

DRAFT FOR CONSULTATION

Draft Regulations laid before the House of Commons under section 21(7) of the Finance Act 2008, for approval by resolution of the House of Commons.

D R A F T S T A T U T O R Y I N S T R U M E N T S

[2012] No.

CLIMATE CHANGE

EMISSIONS TRADING

**The CRC Energy Efficiency Scheme (Allocation of Allowances
for Payment) Regulations [2012]**

Made - - - -

Coming into force in accordance with regulation 1

The Treasury make the following Regulations in exercise of the powers conferred by section 21(1), (2) and (3) of the Finance Act 2008(a).

A draft of these Regulations has been laid before the House of Commons in accordance with section 21(7) of that Act and approved by a resolution of the House of Commons.

PART 1

INTRODUCTORY

Citation and commencement

1. These Regulations may be cited as the CRC Energy Efficiency Scheme (Allocation of Allowances for Payment) Regulations [2012] and come into force on the day after the day on which they are made.

Interpretation

2.—(1) In these Regulations—

“allocation” means an allocation of allowances conducted in accordance with Part 2 of these Regulations;

“allocation period” means such period as is determined in accordance with regulation 5;

“allowance” means an allowance allocated and issued by the Environment Agency pursuant to these Regulations;

(a) 2008 c.9.

- “main allocation” means an allocation of allowances conducted during an allocation period;
- “the Order” means the CRC Energy Efficiency Scheme Order 2010(a);
- “payment amount” means the amount required to be paid for an allowance at an allocation;
- “primary allocation period” means such period as is determined in accordance with regulation 5(2) and (4);
- “registry account” means an account established by the Environment Agency as required by paragraph 1(1) of Schedule 7 to the Order;
- “secondary allocation period” means such period as is determined in accordance with regulation 5(3) and (4); and
- “special allocation” means an allocation of allowances conducted for the purposes of article 97(4)(b) or article 100(2) of the Order.

(2) The following words and phrases in these Regulations have the same meaning as in the Order:

- “account holder”;
- “civil penalty”;
- “compliance account”;
- “group”;
- “participant”;
- “the Registry”;
- “scheme”; and
- “working day”.

PART 2

ALLOCATIONS

Conduct of allocations

3.—(1) The Environment Agency(b) must conduct allocations of allowances in return for payment.

(2) The Environment Agency—

- (a) may only conduct main allocations of allowances during the periods prescribed by these Regulations, and
- (b) may conduct special allocations of allowances at any time.

Requests for allocation of allowances

4.—(1) An account holder wishing to be allocated allowances must submit a request to the Environment Agency.

(2) An account holder may only make a request to be allocated allowances—

- (a) during a primary allocation period which, at the time of the request, has commenced and has not ended, or
- (b) where the request is for a special allocation, following receipt of a notice of a civil penalty requiring allowances to be acquired.

(3) A request for allowances to be allocated must specify—

(a) S.I. 2010/768, which has been amended by S.I. 2011/234.

(b) established under section 1(1) of the Environment Act 1995 (c.25).

- (a) the number of allowances that the account holder wishes to acquire,
- (b) the name of the account holder making the request,
- (c) the registry account to which the allowances allocated are to be issued, and
- (d) whether the request relates to a main allocation or a special allocation.

(4) Unless otherwise agreed by the Environment Agency, the request must be made using such facilities as are provided by the Registry.

(5) An account holder may make multiple requests in respect of each primary allocation period.

Allocation periods

5.—(1) The Environment Agency must conduct main allocations of allowances during the allocation periods determined in accordance with this regulation.

(2) The primary allocation periods are as follows—

- (a) the first primary allocation period begins on 1st June 2012 and ends on the last working day of July 2012,
- (b) the second primary allocation period begins on 3rd June 2013 and ends on the last working day of July 2013, and
- (c) the third primary allocation period begin on 2nd June 2014 and ends of the last working day of July 2014.

(3) The secondary allocation periods are as follows—

- (a) the first secondary allocation period begins on 13th August 2012 and ends on the last working day of September 2012,
- (b) the second secondary allocation period begins on 12th August 2013 and ends on the last working day of September 2013, and
- (c) the third secondary allocation period begins on 11th August 2014 and ends on the last working day of September 2014.

(4) Where a day referred to in this regulation is not a working day, the allocation period is to begin on the next working day.

Allocations

6.—(1) Only a participant may make a request to be allocated allowances at an allocation.

(2) A request to be allocated allowances at an allocation is not valid unless payment is made in accordance with regulation 7(3).

(3) Where payment is not received in full or where payment is received after the time required under regulation 7(3), the Environment Agency must repay the payment to the account holder making the request as soon as reasonably practicable.

Payment for allowances

7.—(1) The payment amount for each allowance at an allocation is £[12 as announced for 2012].

(2) A participant who requests the allocation of allowances at an allocation must make payment in full for the allowances requested.

(3) Payment for allocations requested in a primary allocation period must be made no later than the last day of that allocation period.

PART 3
GENERAL

Fees

8.—(1) The Environment Agency may require the payment by an account holder who requests the allocation of allowances of a fee of an amount determined by reference to the costs of allocating the allowances.

(2) Where the Environment Agency requires the payment of such a fee in relation to an allocation, the Environment Agency must, prior to the allocation, give notice of the amount of the fee to the account holder who has requested the allocation of allowances.

(3) Where an account holder has not paid, in full, a fee notified under this regulation, any outstanding amount is recoverable as a civil debt by the Environment Agency.

Payments

9.—(1) Payments under these Regulations must be made into a bank account nominated by the Environment Agency—

- (a) by electronic transfer from an account with a credit institution,
- (b) accompanied by information which identifies the account holder making the payment, and
- (c) in sterling.

(2) Payment is deemed to have been made when the Environment Agency receives full cleared funds.

(3) In this regulation “credit institution” has the meaning given to it by article 4(1) of Directive 2006/48/EC of the European Parliament and of the Council relating to the taking up and pursuit of the business of credit institutions (recast)(a).

Issue of allowances

10. On receipt of payment in full for allowances, the Environment Agency must, as soon as reasonably practicable, issue the number of allowances to the participant’s compliance account.

Issue of excess allowances

11.—(1) If it comes to the account holder’s notice that the Environment Agency has issued allowances in excess of the number of allowances which should have been issued in accordance with an allocation the account holder must as soon as reasonably practicable notify the Environment Agency.

(2) Where an issue of excess allowances comes to the notice of the Environment Agency, whether by notification under paragraph (1) or otherwise, as soon as reasonably practicable the Environment Agency must—

- (a) cancel the excess allowances, and
- (b) notify the account holder that the allowances have been cancelled.

(3) The provisions of paragraph (2) do not apply in the event that an account holder sells or otherwise deals in any excess allowances.

(4) In the event that an account holder sells or otherwise deals in any excess allowances the Environment Agency—

(a) O.J. No.L177, 30.6.2006, p.1. Directive as last amended by Commission Directive 2010/16/EU (OJ No. L60 10.3.2010, p.15).

- (a) must not cancel the excess allowances, and
- (b) may require that account holder to pay the required payment amount multiplied by the number of excess allowances.

(5) If payment required under paragraph (4) is not received in full by such date as is specified by the Environment Agency, any outstanding amount is payable by the participant on demand and each member of a group is jointly and severally liable to comply with such a demand.

(6) In this regulation the “required payment amount” means the payment amount required to be paid for each allowance at the allocation in respect of which excess allowances were issued.

Financial provision

12. Except for any sums received by the Environment Agency by way of fees pursuant to regulation 8, any sums received by the Environment Agency under or by virtue of these Regulations shall be paid to the Secretary of State who shall pay them into the Consolidated Fund.

Notices

13.—(1) Any notice to be given under these Regulations by the Environment Agency may be in such form as the Environment Agency thinks fit and may be included as part of any other notice, notification or communication by the Environment Agency to the person in question.

(2) A notice or document may be served on, or given to, a person by—

- (a) delivering it to that person in person,
- (b) leaving it at that person’s proper address,
- (c) sending it by post or electronic means to that person’s proper address, or
- (d) in the case of an account holder, using such facilities as are provided by the Registry.

(3) For the purpose of sub-paragraph (2)(c), a person’s proper address may be taken as—

- (a) its principal place of business in the United Kingdom,
- (b) an email address provided to the Environment Agency,
- (c) in the case of a body corporate, the registered or principal office of that body, and
- (d) in the case of a partnership, or a partner or person having control or management of the partnership business, the principal office of the partnership.

(4) For the purpose of sub-paragraph (3)(c), the principal office of a company registered outside the United Kingdom or of a partnership established outside the United Kingdom is their principal office in the United Kingdom.

(5) In the case of a body corporate a notice or document may be served on, or given to one of the persons listed in sub-paragraph (6) by means of the service of that notice, or the giving of that document, to those persons in accordance with contact details provided to the Environment Agency (and such service is deemed to be effective, unless the account holder has notified the Environment Agency of any changes to the particulars provided).

(6) The persons referred to in paragraph (5) are as follows—

- (a) the secretary or clerk of that body, or
- (b) where that body corporate is an account holder, a director or,
- (c) where the body corporate is not a company and the account holder is a participant, a person of equivalent status to a director of a body corporate, who is responsible at senior management level for compliance with the scheme, or
- (d) an officer or employee who has authority to deal with the Environment Agency on behalf of the account holder on a day-to-day basis,

and in each case in respect of whom contact details have been provided to the Environment Agency.

(7) In the case of a partnership, a notice or document may be served on, or given to—

- (a) a partner or a person having control or management of the partnership business, or
 - (b) where that partnership is an account holder, any partner or employee in respect of whom contact details have been provided.
- (8) In the case of any other person, a notice or document may be served on, or given to—
- (a) any person of equivalent status to a secretary or clerk of a body corporate, or
 - (b) where that person is a participant, an officer or employee in respect of whom contact details have been provided.
- (9) A notice to the Environment Agency under regulation 11(1) must be given using such facilities as are provided by the Registry.
- (10) Where a notice or document is served, or given, using electronic communications, the service is deemed to be effected, and the notice or document received, by properly addressing and transmitting the electronic communication.
- (11) Where a participant is a group and the administrator gives any communication to the public body or undertaking who is the account holder, that communication is deemed to be made to each member of the group.

Two of the Lords Commissioners of Her Majesty's Treasury

Date

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for the Treasury to impose charges by providing for the allocation and issue of allowances in return for payment in the trading scheme established by the CRC Energy Efficiency Scheme Order 2010 (S.I. 2010/768). The regulations set out provision as to who will conduct allocations, the timing of requests to be allocated allowances, the payment for and issue of allowances, the consequences of late or non-payment and the consequences of a transfer of excess allowances.

Regulation 3 sets out that the Environment Agency must conduct allocations of allowances in return for payment and that main allocations must be conducted in the periods set out in regulation 5. Special allocations (which are allocations made to a participant who has received a notice of a civil penalty requiring them to acquire allowances) may be made at any time.

Regulation 4 sets out the provision as to the information that an account holder requesting allowances is required to submit to the Environment Agency using the Registry. Provision is made for account holders to make multiple requests and that requests can only be made during a primary allocation period.

Regulation 5 provides for the periods during which allocations will take place. It provides for both primary allocation periods (during which account holders may request allowances and the Environment Agency may conduct allocations) and secondary allocation periods (during which the Environment Agency may conduct allocations requested during the primary allocation period but not yet allocated).

Regulation 6 provides that only participants in the CRC Energy Efficiency Scheme may make requests for allowances during an allocation and that for a request to be valid payment must be made in accordance with regulation 7. If payment is made after the time set out in regulation 7, the payment is returned to the participant and no allowances issued.

Regulation 7 provides that the price of each allowance at a main allocation is £12 as announced for 2012] and that payment for allowances must be made no later than the last day of the primary allocation period.

Regulation 8 provides for the Environment Agency to charge fees determined by reference to the costs of allocating the allowances.

Regulation 9 sets out how payments must be made.

Regulation 10 provides that once payment for allowances has been received in full the Environment Agency must issue allowances to the account holder.

Regulation 11 sets out provision in the event that excess allowances are issued. This regulation requires the account holder to notify the Environment Agency of any excess allowances that are issued. If an issue of excess allowances comes to the notice of the Environment Agency the Environment Agency must cancel the excess allowances and notify the account holder that the allowances have been cancelled. If the account holder has dealt in the excess allowances, or in an interest in them, the Environment Agency may require the account holder to pay the price they would have paid in the allocation.

Regulation 12 provides that any money, apart from that which covers fees and costs, received under or by virtue of the Regulations is to be paid into the Consolidated Fund.

Regulation 13 sets out provisions for the service of notice by and on the Environment Agency.

These Regulations are covered by the full impact assessment produced in relation to the CRC Energy Efficiency Scheme Order 2010, which contains an assessment of the effect that both these Regulations and that Order, taken together, will have on the costs of business and the voluntary sector. That assessment is available from www.decc.gov.uk and is also annexed to the Explanatory

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Memorandum to the CRC Energy Efficiency Scheme Order 2010 which is available alongside the instrument on www.legislation.gov.uk.

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