (j) is made after the end of a period of twenty years starting from the date of the opening of the bidding window of the auction in which the confidential information is first disclosed.
- (3) In this regulation “bidding window” has the same meaning as in regulation 4.

### **Offence**

**9B.** Any person who contravenes regulation 9A is guilty of an offence.

### **Defences**

**9C.**—(1) It is a defence for a person charged with an offence under regulation 9B of disclosing confidential information to prove that the person—

- (a) reasonably believed that the disclosure was lawful, or
- (b) took all reasonable precautions and exercised all due diligence to avoid committing the offence.

### **Penalties**

**9D.**—(1) A person guilty of an offence under regulation 9B shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

(2) Where a body corporate or a limited liability partnership is guilty of an offence under regulation 9B and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—

- (a) any director, manager, secretary, or other similar officer of the body corporate, or
- (b) any member of the limited liability partnership, or
- (c) any person who was purporting to act in any such capacity as in (a) or (b),

that person, as well as the body corporate or limited liability partnership, shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(3) For the purposes of paragraph (2) “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

(4) Where an offence under regulation 9B is committed in Scotland by a Scottish partnership and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, that partner as well as the partnership shall be guilty of the offence and be liable to be proceeded against and punished accordingly.

(5) Proceedings for an offence under regulation 9B—

- (a) may not be instituted in England and Wales without the consent of the Director of Public Prosecutions,
- (b) may not be instituted in Northern Ireland without the consent of the Director of Public Prosecutions for Northern Ireland.”

*Claire Ward*

*Dave Watts*

Two of the Lords Commissioners of Her Majesty’s Treasury

22nd July 2008

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

These Regulations amend the Community Emissions Trading Scheme (Allocation of Allowances for Payment) Regulations 2008 (the “principal Regulations”) in order to create a criminal offence of wrongful disclosure of confidential information. They also make a minor amendment in order to permit allowances to be allocated to an account holder following an auction as a consequence of a review of a decision made by the person conducting an auction

Regulation 4 inserts new definitions of a “bid instruction” and “confidential information” in the principal Regulations.

Regulation 5 amends regulation 7 of the principal Regulations to permit allowances to be allocated to an account holder following an auction as a consequence of a review carried out under a Treasury scheme made under section 16(5) of the Finance Act 2007 of a decision by the person conducting an auction.

Regulation 6 inserts a new regulation 9A after Regulation 9 (transfer of excess allowances) in the principal Regulations. Regulation 9A provides that confidential information must not be disclosed by any person who obtains the information, whether directly or indirectly, from an account holder unless disclosure is permitted under this regulation. The regulation then sets out a list of permitted disclosures of confidential information.

Regulation 6 also inserts a new regulation 9B which provides that disclosure in breach of regulation 9A is an offence.

Regulation 6 also inserts a new regulation 9C which provides that it is a defence to prove that the person charged reasonably believed the disclosure to be lawful or took all reasonable precautions and exercised all due diligence to avoid committing the offence.

Regulation 6 inserts a new regulation 9D which sets out the penalties for a person guilty of the offence. New regulation 9D also makes provision in relation to corporate bodies and provides that the Director of Public Prosecutions must give consent before proceedings may be instituted for an offence under regulation 9B.

These Regulations amend the framework for allocating Community tradeable emissions allowances in return for payment, and as with the principal Regulations, 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](http://www.defra.gov.uk). The 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.