

2021 No. 917

CLIMATE CHANGE

The Greenhouse Gas Emissions Trading Scheme Auctioning (Amendment) (No. 2) Regulations 2021

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| <i>Made</i> | <i>3rd August 2021</i> |
| <i>Laid before the House of Commons</i> | <i>4th August 2021</i> |
| <i>Coming into force</i> | <i>25th August 2021</i> |

The Treasury, in exercise of the powers conferred by section 96 of the Finance Act 2020, makes the following Regulations.

Extent

Preamble: United Kingdom

 Law In Force

1.— Citation, commencement and extent

- (1) These Regulations may be cited as the Greenhouse Gas Emissions Trading Scheme Auctioning (Amendment) (No. 2) Regulations 2021.
- (2) They come into force on the 21st day after the day on which they are laid before the House of Commons.
- (3) They extend to the whole of the United Kingdom.

Commencement

reg. 1(1)-(3): August 25, 2021

Extent

reg. 1(1)-(3): United Kingdom

✓ Law In Force

2. Greenhouse Gas Emissions Trading Scheme Auctioning Regulations 2021 amended

The Greenhouse Gas Emissions Trading Scheme Auctioning Regulations 2021¹ are amended as follows.

Notes

¹ Amended by S.I. 2021/513 and 2021/561.

Commencement

reg. 2: August 25, 2021 (SI 2021/917 reg. 1(2))

Extent

reg. 2: United Kingdom

✓ Law In Force

3.— Regulation 7 amended (auction clearing price)

(1) Regulation 7 is amended as follows.

(2) In paragraph (4) for "an auction is started" substitute "the opening of the bidding window of an auction".

Commencement

reg. 3(1)-(2): August 25, 2021 (SI 2021/917 reg. 1(2))

Extent

reg. 3(1)-(2): United Kingdom

✓ Law In Force

4.— Regulation 9 amended (annual volumes of allowances)

(1) Regulation 9 is amended as follows.

(2) In paragraph (1)—

(a) in the opening words—

(i) for "The volume" substitute "Except as otherwise provided in these Regulations, the volume";

(ii) for "((AFA) + IC + RFS + NER)" substitute "(AFA + IC + RFS + NER + BF)";

(b) in sub-paragraph (d) for "the flexible share referred to in Article 16a(2)(b) of the free allocation regulation, and" substitute "4,098,497 allowances¹";

(c) in sub-paragraph (e) for the words from "is the total number of allowances" to the end substitute "means 3,024,907 allowances²";

(d) after sub-paragraph (e) insert—

"(f) BF means—

- (i) if part of the volume of allowances to be auctioned in the calendar year has been brought forward to increase the volume of allowances auctioned in a previous calendar year in accordance with measures authorised under regulation 12(1)(b)(i), the volume of allowances brought forward;
- (ii) in any other case, zero."

(3) Omit paragraphs (4) to (6).

(4) In paragraph (9) in the table in the row whose first entry is "2028" for "4,364,195" substitute "4,365,195".

Notes

¹ One-tenth of the 40,984,970 allowances referred to in Article 16a(2)(b) of EUR 2019/331 (the flexible share).

² Approximately one-tenth of the 30,249,066 allowances referred to in article 34G(1) of S.I. 2020/1265 (the new entrants' reserve).

Commencement

reg. 4(1)-(4): August 25, 2021 (SI 2021/917 reg. 1(2))

Extent

reg. 4(1)-(4): United Kingdom

 Law In Force

5.— Regulation 10 amended (adjustments of the auction calendar)

(1) Regulation 10 is amended as follows.

(2) In paragraph (1)(b) for "the cancellation of an auction" substitute "the cancellation, or a change to the date or time of the opening or close of the bidding window, of an auction".

Commencement

reg. 5(1)-(2): August 25, 2021 (SI 2021/917 reg. 1(2))

Extent

reg. 5(1)-(2): United Kingdom

 Law In Force

6.— Regulation 11 amended (circumstances preventing the conduct of auctions)

(1) Regulation 11 is amended as follows.

(2) In paragraph (1) for "cancel an auction" substitute "cancel, or change the date or time of the opening or close of the bidding window of, an auction".

Commencement

reg. 6(1)-(2): August 25, 2021 (SI 2021/917 reg. 1(2))

Extent

reg. 6(1)-(2): United Kingdom

✔ Law In Force

7.— Regulation 12 amended (cost containment mechanism)

(1) Regulation 12 is amended as follows.

(2) In paragraph (1) after sub-paragraph (b)(iii) insert—

"(iv) if the industry cap for a scheme year (determined in accordance with Article 16a(6)(a) of the Free Allocation Regulation¹) exceeds the actual allocation for the scheme year (determined in accordance with paragraph (1A)), by the release for auction of allowances not exceeding the difference;

(v) by the release for auction of up to 40,984,970 allowances (the flexible share)."

(3) After paragraph (1) insert—

"(1A) The actual allocation for a scheme year is A–B, where—

(a) A is the final annual number of allowances to be allocated for the scheme year in respect of all installations approved under Article 16b of the Free Allocation Regulation (final allocation at installation level for incumbent installations);

(b) B is the total of any of that number that, although approved as mentioned in sub-paragraph (a), were not in fact so allocated (or, if allocated, were subsequently returned) by reason of a reduction in the allocation for the scheme year in consequence of any approval of the UK ETS authority under a provision referred to in article 34C(1)(b), (c), (e) and (f) of the Trading Scheme Order² (activity level changes, renunciation, cessation and errors).

(1B) In paragraph (1A), a reference to the final annual number of allowances approved under Article 16b of the Free Allocation Regulation to be allocated in respect of all installations includes the number that would have been so approved but for any error in an application for free allocation made under that Regulation or of the regulator or the UK ETS authority in the exercise of functions under that Regulation in consequence of which the UK ETS authority approves, under article 34H(6) of the Trading Scheme Order, an increase to the final annual number of allowances originally approved under Article 16b.

(1C) In paragraphs (1A) and (1B), "installation" does not include an installation referred to—

(a) if the scheme year is in the 2021-2025 allocation period, in article 34A(4)(b) and (c) of the Trading Scheme Order (installations that ceased operation, or whose permit was revoked, on or before 31st December 2020);

(b) if the scheme year is in the 2026-2030 allocation period, in article 34A(7)(b) and (c) of the Trading Scheme Order (installations that ceased operation, or whose permit was revoked, on or before 31st December 2025).".

(4) In paragraph (5) for the defined term "EU emissions allowance" substitute "EU allowance".

Notes

¹ EUR 2019/331, amended by S.I. 2020/1557. "Free Allocation Regulation" is defined in article 4(1) of S.I. 2020/1265. Regulation 2(3) of S.I. 2021/484 provides that terms used in both S.I. 2021/484 and S.I. 2020/1265 and not defined in the former have the same meaning as in the latter.

² The Greenhouse Gas Emissions Trading Scheme Order 2020 (S.I. 2020/1265, amended by S.I. 2020/1557). "Trading Scheme Order" is defined in regulation 2(1) of S.I. 2021/484.

Commencement

reg. 7(1)-(4): August 25, 2021 (SI 2021/917 reg. 1(2))

Extent

reg. 7(1)-(4): United Kingdom

✔ Law In Force

8.— Regulation 21 amended (the auctioneer's functions)

(1) Regulation 21 is amended as follows.

(2) In paragraph (5) for "FCA" substitute "Treasury".

Commencement

reg. 8(1)-(2): August 25, 2021 (SI 2021/917 reg. 1(2))

Extent

reg. 8(1)-(2): United Kingdom

✔ Law In Force

9.— Regulation 23 amended (functions of the auction platform)

(1) Regulation 23 is amended as follows.

(2) In paragraph (3) for "FCA" substitute "auctioneer and the Treasury".

Commencement

reg. 9(1)-(2): August 25, 2021 (SI 2021/917 reg. 1(2))

Extent

reg. 9(1)-(2): United Kingdom

✓ Law In Force

10.— Regulation 29 amended (transfer of the auctioned allowances)

- (1) Regulation 29 is amended as follows.
- (2) Omit ", as provided for in the Trading Scheme Order".

Commencement

reg. 10(1)-(2): August 25, 2021 (SI 2021/917 reg. 1(2))

Extent

reg. 10(1)-(2): United Kingdom

✓ Law In Force

11.— Regulation 36 amended (monitoring of auctions)

- (1) Regulation 36 is amended as follows.
- (2) In paragraph (3) after "FCA" insert ", the auctioneer and the Treasury".
- (3) In paragraph (4) for "FCA" substitute "auctioneer".
- (4) In paragraph (5)—
 - (a) for "auctioneer" substitute "FCA";
 - (b) for "with the FCA" substitute "with the auctioneer and the Treasury";
 - (c) for "provide the FCA" substitute "provide the auctioneer or the Treasury".

Commencement

reg. 11(1)-(4)(c): August 25, 2021 (SI 2021/917 reg. 1(2))

Extent

reg. 11(1)-(4)(c): United Kingdom

✓ Law In Force

12.— Regulation 37 amended (monitoring the relationship with bidders)

- (1) Regulation 37 is amended as follows.
- (2) In paragraph (4)—
 - (a) after sub-paragraph (b)(i) insert—

"(ia) refusing to grant admission to bid and revoking or suspending any admission to bid under regulation 19;"
 - (b) in sub-paragraph (c) omit "(3) and (4)".

Commencement

reg. 12(1)-(2)(b): August 25, 2021 (SI 2021/917 reg. 1(2))

Extent

reg. 12(1)-(2)(b): United Kingdom

✔ Law In Force

13.— Regulation 39 amended (notification of market abuse)

- (1) Regulation 39 is amended as follows.
- (2) In paragraph (2) omit "has taken or".
- (3) After paragraph (2) insert—

"(3) Where the appointed auction platform gives a report under paragraph (1) to the FCA, the appointed auction platform must inform the auctioneer and the Treasury of that fact and the remedial action proposed as soon as reasonably practicable."

Commencement

reg. 13(1)-(3): August 25, 2021 (SI 2021/917 reg. 1(2))

Extent

reg. 13(1)-(3): United Kingdom

✔ Law In Force

14.— Regulation 40 amended (maximum bid-size and other remedial measures)

- (1) Regulation 40 is amended as follows.
- (2) In paragraph (1) after "consulting the FCA" insert "and the auctioneer".
- (3) In paragraph (3) for "by any group of persons listed in regulation 16(1) or (2), which belong" substitute "by any person, or by any group of persons belonging".

Commencement

reg. 14(1)-(3): August 25, 2021 (SI 2021/917 reg. 1(2))

Extent

reg. 14(1)-(3): United Kingdom

✔ Law In Force

15.— Regulation 44 amended (announcement and notification of the auction results)

(1) Regulation 44 is amended as follows.

(2) In paragraph (1)(e) for "cancellation of an auction" substitute "cancellation of, or unsold allowances at, an auction".

Commencement

reg. 15(1)-(2): August 25, 2021 (SI 2021/917 reg. 1(2))

Extent

reg. 15(1)-(2): United Kingdom

✔ Law In Force

16.— Regulation 45 amended (protection of confidential information)

(1) Regulation 45 is amended as follows.

(2) After paragraph (1)(g) insert—

"(h) the methodology referred to in regulation 7(4) and the prevailing secondary market price determined in accordance with that methodology.".

(3) In paragraph (3)(g) for "FCA" substitute "auctioneer".

(4) In paragraph (6) after sub-paragraph (a) insert—

"(aa) the auctioneer;
(ab) the UK ETS authority;
(ac) the Treasury;".

(5) In paragraph (7) omit "(a), (b) and (c)".

Commencement

reg. 16(1)-(5): August 25, 2021 (SI 2021/917 reg. 1(2))

Extent

reg. 16(1)-(5): United Kingdom

✔ Law In Force

Rebecca Harris

James Morris

Two of the Lords Commissioners of Her Majesty's Treasury

3rd August 2021

EXPLANATORY NOTE

(This note is not part of the Regulations)

✓ Law In Force

The Greenhouse Gas Emissions Trading Scheme Auctioning Regulations 2021 (the "Auctioning Regulations") provide for the auctioning of allowances used in the UK Emissions Trading Scheme, which was established by the Greenhouse Gas Emissions Trading Scheme Order 2020, including for the appointment of an "auctioneer" and an "auction platform". These Regulations amend the Auctioning Regulations, including correcting errors. The main changes are as follows:

- The way in which the annual volume of allowances to be auctioned in a calendar year is to be calculated is amended (see amendments to regulation 9 of the Auctioning Regulations).
- Where the proper conduct of an auction is, or is likely to be, disrupted, the appointed auction platform has the option of changing the date or time of the opening and close of the bidding window as well as cancelling the auction (see amendments to regulations 10 and 11).
- Where allowances provisionally earmarked for free allocation to certain industrial emitters are not in fact so allocated, the Treasury may authorise their release for auction as part of the cost containment mechanism (see amendments to regulation 12).
- A number of functions conferred on the Financial Conduct Authority are transferred to the auctioneer or the Treasury (see amendments to regulations 21, 23 and 36(4)).
- The appointed auction platform must provide regular information about auctions to the auctioneer and the Treasury (see amendment to regulation 36(3)).
- The appointed auction platform must keep records of checks carried out in refusing to grant admission to bid and revoking or suspending any admission to bid (see amendment to regulation 37(4)(b)).
- The appointed auction platform must inform the auctioneer and the Treasury when it reports market abuse to the Financial Conduct Authority (see amendments to regulation 39).
- Before maximum bid sizes and other remedial measures are imposed in the case of a risk of market abuse, the appointed auction platform must consult the auctioneer. Maximum bid sizes may be imposed on single entities as well as groups (see amendments to regulation 40).
- When announcing the results of an auction, the appointed auction platform must include details of the auctions to which the volume of any unsold allowances will be carried over (see amendment to regulation 44).
- The methodology for determining the prevailing secondary market price under regulation 7(4) of the Auctioning Regulations (including the price) is to be treated as confidential information. Confidential information may also be disclosed to the auctioneer, the UK ETS authority and the Treasury (see amendments to regulation 45).

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

Commencement

para. 1: August 25, 2021 (SI 2021/917 reg. 1(2))

Extent

para. 1: United Kingdom

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