

**2012 No. 2661**

**ENVIRONMENTAL PROTECTION**

**EMISSIONS TRADING**

**The Community Emissions Trading Scheme (Allocation of Allowances for Payment) Regulations 2012**

<i>Made</i>	- - - -	<i>23rd October 2012</i>
<i>Laid before Parliament</i>		<i>24th October 2012</i>
<i>Coming into force</i>	- -	<i>14th November 2012</i>

The Treasury make the following Regulations, except regulation 6(1)(a), in exercise of the powers conferred on them by section 16(2) and (4) of the Finance Act 2007<sup>(a)</sup>.

The Secretary of State for Energy and Climate Change is designated<sup>(b)</sup> for the purposes of section 2(2) of the European Communities Act 1972<sup>(c)</sup> in relation to the environment.

The Secretary of State for Energy and Climate Change makes regulation 6(1)(a) in exercise of the power conferred on him by section 2(2) of the European Communities Act 1972.

**Citation and commencement**

1. These Regulations may be cited as the Community Emissions Trading Scheme (Allocation of Allowances for Payment) Regulations 2012, and come into force on 14th November 2012.

**Interpretation**

2. In these Regulations—

“allowances” means Community tradeable emissions allowances;

“auction platform” has the same meaning as in the Auctioning Regulation;

“auction process” has the meaning given in Article 3(16) of the Auctioning Regulation;

“auctioneer” has the meaning given in Article 3(20) of the Auctioning Regulation;

“the 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

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<sup>(a)</sup> 2007 c.11.

<sup>(b)</sup> S.I. 2008/301.

<sup>(c)</sup> 1972 c.68. Section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c.51) and the European Union (Amendment) Act 2008 (c.7), Schedule, Part 1.

the Council establishing a scheme for greenhouse gas emission allowances trading within the Community(a);

“the Directive” means Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowances trading within the Community(b);

“emissions” has the meaning given in Article 3(b) of the Directive(c);

“Phase II allowances” means allowances which are valid for surrender against emissions occurring before 1st January 2013, and which have not been surrendered before 14th November 2012; and

“Phase III allowances” means allowances under Chapter II (aviation) or Chapter III (stationary installations) of the Directive which are valid for surrender against emissions occurring on or after 1st January 2013.

### **Persons who may conduct auctions pursuant to the Auctioning Regulation**

**3.—**(1) For the purpose of the allocation of Phase III allowances by auction process the Treasury may appoint as auctioneer—

(a) the Secretary of State, the Scottish Ministers, the Welsh Ministers, the Department of the Environment in Northern Ireland or any other person; or

(b) any two or more such persons jointly.

(2) The appointment may be made subject to such conditions (including as to fees charged) and limitations as the Treasury see fit.

### **Appointment of auction platform**

**4.—**(1) For the purpose of the allocation of Phase III allowances by auction process the Treasury may appoint a person to carry out the functions of the auction platform specified in the Auctioning Regulation.

(2) The appointment may be made subject to such conditions (including as to fees charged) and limitations as the Treasury see fit.

### **Financial provisions**

**5.—**(1) Subject to any deduction in respect of costs made in accordance with the Auctioning Regulation—

(a) any sum received by the Secretary of State as auctioneer in return for the allocation of allowances must be paid into the Consolidated Fund; and

(b) any sum received by the Scottish Ministers, the Welsh Ministers, the Department of the Environment in Northern Ireland or any other person as auctioneer in return for the allocation of allowances must be paid to the Treasury.

(2) All sums received by the Treasury under paragraph (1)(b) are to be paid into the Consolidated Fund.

### **Repeal, revocation and saving**

**6.—**(1) Subject to paragraph (2)—

(a) section 16(3) of the Finance Act 2007 is repealed; and

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(a) OJ No. L 302, 18.11.2010, p.1.

(b) OJ No. L 275, 25.10.2003, p.32. The Directive was amended by Directives 2004/101/EC (OJ No. L 338, 13.11.2004, p.18); 2008/101/EC (OJ No. L 8, 13.1.2009, p.3) and 2009/29/EC (OJ No. L 140, 5.6.2009, p.63), and by Regulation (EC) No. 219/2009 (OJ No. L 87, 31.3.2009, p.109).

(c) Article 3(b) was amended by Article 1(3)(a) of Directive 2008/101/EC (OJ No. L 8, 13.1.2009, p.3).

(b) the Community Emissions Trading Scheme (Allocation of Allowances for Payment) Regulations 2008<sup>(a)</sup> are revoked.

(2) That section and those Regulations continue to have effect for the purpose of auctioning Phase II allowances.

22nd October 2012

*Stephen Crabb*  
*Mark Lancaster*  
Two of the Lords Commissioners of Her Majesty's Treasury

23rd October 2012

*Edward Davey*  
Secretary of State for Energy and Climate Change

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<sup>(a)</sup> S.I. 2008/1825, as amended by S.I. 2008/1939.

## EXPLANATORY NOTE

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

These Regulations make provision for the allocation of Community tradeable emissions allowances (“allowances”) in accordance with 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 establishing a scheme for greenhouse gas emission allowances trading within the Community (the “Auctioning Regulation”). The Auctioning Regulation lays down a process for auctioning allowances under Chapter II (aviation) or Chapter III (stationary installations) of the Directive, which are valid for surrender against emissions occurring on or after 1st January 2013 (“Phase III allowances”).

The Auctioning Regulation requires each Member State to appoint an auctioneer and an auction platform. Regulation 3 provides for the appointment of an auctioneer and regulation 4 provides for the appointment of an auction platform. Both appointments are to be made by the Treasury and may be made subject to conditions and limitations. The functions of an auctioneer and of an auction platform are laid down in the Auctioning Regulation.

Regulation 5 makes provision for sums received by the auctioneer in relation to the auction process to be paid into the Consolidated Fund.

Phase II allowances are allowances which are not subject to auctioning in accordance with the Auctioning Regulation, and which (so far as they have not been surrendered before 14th November 2012) will continue to be auctioned in accordance with the Community Emissions Trading Scheme (Allocation of Allowances for Payment) Regulations 2008 (S.I. 2008/1825).

Regulation 6(1)—

- repeals section 16(3) of the Finance Act 2007, as a requirement to appoint an independent person to oversee allocations is incompatible with the Auctioning Regulation, which provides that a single auction monitor is to monitor the auctioning of Phase III allowances in all Member States; and
- revokes the Community Emissions Trading Scheme (Allocation of Allowances for Payment) Regulations 2008.

Regulation 6(2) provides that the repeal and the revocation do not affect the auctioning of Phase II allowances in accordance with the auction process laid down in those Regulations.

An impact assessment has not been prepared because no impact is foreseen on the business and voluntary sectors.

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