

*Draft Regulations laid before the House of Commons under section 96(6) of the Finance Act 2020, for approval by resolution of the House of Commons.*

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## DRAFT STATUTORY INSTRUMENTS

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**2021 No. \*\*\*\***

# CLIMATE CHANGE

## The Greenhouse Gas Emissions Trading Scheme Auctioning Regulations 2021

<i>Made</i>	-	-	-	-	***
<i>Coming into force</i>	-	-			***

The Treasury, in exercise of the powers conferred by section 96 of the Finance Act 2020<sup>(1)</sup>, make the following Regulations.

In accordance with section 96(6) of that Act, a draft of this instrument has been laid before and approved by the House of Commons.

### PART 1

#### General Provisions

##### Citation and commencement

1.—(1) These Regulations may be cited as the Greenhouse Gas Emissions Trading Scheme Auctioning Regulations 2021.

(2) They come into force on the day after the day on which these Regulations are made.

##### Interpretation

2.—(1) In these Regulations—

“affiliated undertaking” means any undertaking within a group;

“allowance” means, except where the context requires otherwise, an allowance created under the Trading Scheme Order<sup>(2)</sup> to emit 1 tonne of carbon dioxide equivalent;

“appointed auction platform” means the auction platform appointed by the Treasury under regulation 22<sup>(1)</sup>;

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(1) 2020 c. 14.

(2) S.I. 2020/1265, amended by S.I. 2020/1557.

“auction process” means the process encompassing the setting of the auction calendar, the procedures for admission to bid, the procedures for submission of bids, the conduct of the auction, the calculation and announcement of the auction results, the arrangements for payment of the price due, delivery of the allowances and management of the collateral needed to cover any transaction risks, as well as the surveillance and monitoring of the proper conduct of the auctions by recognised auction platform;

“auctioned product” has the meaning given in regulation 4(1);

“auction reserve price” has the meaning given in regulation 6(9);

“auctioneer” means any public or private entity appointed by the Treasury, to auction allowances;

“beneficial owner” has the meaning given in regulation 3(1) of the Money Laundering Regulations;

“bid” means an offer in an auction to acquire a given volume of allowances at a specified price;

“bidding window” means the time period during which bids may be submitted;

“central counterparty” means an entity which interposes either directly between an auctioneer and a bidder or its successor in title, or between intermediaries representing them, that acts as the exclusive counterparty to each of them guaranteeing the payment of the auction proceeds to the auctioneer or an intermediary representing it or the delivery of the auctioned allowances to the bidder or an intermediary representing it, subject to regulation 31;

“clearing system” means any infrastructure connected to the auction platform that can provide clearing, margining, netting, management of collateral, settlement and delivery, and any other services, carried out by a central counterparty, accessed either directly or indirectly through members of the central counterparty who act as intermediaries between their clients and the central counterparty;

“clearing” means all processes preceding the opening of the bidding window, during the bidding window and following the closing of the bidding window until settlement, involving the management of any risks arising during that interval, including margining, netting, or novation, or any other services, that may be carried out by a clearing or settlement system;

“collateral” means the forms of collateral security referred to in regulation 2(1) of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999(3), including any allowances accepted as security by the clearing system or settlement system;

“credit institution” means an undertaking the business of which is to take deposits or other repayable funds from the public and to grant credits for its own account;

“criminal activity” means any kind of criminal involvement in the commission of any of the offences referred to in—

- (a) Schedule 3 to the Anti-Terrorism, Crime and Security Act 2001(4),
  - (b) Schedule 3 to the Money Laundering Regulations,
  - (c) Regulations made under section 1 of the Sanctions and Anti-Money Laundering Act 2018(5), or
  - (d) Part 3 of the Counter-Terrorism (International Sanctions) (EU Exit) Regulations 2019(6);
- “customer due diligence measures” has the meaning given in regulation 3(1) of the Money Laundering Regulations;

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(3) S.I. 1999/2979, amended by S.I. 2019/341. The definition of “collateral security” has been amended by S.I. 2010/2993.

(4) 2001 c. 24.

(5) 2018 c. 13.

(6) S.I. 2019/573.

“FCA” means the Financial Conduct Authority<sup>(7)</sup>;

“five-day futures” means allowances auctioned for delivery at an agreed date no later than the fifth trading day from the day of the auction;

“group”, in relation to undertakings, means a parent undertaking and all its subsidiary undertakings;

“investment firm” has meaning given in as in Article 2(1A) of the Markets in Financial Instruments Regulation;

“marginining” means the process by which collateral is to be pledged by an auctioneer or a bidder, or one or more intermediaries acting on their behalf, to cover a given financial position, encompassing the entire process of measuring, calculating and administering the collateral put up to cover such financial positions, intended to ensure that all payment commitments of a bidder and all delivery commitments of an auctioneer or one or more intermediaries acting on their behalf can be met within a very short period of time;

“market abuse” means behaviour prohibited by Articles 14 and 15 of the Market Abuse Regulation;

“Market Abuse Regulation” means Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16th April 2014 on market abuse (Market Abuse Regulation);

“Markets in Financial Instruments Regulation” means Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15th May 2014 on markets in financial instruments;

“money laundering” has the meaning given by section 340(11) of the Proceeds of Crime Act 2002<sup>(8)</sup>;

“Money Laundering Regulations” means the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017<sup>(9)</sup>;

“nominated bank account” means a bank account designated by an auctioneer, a bidder or its successor in title for the receipt of payments due under these Regulations;

“nominated holding account” means one or more holding accounts, of whatever type, provided for paragraphs 11 to 13 of Schedule 5A to the Trading Scheme Order for the purposes of participating in or conducting the auction process including the holding of allowances in escrow, pending their delivery under these Regulations;

“parent undertaking” and “subsidiary undertaking” have the same meanings as in the Companies Act 2006<sup>(10)</sup> (see section 1162 of, and Schedule 7 to, the Companies Act 2006);

“recognised auction platform” has the meaning given in regulation 22;

“recognised investment exchange” means an investment exchange in relation to which a recognition order is in force under section 290 of the Financial Services and Markets Act 2000<sup>(11)</sup>, but does not include an overseas investment exchange (within the meaning of section 313 of that Act);

“the registry” means the electronic system established by the UK ETS authority under paragraph 5 of Schedule 5A to the Trading Scheme Order;

“registry administrator” has the meaning given in article 8A of the Trading Scheme Order;

“secondary market” means the market in which persons buy or sell allowances either before or after they are allocated either free of charge or through auctioning;

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(7) The FCA was established under section 1A of the Financial Services and Markets Act 2000 (c. 8), as amended by the Financial Services Act 2012 (c. 21).

(8) 2002 c. 29.

(9) S.I. 2017/692.

(10) 2006 c. 46.

(11) 2000 c. 8. Section 290 was amended by paragraph 6 of Schedule 8 to the Financial Services Act 2012 (c. 21); S.I. 2007/126 and S.I. 2013/504.

“settlement agent” means an entity acting as an agent providing accounts to the auction platform, through which accounts instructions for the transfer of the auctioned allowances given by the auctioneer or an intermediary representing it and the payment of the auction clearing price by a successful bidder, its successor in title or an intermediary representing them are safely executed either simultaneously or nearly simultaneously in a guaranteed manner;

“settlement system” means any infrastructure whether or not connected to the auction platform that can provide settlement services, which may include clearing, netting, management of collateral, or any other services, which ultimately enable the delivery of allowances on behalf of an auctioneer to a successful bidder or its successor in title, and the payment of the sum due by a successful bidder or its successor in title to an auctioneer, carried out through either of the following—

- (a) the banking system and the registry;
- (b) one or more settlement agents acting on behalf of an auctioneer and a bidder or its successor in title, accessing the settlement agent either directly or indirectly through members of the settlement agent who act as intermediaries between their clients and the settlement agent;

“settlement” means—

- (a) payment by a successful bidder, its successor in title, a central counterparty or a settlement agent of the sum due for allowances to be delivered to that bidder, its successor in title, the central counterparty, or a settlement agent, and
- (b) delivery of the allowances to the successful bidder, its successor in title, the central counterparty or a settlement agent;

“terrorist financing” has the meaning given in regulation 3(1) of the Money Laundering Regulations;

“trading day” means any day during which an auction platform and the clearing system or settlement system connected to it are open for trading;

“Trading Scheme Order” means the Greenhouse Gas Emissions Trading Scheme Order 2020;

“two-day spot” means allowances auctioned for delivery at an agreed date no later than the second trading day from the day of the auction.

(2) A person is established in the United Kingdom—

- (a) for the purposes of regulation 5(5), if their place of residence or permanent address is within the United Kingdom;
- (b) for the purposes of regulation 17(2)—
  - (i) where the operator or aircraft operator is a natural person, or a legal person which has no registered office, if its head office is situated in the United Kingdom;
  - (ii) where the operator or aircraft operator is a legal person which has a registered office, if its registered office is situated in the United Kingdom.

(3) Terms used in these Regulations and in the Trading Scheme Order, and not defined in these Regulations, have the same meaning as in that Order.

(4) Any reference in these Regulations to an EU regulation, as defined by section 20 of the European Union (Withdrawal) Act 2018(12), is, unless otherwise provided, a reference to that regulation as it forms part of domestic law under that Act.

### Meaning of UK ETS authority

3.—(1) A reference in these Regulations to the “UK ETS authority” is a reference to all of the national authorities.

(2) Functions conferred or imposed by these Regulations on the “UK ETS authority” may be exercised—

- (a) by all of the national authorities jointly; or
- (b) by one of the national authorities (or by more than one of the national authorities jointly) on behalf of the other national authorities with their agreement.

(3) For the purposes of this regulation, “national authorities” means any of the following—

- (a) the Secretary of State;
- (b) the Scottish Ministers;
- (c) the Welsh ministers;
- (d) the relevant Northern Ireland department, within the meaning of section 96 of the Climate Change Act 2008<sup>(13)</sup>.

## PART 2

### Auction Design

#### Auctioned products

4.—(1) Allowances may be offered for sale on an appointed auction platform by means of standardised electronic contracts, and for the purposes of these Regulations, “the auctioned product” means the standardised electronic contract for one or more allowances.

(2) Allowances sold on an auction platform may take the form of either two-day spot or five-day futures.

(3) Bidders at an auction of allowances must submit their bids during one bidding window without seeing bids submitted by other bidders.

(4) Each successful bidder must pay the same auction clearing price referred to in regulation 7 for each allowance regardless of the bid price.

#### Submission and withdrawal of bids

5.—(1) The minimum volume bid is one lot, and each lot auctioned must consist of 500 allowances.

(2) Each bid must state—

- (a) the identity of the bidder and whether the bidder is bidding on its own account or on behalf of a client;
- (b) where the bidder is bidding on behalf of a client, the identity of the client;
- (c) the volume bid as a number of allowances in integral multiples of lots of 500 allowances;
- (d) the price bid in pounds sterling for each allowance specified to two decimal points.

(3) Subject to paragraph (4), each bid may only be submitted, modified or withdrawn during the bidding window set by the auction platform.

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(13) 2008 c. 27.