Draft Regulations laid before the House of Commons under section 16(8) of the Finance Act 2007 for approval by resolution of the House of Commons

DRAFT STATUTORY INSTRUMENTS

2008 No.

ENVIRONMENTAL PROTECTION

EMISSIONS TRADING

The Community Emissions Trading Scheme (Allocation of Allowances for Payment) Regulations 2008

Made - - - -	***
Coming into force - -	***

These Regulations are made in exercise of the powers conferred by section 16(2), (3) and (4) of the Finance Act 2007(**1**).

A draft of these Regulations has been approved by a resolution of the House of Commons pursuant to section 16(8) of the Finance Act 2007.

The Treasury make the following Regulations:

PART 1

INTRODUCTORY

Citation and commencement

1. These Regulations may be cited as the Community Emissions Trading Scheme (Allocation of Allowances for Payment) Regulations 2008 and come into force on the day after the date on which they are made.

Interpretation

2. In these Regulations—

"account holder" means an account holder, as defined in Article 2 of the Registries Regulation;

"allowance" means a Community tradeable emissions allowance;

(**1**) c. 11.

"auction" means the process of allocation of allowances for payment by means of submission of bids as provided for by these Regulations and the Scheme;

"auction clearing price" is the price required to be paid by an account holder for an allowance at an auction and is determined in accordance with the Scheme;

"bid" means an offer to acquire allowances in such form as is required by the Scheme;

"the Directive" means Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC(**2**);

"Environment Agency" means the agency established under Chapter I of the Environment Act 1995(**3**), designated under Article 8 of the Registries Regulation and acting as the United Kingdom's registry administrator;

"holding account" means an operator holding account created under Article 15 of the Registries Regulation, or a person holding account created under Article 19 of the Registries Regulation;

"nominated bank account" means such bank account as is nominated by the person conducting an auction, or by the person conducting an allocation for payment otherwise than by auction, for the receipt of a payment from an account holder;

"nominated holding account" means the holding account nominated by an account holder for the receipt of allowances;

"Party holding account" means the United Kingdom's Party holding account created in accordance with Article 12 of the Registries Regulation;

"the person conducting an allocation for payment otherwise than by auction" means the Treasury, or, where the Treasury has made an appointment under regulation 10(b), the person so appointed;

"the person conducting an auction" means the Treasury, or, where the Treasury has made an appointment under regulation 3(b), the person so appointed;

"the Registries Regulation" means Commission Regulation 2216/2004/EC for a standardised and secured system of registries pursuant to the Directive and Decision 280/2004/EC of the European Parliament and the Council(**4**);

"relevant interest rate" means—

(a) where payment is made in sterling, one per cent above the rate announced from time to time by the Monetary Policy Committee of the Bank of England (the "Bank") as the official dealing rate, being the rate at which the Bank is willing to enter into transactions for providing short term liquidity in the money markets;

(b) where payment is made in euros, one per cent above the rate announced from time to time by the Governing Council of the European Central Bank as the main refinancing operations rate, being the minimum rate at which the European Central Bank is willing to enter into transactions for providing short-term liquidity in the money markets.

"Scheme" means a scheme made by the Treasury under section 16(5) of the Finance Act 2007;

"settlement date" means the date, determined in accordance with the Scheme, by which payment in full for allowances is required to be made by an account holder.

(**2**) OJNo. L275, 25.10.2003, p.32.
(**3**) c. 25.
(**4**) OJ No. L 386, 29.12.2004, p.1.

PART 2

AUCTIONS

Persons who may conduct auctions

3. The Treasury may—

(a) conduct auctions to allocate allowances, or

(b) appoint the Secretary of State, the Scottish Ministers, the Welsh Ministers or the Department of the Environment in Northern Ireland, or any other person, or any of them acting jointly, to conduct auctions to allocate allowances, subject to conditions (including as to fees charged) and limitations as the Treasury see fit.

Deposits

4.—(1) The person conducting an auction—

(a) may require an account holder to pay a deposit into a nominated bank account on account of payment for allowances,

(b) may retain a deposit as payment for allowances allocated, and

(c) must repay to an account holder any part of a deposit not used to satisfy payment for allowances as soon as reasonably practicable after the close of the bidding window.

(2) In paragraph (1) "bidding window" means such period as is specified in the Scheme during which an account holder may submit a bid in an auction for the allocation of an allowance.

Payment

5.—(1) An account holder to whom allowances are allocated at an auction must pay, by the settlement date, the total amount due for payment for the allowances allocated.

(2) Payment must be made—

(a) into a nominated bank account,

(b) in sterling or euros, as determined in accordance with the Scheme.

(3) In paragraph (1) "total amount due" means the amount notified to the account holder by the person conducting the auction.

Transfer of allowances

6.—(1) On receipt of payment in full from an account holder for the allocation of allowances, the person conducting an auction must provide to the Environment Agency such information as is necessary to effect the transfer referred to in paragraph (2).

(2) As soon as reasonably practicable following receipt of the information referred to in paragraph (1), the Environment Agency must transfer from the Party holding account to the nominated holding account of each account holder the number of allowances which are allocated to that account holder at auction.

Allocation following review

7.—(1) If, following an auction, an account holder requests a review under regulation 13 and the decision of the Treasury in respect of that review is to allocate allowances to an account holder, the account holder must pay the auction clearing price for those allowances.

(2) Payment must be made into a nominated bank account by the date specified by the Treasury.

(3) On receipt of payment in full from that account holder the person conducting the auction must provide to the Environment Agency such information as is necessary to effect the transfer referred to in paragraph (4).

(4) As soon as reasonably practicable on receipt of the information referred to in paragraph (3), the Environment Agency must transfer the number of allowances from the Party holding account to the account holder's nominated holding account as is specified by the Treasury in their decision under regulation 13.

(5) Where payment for allowances is not received into the nominated bank account from an account holder by the date specified under paragraph (2), any outstanding amount is payable by the account holder on demand, and the Treasury may—

(a) require that account holder to pay interest for each day beginning with the settlement date and ending on the date on which payment is made, at the relevant interest rate, calculated on a daily basis, or

(b) decide not to provide to the Environment Agency such information as is necessary to effect the transfer under paragraph (4).

(6) The Treasury must give an account holder notice of a decision under sub-paragraph (5)(b) as soon as reasonably practicable after making that decision.

Consequences of late or non-payment

8.—(1) Where payment for allowances is not received from an account holder by the settlement date, any outstanding amount is payable by the account holder on demand, and the person conducting an auction may—

(a) require that account holder to pay interest for each day beginning with the settlement date and ending on the date on which payment is made at the relevant interest rate, calculated on a daily basis, or

(b) decide not to provide to the Environment Agency such information as is necessary to effect the transfer under regulation 6(2).

(2) The person conducting an auction must give an account holder notice of a decision under sub-paragraph (1)(b) as soon as reasonably practicable after making that decision.

Transfer of excess allowances

9.—(1) If, following an auction, the Environment Agency transfers a number of allowances to a nominated holding account in excess of the number of allowances which should have been transferred to that account ("excess allowances"), when the transfer of excess allowances comes to the account holder's notice, that account holder must, as soon as reasonably practicable—

(a) give notice to the Environment Agency and to the person conducting the auction;

(b) where the nominated holding account is administered by the Environment Agency, request that the Environment Agency transfers the excess allowances from that account to the Party holding account.

(2) When an excess transfer comes to the notice of the Environment Agency, whether by notification from an account holder under sub-paragraph (1)(a) or otherwise, and if—

(a) the Environment Agency is not in receipt of a request under sub-paragraph (1)(b); and

(b) the nominated holding account is administered by the Environment Agency,

then the Environment Agency must transfer the excess allowances from that account to the Party holding account as soon as reasonably practicable.