
STATUTORY INSTRUMENTS

2012 No. 1906

**The Financial Services and Markets Act 2000
(Regulated Activities) (Amendment) Order 2012**

PART 3

CONSEQUENTIAL AND MISCELLANEOUS AMENDMENTS

Amendment of Schedule 3 to the Financial Services and Markets Act 2000

4.—(1) Schedule 3 to the Financial Services and Markets Act 2000 (EEA passport rights) is amended as follows.

(2) After paragraph 4C (the market in financial instruments directive)(1), insert—

“The emission allowance auctioning regulation

4D. “The emission allowance auctioning regulation” means Commission Regulation (EU) No 1031/2010 of 12 November 2010 on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances pursuant to Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community.”.

(3) In paragraph 5 (EEA firm)—

(a) at the end of sub-paragraph (e), omit “or”;

(b) at the end of sub-paragraph (f)(2), insert—

“; or

(g) a person who has received authorisation under Article 18.2 of the emission allowance auctioning regulation.”.

(4) In paragraphs 6(b)(3) (EEA authorisation), 7(b) (EEA right), 9 (home state regulator) and 11 (host state regulator), after “single market directive” insert “or, as the case may be, the emission allowance auctioning regulation”.

(5) In paragraph 12 (firms qualifying for authorisation), after sub-paragraph (6)(4), insert—

“(7) Sub-paragraph (2) does not apply to an EEA firm which falls within paragraph 5(a), (b) or (g), and only provides services in the exercise of its right under Article 18 of the emission allowance auctioning regulation.

(8) An EEA firm which falls within paragraph 5(g) qualifies for authorisation.

(1) Paragraph 4C of Schedule 3 was inserted by [S.I. 2006/2975](#).

(2) Sub-paragraph (f) of paragraph 5 of Schedule 3 was substituted by [S.I. 2011/1613](#).

(3) Paragraph 6 of Schedule 3 was substituted by [S.I. 2003/1473](#).

(4) Sub-paragraph (6) of paragraph 12 of Schedule 3 was inserted by [S.I. 2007/3253](#).

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- (9) An EEA firm which falls within paragraph 5(a) or (b) but does not qualify for authorisation under sub-paragraph (1) or (2) qualifies for authorisation under this sub-paragraph if it—
- (a) has received authorisation from its home state regulator under Article 18.3 of the emission allowance auctioning regulation; and
 - (b) is seeking to provide services or establish a branch in the United Kingdom in the exercise of the EEA right arising under that provision.”.
- (6) In paragraph 13 (establishment), in sub-paragraph (4), in the definition of “host state rules”—
- (a) in paragraph (a), after “single market directive” insert “or for the purposes of the emission allowance auctioning regulation”, and
 - (b) in paragraph (b), after “that directive” insert “or for the purposes of that regulation”.
- (7) In paragraph 14 (services), in sub-paragraph (4), in the definition of “host state rules”—
- (a) in paragraph (a), after “single market directive” insert “or for the purposes of the emission allowance auctioning regulation”, and
 - (b) in paragraph (b), after “that directive” insert “or for the purposes of that regulation”.
- (8) In paragraph 15(1A)(5) (grant of permission), for “paragraph 15A(3)” substitute “paragraphs 15A(3) and 15ZA(1)”.
- (9) After paragraph 15, insert—

“Grant of permission: bidding for emission allowances

15ZA.—(1) A firm that qualifies for authorisation as a result of paragraph 12(1) or (2) has permission to receive, transmit or submit a bid on behalf of its clients in the exercise of its rights under Article 18.3 of the emission allowance auctioning regulation if it has received authorisation under that provision from its home state regulator.

(2) Permission under sub-paragraph (1) is to be treated as being on terms equivalent to those appearing in the authorisation granted to the firm pursuant to Article 18.3 of the emission allowance auctioning regulation.

(3) A firm which qualifies for authorisation as a result of paragraph 12(9) has permission to receive, transmit and submit a bid on behalf of its clients in the exercise of its rights under Article 18.3 of the emission allowance auctioning regulation.

(4) A firm which qualifies for authorisation as a result of paragraph 12(8) has permission to receive, transmit and submit a bid on its own account or on behalf of clients of its main business under Article 18.2 of the emission allowance auctioning regulation.

(5) The permissions referred to in sub-paragraphs (3) and (4) are to be treated as being on terms equivalent to those appearing in the authorisation granted to the firm pursuant to Article 18.2 or 18.3 of the emission allowance auctioning regulation.”.

- (10) In paragraph 19 (establishment)—
- (a) in sub-paragraph (1)(6), after “(5ZA)(7)” insert “, (5ZB)”.
 - (b) after sub-paragraph (5ZA), insert—

“(5ZB) This paragraph does not apply to a UK firm having an EEA right which is subject to the conditions of the emission allowance auctioning regulation, in respect of its exercise of that EEA right.”.

(5) Paragraph 15(1A) of Schedule 3 was inserted by [S.I. 2003/2066](#).

(6) Sub-paragraph (1) of paragraph 19 of Schedule 3 was amended by [S.I. 2003/1473](#) and [2007/3253](#).

(7) Paragraph 19(5ZA) was inserted by [S.I. 2007/3253](#).

(11) In paragraph 20 (services)—

(a) in sub-paragraph (1)(8), for “sub-paragraph (4D)”(9) substitute “sub-paragraphs (4D) and (4E)”;

(b) after sub-paragraph (4D), insert—

“(4E) This paragraph does not apply to a UK firm having an EEA right which is subject to the conditions of the emission allowance auctioning regulation, in respect of its exercise of that EEA right.”.

Commencement Information

II Art. 4 in force at 20.7.2012, see [art. 1](#)

(8) Sub-paragraph (1) of paragraph 20 of Schedule 3 was amended by [S.I. 2007/3253](#).

(9) Sub-paragraph (4D) of paragraph 20 of Schedule 3 was inserted by [S.I. 2007/3253](#).

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