

EXPLANATORY MEMORANDUM TO
THE RECOGNISED AUCTION PLATFORMS AND GREENHOUSE GAS
EMISSIONS TRADING SCHEME AUCTIONING (AMENDMENT) REGULATIONS
2021

2021 No. 513

1. Introduction

- 1.1 This explanatory memorandum has been prepared by HM Treasury (“HMT”) and is laid before the House of Commons by Command of Her Majesty.
- 1.2 This memorandum contains information for the Select Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument amends the Recognised Auction Platforms Regulations 2011 (“the RAP Regulations”) and Greenhouse Gas Emissions Trading Scheme Auctioning Regulations 2021 (“the Auctioning Regulations”). The RAP Regulations ensures the appropriate regulatory treatment is in place for the auctioning and trading of UK emissions allowances. The Auctioning Regulations make detailed provision for the auctioning of emissions allowances to emit 1 tonne of carbon dioxide equivalent under the UK Emissions Trading Scheme (the “UK ETS”) and introduces mechanisms to support market stability in this new scheme. The UK ETS was established by the Greenhouse Gas Emissions Trading Scheme Order 2020 (the “UK ETS Order”).
- 2.2 The amending instrument clarifies the position in the Recognised Auction Platform Regulations 2011 and clarifies the position and corrects errors in the Auctioning Regulations. These amendments need to be in force in advance of the first UK ETS auction on the 19 May 2021.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

- 3.1 As this instrument has been made to correct errors in the Auctioning Regulations, it will be issued free of charge to all known recipients of the Auctioning Regulations.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to the negative resolution procedure, there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the whole of the United Kingdom.
- 4.2 The territorial application of this instrument is the whole of the United Kingdom.

5. European Convention on Human Rights

5.1 As this instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 This instrument is made under the power in section 96 of the Finance Act 2020 to make regulations providing for the allocation in exchange for payment of emissions allowances under trading schemes established under Part 1 of Schedule 2 to the Climate Change Act 2008. It relates to the rules for auctioning emission allowances created under the UK ETS, which is such a trading scheme.

7. Policy background

What is being done and why?

7.1 The primary objective of the Auctioning Regulations is to provide the rules covering auctions and the secondary market for emissions allowances. This amending instrument will correct errors in the Auctioning Regulations and make consequential amendments to the RAP Regulations.

Auction eligibility

7.2 Regulation 4 of this instrument omits regulation 2(2) of the Auctioning Regulations.

7.3 Regulation 10 of this instrument amends regulation 16 of the Auctioning Regulations, which sets out the requirements that persons must meet in order to bid in auctions. Regulation 16 is being amended to clarify the policy around auction eligibility. In particular, the amendments clarify that to be eligible to bid in UK ETS auctions, entities will need to be one of the following:

- A UK ETS operator or a UK ETS aircraft operator;
- A member of a UK ETS operator or UK ETS aircraft operator's group (i.e. parent companies, subsidiaries or affiliates) wheresoever located;
- A business grouping of UK ETS operators, UK ETS aircraft operators or their group wheresoever located;
- Public/state bodies of the UK that control UK ETS operators, UK ETS aircraft operator or members of their group;
- A UK MiFID investment firm or CRD credit institution with a Part 4A FSMA permissions;
- A third country investment firm or credit institution with corresponding Part 4A FSMA permission;
- Those persons whose head office or registered office (as appropriate) is situated in the UK, and where the activity of bidding on their own account or on behalf of clients is ancillary to their main business.
- Regulation 2 of this instrument makes a required amendment to regulation 20 of the RAP Regulations so that it mirrors the position in regulation 16(1) of the Auctioning Regulations after amendment by this instrument.

Auction clearing price

- 7.4 Regulation 7 of this instrument amends regulation 7 of the Auctioning Regulations, which sets out how the auction clearing price for UK ETS auctions will be determined. Without this change, there may be a scenario where there is a difference between the auction clearing price when the auction fully clears compared to when it partially clears. The amending instrument corrects how the auction clearing price is determined and clarifies that it cannot be significantly below the prevailing secondary market price. The auction platform provider is required to develop a methodology which determines what the prevailing secondary market price is and whether a given price is significantly below the secondary market price.

Cost containment mechanism

- 7.5 Regulation 9 of this instrument amends regulation 12 of the Auctioning Regulations, which provides for the cost containment mechanism (the “CCM”) that enables HMT to amend the distribution or volume of allowances to be auctioned in any one year if the carbon price exceeds specified limits. The amendments clarify the CCM trigger thresholds, how the carbon price is calculated to determine if the CCM is triggered and how the relevant carbon market exchange for the purpose of determining the carbon price is determined. These amendments ensures that the CCM can be triggered if the trigger points are met.
- 7.6 A small number of technical errors have also been identified which have been corrected at the same time.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument is being made under powers in the Finance Act 2020.
- 8.2 This instrument amends legislation that was part of a legislative package which introduced a policy replacement for the UK’s participation in the EU Emissions Trading System (the “EU ETS”). Except in relation to certain electricity generators in Northern Ireland, the UK ceased to participate in the EU ETS at the end of the Transition Period (from 1 January 2021), as a direct consequence of the UK’s withdrawal from the EU.

9. Consolidation

- 9.1 This instrument is the first time that the Auctioning Regulations have been amended. HMT currently has no plans to consolidate the relevant legislation.

10. Consultation outcome

- 10.1 Between 2 May 2019 and 12 July 2019, the UK Government and Devolved Administrations ran a public consultation seeking views on the UK's future carbon pricing policy. The consultation set out policy proposals for a UK ETS and sought views on these proposals from stakeholders. The public consultation included policy proposals for auctioning and market stability mechanisms in a standalone UK ETS. This instrument amends aspects of the legislation in relation to some elements of these proposals to correct the errors described above.

- 10.2 Alongside the consultation, the UK Government and Devolved Administrations jointly commissioned the Committee on Climate Change (CCC) for advice on both a standalone and linked UK ETS.
- 10.3 The public consultation received over 130 responses, from a range of stakeholders including current EU ETS participants and NGOs, with the majority supporting most of the proposals on the design of a UK ETS.
- 10.4 The Government Response to the consultation was published on 1st June 2020.
- 10.5 Full details of the consultation and the response can be found at:
<https://www.gov.uk/government/consultations/the-future-of-uk-carbon-pricing>
- 10.6 The Energy White Paper was published on 14th December 2020. This paper confirmed that the UK would introduce the UK ETS to replace participation in the EU ETS following the end of the Transition Period. It also stated that ‘the UK is open to linking the UK ETS internationally in principle and we are considering a range of options, but no decision on our preferred linking partners has yet been made.’

11. Guidance

- 11.1 Guidance for UK ETS auction participants has been published on gov.uk.¹

12. Impact

- 12.1 The UK ETS will affect businesses in the power, aviation and industry sectors, and this instrument clarifies an existing price control mechanisms (CCM). The UK ETS Impact Assessment has considered the impacts on businesses of this scheme in more detail. Alongside this, the government compensates energy-intensive businesses for up to 75% of the costs in their electricity bills due to the UK ETS and Carbon Price Support (CPS).
- 12.2 There is no significant impact on charitable or voluntary bodies.
- 12.3 There is no significant impact on the public sector.
- 12.4 Although Government policy does not require an Impact Assessment for this instrument because it is not a regulatory provision, an Impact Assessment of the UK ETS policy was produced. This Impact Assessment considered the expected costs and benefits of the UK ETS in its initial years of operation (from 2021 to 2024) in an unlinked context. It covers UK ETS policy contained within the UK ETS Order and the Auctioning Regulations.
- 12.5 This UK ETS is expected to deliver a net benefit to society in its initial years of operation compared to a counterfactual of continued UK participation in Phase IV of the EU ETS.
- 12.6 The Impact Assessment was published on the gov.uk website, alongside the Government Response to the Future of UK Carbon Pricing consultation on 1 June 2020.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.

¹ <https://www.gov.uk/government/publications/participating-in-the-uk-ets/participating-in-the-uk-ets>

13.2 To minimise any disproportionate impact of UK ETS requirements on small businesses, operators and aircraft operators with relatively low levels of emissions are either not caught by the scheme or can take advantage of derogations under the UK ETS.

14. Monitoring & review

14.1 The operation of the Auctioning Regulations will be reviewed along with other aspects of the UK ETS under Article 17 of the UK ETS Order. This article commits the UK Government (and Devolved Administrations) to reviewing the operation of the UK ETS in 2023 and in 2028.

15. Contact

15.1 Joseph Spencer, at Her Majesty's Treasury (joseph.spencer@HMTreasury.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Alanna Barber, Deputy Director for the Energy and Transport Tax team can confirm that this Explanatory Memorandum meets the required standard.

15.3 Kemi Badenoch MP, Exchequer Secretary of the Treasury, can confirm that this Explanatory Memorandum meets the required standard.