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## STATUTORY INSTRUMENTS

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**2012 No. 1906**

# FINANCIAL SERVICES

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

Made - - - - 19th July 2012

Coming into force in accordance with Article 1

In the opinion of the Treasury, one of the effects of the following order is that an activity which is not a regulated activity (within the meaning of the Financial Services and Markets Act 2000(1)) will become a regulated activity.

The Treasury are a government department designated(2) for the purposes of section 2(2) of the European Communities Act 1972(3) in relation to measures relating to the operation of regulated markets and clearing or settlement systems and in relation to insider dealing and market manipulation.

A draft of this Order was laid before Parliament, and approved by a resolution of each House of Parliament, in accordance with paragraphs 2(2) and 2A(4) of Schedule 2 to the European Communities Act 1972.

The Treasury, in exercise of the powers conferred upon them by section 2(2) of the European Communities Act 1972, and sections 22(1) and (5), 426 and 428(3) of, and paragraph 25 of Schedule 2 to, the Financial Services and Markets Act 2000, make the following Order.

### PART 1

### GENERAL

#### Citation and commencement

1. This Order may be cited as the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2012 and comes into force on the day after the day on which it is made.

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(1) 2000 c.8.

(2) S.I. 1993/2661; S.I. 2004/2642.

(3) 1972 c. 68. Section 2(2) of and Schedule 2 to the 1972 Act were amended by section 27 of the Legislative and Regulatory Reform Act 2006 (c.51); and by section 3 of and the Schedule to the European Union (Amendment) Act 2008 (c. 7).

(4) Paragraph 2A was inserted by the Legislative and Regulatory Reform Act 2006, section 33.

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## Commencement Information

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

## PART 2

### AMENDMENT OF THE REGULATED ACTIVITIES ORDER

#### Amendment of the Regulated Activities Order

**2.**—(1) The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001<sup>(5)</sup> is amended as follows.

(2) In article 3(1) (interpretation)—

(a) for the definition of “investment services and activities”<sup>(6)</sup>, substitute—

““investment services and activities” means—

- (a) any service provided to third parties listed in Section A of Annex 1 to the markets in financial instruments directive (the text of which is set out in Part 3 of Schedule 2) read with Article 52 of Commission Directive [2006/73/EC](#) of 10 August 2006<sup>(7)</sup> (the text of which is set out in Part 4 of Schedule 2), including the reception, transmission or submission of a bid by an investment firm or credit institution on any auction platform, in relation to any financial instrument; or
- (b) any activity listed in Section A of Annex 1 to that directive, in relation to any financial instrument;”;

(b) insert the following definitions in the appropriate places—

““aircraft operator” has the same meaning as in the emission allowance trading directive;”;

““auction platform” means a platform on which auctions of greenhouse gas emissions allowances are held in accordance with the emission allowance auctioning regulation;”;

““emission allowance trading directive” means Directive [2003/87/EC](#) of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowances trading within the Community<sup>(8)</sup>;”;

““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 the emission allowance trading directive <sup>(9)</sup>;”;

““greenhouse gas emissions allowances” mean “allowances” as defined in Article 3(a) of the emission allowance trading directive;”;

““operator” has the same meaning as in the emission allowance trading directive;”;

<sup>(5)</sup> [S.I. 2001/544](#).

<sup>(6)</sup> The definition of “investment services and activities” was inserted by [S.I. 2006/3384](#).

<sup>(7)</sup> OJ L 241, 2.9.2006, p.26.

<sup>(8)</sup> OJ L 275, 25.10.2003, p.32.

<sup>(9)</sup> OJ L 302, 18.11.2010, p.1.

““reception”, “transmission” and “submission” have the same meaning in relation to a bid at an auction for an investment of the kind specified in article 82A as in the emission allowance auctioning regulation;”.

(3) Insert after article 24 (other exclusions)—

#### “CHAPTER 5A

#### BIDDING IN EMISSIONS AUCTIONS

##### *The activity*

##### **Bidding in emissions auctions**

**24A.**—(1) The reception, transmission or submission of a bid at an auction of an investment of the kind specified by article 82A conducted—

- (a) on a recognised auction platform, or
- (b) on any other auction platform which has been appointed under the emission allowance auctioning regulation,

is a specified kind of activity.

(2) An activity which falls within paragraph (1) (or would do so but for the exclusions in article 24B) does not form part of any other activity specified under any other article of this Order.

(3) In this article, “recognised auction platform” has the meaning given in regulation 1(3) of the Recognised Auction Platform Regulations 2011(**10**).

##### *Exclusions*

##### **Miscellaneous exclusions**

**24B.**—(1) There is excluded from article 24A any activity carried on by—

- (a) an operator or an aircraft operator having an operator holding account, in either case bidding on its own account, including any parent undertaking, subsidiary undertaking or affiliate undertaking forming part of the same group of undertakings as the operator or the aircraft operator;
- (b) business groupings of persons listed in sub-paragraph (a) bidding on their own account or acting as an agent on behalf of their members; or
- (c) public bodies or state-owned entities of the Member States that control any of the persons listed in sub-paragraph (a).

(2) There is excluded from article 24A the reception, transmission or submission of a bid by an investment firm or a credit institution on any auction platform on their own account for investments of the kind specified by article 82A which are not financial instruments.

(3) In this article, the expressions “parent undertaking”, “subsidiary undertaking”, “affiliate undertaking”, “business grouping”, “public bodies” and “state-owned entities” have the same meaning as in the emission allowance auctioning regulation.”

(4) Insert after article 82 (rights under a pension scheme)—

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### “Greenhouse gas emissions allowances

**82A.** Greenhouse gas emissions allowances which are auctioned as financial instruments or as two-day spots within the meaning of Article 3.3 of the emission allowance auctioning regulation.”.

#### Commencement Information

**I2** Art. 2 in force at 20.7.2012, see [art. 1](#)

## PART 3

### CONSEQUENTIAL AND MISCELLANEOUS AMENDMENTS

#### Amendment of the Financial Services and Markets Act 2000

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

(2) In section 39(4)(**11**) (exemption of appointed representatives), after “markets in financial instruments directive” insert “or contained in the emission allowance auctioning regulation”.

(3) In section 45 (variation etc. on the Authority’s own initiative), after subsection (2B)(**12**), insert—

“(2C) Without prejudice to the generality of subsections (1) and (2), the Authority may, in relation to an authorised person who has permission to carry on the regulated activity specified in article 24A of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, exercise its power under this section to vary the Part 4 permission of the person concerned by removing that activity from those to which the permission relates if it appears to the Authority that that person has seriously and systematically infringed the provisions of paragraph 2 or 3 of Article 59 of the emission allowance auctioning regulation.”.

(4) In section 59(8) (approval for particular arrangements), after “the single market directives” insert “or the emission allowance auctioning regulation”.

(5) In section 66(2)(**13**) (disciplinary powers), after “the markets in financial instruments directive or the UCITS directive” insert “or by the emission allowance auctioning regulation”.

(6) In section 138(6)(b) (general rule-making power), after “the single market directives” insert “or the emission allowance auctioning regulation”.

(7) In section 168(4)(j)(**14**) (appointment of persons to carry out investigations in particular cases), insert at the end “or made by the emission allowance auctioning regulation”.

(8) In section 205(**15**) (public censure), after “the UCITS directive” insert “or by the emission allowance auctioning regulation”.

(9) In section 206(1)(**16**) (financial penalties), after “the UCITS directive” insert “or by the emission allowance auctioning regulation”.

(11) Section 39(4) was amended by [S.I. 2007/126](#).

(12) Section 45(2B) was inserted by [S.I. 2007/126](#).

(13) Section 66(2) was amended by [S.I. 2007/126](#) and [2011/1613](#).

(14) Paragraph (j) was inserted into section 168(4) by [S.I. 2007/126](#).

(15) Section 205 was amended by [S.I. 2007/126](#) and [2011/1613](#).

(16) Section 206(1) was amended by [S.I. 2007/126](#) and [2011/1613](#).

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(10) In section 206A(2)(17) (suspending permission to carry on regulated activities etc.), in the definition of “relevant requirement”, omit the word “or” before paragraph (e), and at the end of that paragraph insert—

“; or

(f) by the emission allowance auctioning regulation.”.

(11) In section 380(6)(a)(i)(18) (injunctions), after “the UCITS directive” insert “or by the emission allowance auctioning regulation”.

(12) In section 382(9)(a)(i)(19) (restitution orders), after “the UCITS directive” insert “or by the emission allowance auctioning regulation”.

(13) In section 384(7)(a)(20) (power of Authority to require restitution), after “the UCITS directive” insert “or by the emission allowance auctioning regulation”.

(14) In section 417(1)(21) (definitions), in the definition of “investment services and activities”—

(a) at the end of paragraph (a), omit “and”;

(b) at the end of paragraph (b), insert—

“and

(c) Article 6(5) of the emission allowance auctioning regulation;”.

(15) In section 418 (carrying on regulated activities in the United Kingdom), after subsection (6), insert—

“(7) For the purposes of subsection (2)(b) and (c), the emission allowance auctioning regulation is a single market directive.”.

(16) In section 425(1)(a)(22) (expressions relating to authorisation elsewhere in the single market), after ““EEA State”,” insert ““emission allowance auctioning regulation”,”.

(17) In Schedule 1, paragraph 6(23)(monitoring and enforcement)—

(a) in sub-paragraph (1), after “under this Act, insert “by the emission allowance auctioning regulation”;

(b) in sub-paragraph (3), after “under this Act”, insert “, the emission allowance auctioning regulation,”.

#### Commencement Information

**I3** Art. 3 in force at 20.7.2012, see [art. 1](#)

### 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)(24), insert—

(17) Section 206A was inserted by section 9 of the Financial Services Act 2010 ([c. 28](#)), and subsection (2) was amended by [S.I. 2011/99](#) and [2011/1613](#).

(18) Paragraph (a)(i) of section 380(6) was amended by [S.I. 2007/126](#) and [2011/1613](#).

(19) Paragraph (a)(i) of section 382(9) was amended by [S.I. 2007/126](#) and [2011/1613](#).

(20) Section 384(7)(a) was amended by [S.I. 2007/126](#) and [2011/1613](#).

(21) The definition of “investment services and activities” was inserted by [S.I. 2007/126](#).

(22) Section 425(1)(a) was substituted by [S.I. 2003/2066](#), and amended by [S.I. 2004/3379](#); [2006/2975](#); [2007/126](#) and [2007/3253](#).

(23) Paragraphs 6(1) and (3) of Schedule 1 were each amended by [S.I. 2007/126](#) and [2011/1613](#).

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

### “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)(**25**), insert—

“; or

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

(4) In paragraphs 6(b)(**26**) (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)(**27**), 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.

(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)(**28**) (grant of permission), for “paragraph 15A(3)” substitute “paragraphs 15A(3) and 15ZA(1)”.

(9) After paragraph 15, insert—

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

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

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

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

### “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)(29), after “(5ZA)(30)” 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.”.

(11) In paragraph 20 (services)—

(a) in sub-paragraph (1)(31), for “sub-paragraph (4D)”(32) 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

**I4** Art. 4 in force at 20.7.2012, see [art. 1](#)

## Amendment of the Financial Services and Markets Act 2000 (Appointed Representatives) Regulations 2001

**5.** In regulation 2(1) of the Financial Services and Markets Act 2000 (Appointed Representatives) Regulations 2001(33) (description of business for which appointed representatives are exempt)—

(a) renumber sub-paragraph (aa) as (za);

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

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

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

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

(33) [S.I. 2001/1217](#); regulation 2(1) was amended by [S.I. 2001/2508](#) and sub-paragraph (aa) of regulation 2(1) was inserted by [S.I. 2003/1476](#); there are other amending instruments but none is relevant.



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(b) after that sub-paragraph, insert—

“(zb) an activity of the kind specified by article 24A of the Regulated Activities Order (bidding in emissions auctions), where that activity does not consist either of a person dealing on his own account or of the execution of orders on behalf of clients within the meaning of Part 3 of Schedule 2 to that Order;”; and

(c) in sub-paragraph (d), for “(aa)” substitute “(za)”.

#### Commencement Information

**I5** Art. 5 in force at 20.7.2012, see [art. 1](#)

### Amendment of the Financial Services and Markets Act 2000 (Professions) (Non-exempt Activities) Order 2001

6. In article 4 of the Financial Services and Markets Act 2000 (Professions)(Non-exempt Activities) Order 2001(**34**) (activities to which exemption from the general prohibition does not apply), after paragraph (c), insert—

“(ca) article 24A (bidding in emissions auctions);”.

#### Commencement Information

**I6** Art. 6 in force at 20.7.2012, see [art. 1](#)

### Amendment of the Money Laundering Regulations 2007

7. Regulation 3 of the Money Laundering Regulations 2007(**35**) is amended as follows—

(a) in paragraph (2), after “(within the meaning of the banking consolidation directive)”, insert “, or when it bids directly in auctions in accordance with the emission allowance auctioning regulation on behalf of its clients”;

(b) for paragraph (3)(c), substitute—

“(c) a person, other than a person falling within Article 2 of the markets in financial instruments directive, whose regular occupation or business is the provision to other persons of an investment activity on a professional basis, when providing or performing investment services or activities (within the meaning of that directive) or when bidding directly in auctions in accordance with the emission allowance auctioning regulation on behalf of clients;”; and

(c) after paragraph (3)(c), insert—

“(ca) a person falling within Article 2(1)(i) of the markets in financial instruments directive, when bidding directly in auctions in accordance with the emission allowance auctioning regulation on behalf of clients of the person’s main business.”.

(34) [S.I. 2001/1227](#), amended by [S.I. 2001/3650](#), [2002/682](#), [2004/2737](#) and [2006/1969](#); there are other amending instruments but none is relevant.

(35) [S.I. 2007/2157](#), amended by [S.I. 2011/99](#), [S.I. 2011/2699](#) and [S.I. 2011/2833](#); there are other amending instruments but none is relevant.



#### Commencement Information

**I7** Art. 7 in force at 20.7.2012, see [art. 1](#)

### Amendment of the Recognised Auction Platforms Regulations 2011

**8.**—(1) The Recognised Auction Platforms Regulations 2011<sup>(36)</sup> are amended as follows.

(2) In regulation 5(6)(a) (procedure), for “its intention to do so” substitute “its decision”.

(3) After regulation 5, insert—

#### “Power to impose civil penalties

**5A.**—(1) If the Authority considers that a recognised auction platform has contravened any requirement in Article 19, 20(7), 21(1) or (2), or 54 of the emission allowance auctioning regulation, it may impose upon on the auction platform a penalty of such amount as it considers appropriate, and for this purpose, “appropriate” means effective, proportionate and dissuasive.

(2) The Authority must not impose a penalty on a person under paragraph (1) where there are reasonable grounds for it to be satisfied that the person took all reasonable steps and exercised all due diligence to ensure that the requirement was complied with.

(3) In deciding whether a person has failed to comply with the requirements referred to in paragraph (1), the Authority must consider whether the person concerned followed any relevant guidance issued by the Authority.

(4) If the Authority is entitled to impose a penalty on a person under this regulation in respect of a particular matter, it may, instead of imposing a penalty in respect of that matter, publish a statement censuring the person.

(5) A penalty under this regulation is payable to the Authority.

#### Procedure for civil penalties

**5B.**—(1) If the Authority proposes to take action against a person under regulation 5A, it must give that person a warning notice.

(2) A warning notice about a proposal to impose a penalty must state the amount of the proposed penalty.

(3) A warning notice about a proposal to publish a statement must set out the terms of the proposed statement.

(4) If the Authority decides to take action against a person under regulation 5A, it must without delay give the person a decision notice.

(5) A decision notice about the imposition of a penalty must state the amount of the penalty.

(6) A decision notice about the publication of a statement must set out the terms of the statement.

(7) If the Authority decides to take action against a person under regulation 5A, that person may refer the matter to the Tribunal.

(8) In this regulation “the Tribunal” has the meaning given in section 417 of the Act<sup>(37)</sup>.

(9) Sections 387, 389 to 391, 393 and 394 of the Act apply to notices given in accordance with this regulation.

<sup>(36)</sup> [S.I. 2011/2699](#).

<sup>(37)</sup> The definition of “the Tribunal” was inserted in section 417 by [S.I. 2010/22](#).

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(10) Section 388 of the Act applies to notices given in accordance with this regulation and references in subsection (1)(e)(i) of that section to “any right to have a matter referred to the Tribunal which is given by this Act” shall include a right to have a matter referred to the Tribunal under this regulation.”.

#### Commencement Information

**I8** Art. 8 in force at 20.7.2012, see [art. 1](#)

## PART 4

### REVIEW

#### Review

9.—(1) Before the end of the review period, the Treasury must—

- (a) carry out a review of articles 2 to 8,
- (b) set out the conclusions of the review in a report, and
- (c) publish the report.

(2) In carrying out the review the Treasury must, so far as it is reasonable, have regard to how 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<sup>(38)</sup> is implemented in other Member States.

(3) The report must in particular—

- (a) set out the objectives intended to be achieved by the regulatory system established by this Order,
- (b) assess the extent to which those objectives are achieved, and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(4) “Review period” means—

- (a) the period of five years beginning with the day on which articles 2 to 8 come into force, and
- (b) subject to paragraph (5), each successive period of five years.

(5) If a report under this article is published before the last day of the review period to which it relates, the following review period is to begin with the day on which that report is published.

#### Commencement Information

**I9** Art. 9 in force at 20.7.2012, see [art. 1](#)

<sup>(38)</sup> OJ L 302, 18.11.2010, p.1.

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19th July 2012

James Duddridge  
Angela Watkinson  
Two of the Lords Commissioners of Her  
Majesty's Treasury

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## EXPLANATORY NOTE

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

This Order implements the requirement in Article 18 of Commission Regulation (EU) 1031/2010 of 12 November 2010 on the timing, administration and other aspects of auctioning of greenhouse gas allowances (OJ L 302, 18.11.2010, p.1) (“the emission allowance auctioning regulation”) for the United Kingdom to have enacted legislation enabling the Financial Services Authority (“the FSA”) to authorise certain categories of people to make them eligible to bid in auctions of emissions allowances on their own account or on behalf of clients, and implements related provisions in Articles 6(5) and 59 of that Regulation.

Article 2 amends the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544) to make bidding in auctions of emissions allowances a regulated activity, and to provide for exclusions from that activity. It also makes related amendments to that Order.

Article 3 amends the Financial Services and Markets Act 2000 (c.8) (“FSMA”) to allow the FSA to exercise its powers under FSMA in relation to a person who is authorised to provide bidding services and makes related amendments.

Article 4 amends Schedule 3 to FSMA to provide for passporting rights under the emission allowance auctioning regulation in relation to bidding services.

Article 5 amends the Financial Services and Markets Act 2000 (Appointed Representatives) Regulations 2001 (S.I. 2001/1217) to provide for appointed representatives to be exempt from the general prohibition under FSMA when receiving or transmitting bids for emission allowances.

Article 6 amends the Financial Services and Markets Act 2000 (Professions) (Non-exempt Activities) Order 2001 (S.I. 2001/1227).

Article 7 amends the Money Laundering Regulations 2007 (S.I. 2007/2157) so that credit institutions, investment firms authorised under Directive 2004/39/EC of the European Parliament and of the Council on markets in financial instruments of 20 April 2004 (OJ L 145, 20.4.2004, p1) and persons falling within Article 2(1)(i) of that Directive must comply with the requirements of those Regulations when bidding directly, on behalf of clients, in auctions of emissions allowances.

Article 8 amends the Recognised Auction Platforms Regulations 2011 (S.I. 2011/2699) (“the Regulations”) to clarify what notice the Authority must give once it has taken a decision in relation to a recognition order, direction or revocation order, and to ensure that the Authority has power to impose civil penalties for contraventions of requirements in Articles 19, 20(7), 21(1) or (2), or 54 of the emission allowance auctioning regulation similar to that which it would have under regulation 42 of the Money Laundering Regulations 2007. It also amends the Regulations to provide for the procedure when this power is exercised.

Article 9 requires the Treasury to review the operation and effect of this Order within five years after it comes into force and within every five years after that. Following a review it will fall to the Treasury to consider whether the Order should remain as it is, or be revoked or be amended. A further instrument would be needed to revoke the Order or to amend it.

An Impact Assessment of the effect that this Order will have on the costs of business and the voluntary sector is available on HM Treasury’s website ([hm-treasury.gov.uk](https://www.hm-treasury.gov.uk)) and is published with the Explanatory Memorandum alongside this Order on the [legislation.gov.uk](https://www.legislation.gov.uk) website ([Legislation.gov.uk](https://www.legislation.gov.uk)).

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**Changes to legislation:** *There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2012. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

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**Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:**

- Order power to modify conferred by [2023 c. 29 s. 3 Sch. 1 Pt. 2](#)
- Order revoked by [2023 c. 29 Sch. 1 Pt. 2](#)