

2012 No. 1386

CLIMATE CHANGE

EMISSIONS TRADING

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

Made - - - -

23rd May 2012

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;

“main allocation” means an allocation of allowances which is not a special allocation;

“the Order” means the CRC Energy Efficiency Scheme Order 2010()(b);

(a) 2008 c.9.

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

“primary allocation period” means such period as is determined in accordance with regulation 5(2), (4) and (5);

“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), (4) and (5); and

“special allocation” means an allocation of allowances conducted following the issue of an enforcement notice or 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”;

“enforcement notice”;

“group”;

“participant”;

“the Registry”;

“scheme”; and

“working day”.

PART 2 ALLOCATIONS

Conduct of allocations

3.—(1) The Environment Agency^(a) must conduct allocations of allowances in return for payment to the Secretary of State.

(2) The Environment Agency—

- (a) may only conduct main allocations of allowances during a primary or secondary allocation period, 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, or
- (b) where the request is for a special allocation, following receipt of an enforcement notice or a notice of a civil penalty requiring allowances to be acquired.

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

- (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.

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

(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 31st July 2012,
- (b) the second primary allocation period begins on 3rd June 2013 and ends on 31st July 2013, and
- (c) the third primary allocation period begins on 2nd June 2014 and ends on 31st July 2014.

(3) The secondary allocation periods are as follows—

- (a) the first secondary allocation period begins on 13th August 2012 and ends on 7th September 2012,
- (b) the second secondary allocation period begins on 12th August 2013 and ends on 6th September 2013, and
- (c) the third secondary allocation period begins on 11th August 2014 and ends on 5th September 2014.

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

(5) Where an allocation period referred to in this regulation ends on a day which is not a working day, the allocation period is to end on the previous working day.

Allocations

6.—(1) Only an account holder of a compliance account 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(2) or (3).

(3) Where payment is not received in full the Environment Agency must allocate allowances up to the value for which payment has been received.

(4) Where payment is received after the time required under regulation 7(2) or (3), or where a balance is remaining after allowances have been allocated under regulation 6(3), the Secretary of State must repay the payment or balance to the account holder making the request as soon as reasonably practicable.

Payment for allowances

7.—(1) The amount required to be paid for each allowance at an allocation is £12.

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

(3) Payment for allocations requested at a special allocation must be made—

- (a) no later than the date specified in the enforcement notice or within 5 working days of the effective date of a notice of a civil penalty, or
- (b) where the relevant notice is appealed, no later than 5 working days of the final determination of the appeal.

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—

- (a) for allowances, by the Secretary of State, and
- (b) for fees, by the Environment Agency.

(2) Payments under these Regulations must be made—

- (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.

(3) Payment is deemed to have been made for allowances when the Secretary of State receives cleared funds.

(4) Payment is deemed to have been made for fees when the Environment Agency receives cleared funds.

(5) In this regulation “credit institution” means—

- (a) an institution which has permission under Part 4 of the Financial Services and Markets Act 2000^(a) to carry on the regulated activity of accepting deposits and persons authorised to carry on similar activities under the law of a country other than the United Kingdom, or
- (b) an electronic money institution as defined by article 2 of Directive 2009/110/EC of the European Parliament and of the Council on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC^(b).

Issue of allowances

10.—(1) On receipt by the Secretary of State of payment for allowances, the Environment Agency must, as soon as reasonably practicable, issue the number of allowances to the account holder’s compliance account.

(2) Where payment is received by the Secretary of State in accordance with regulation 7(2) but the Environment Agency has not allocated the allowances before the end of the primary allocation period, the Environment Agency must, as soon as reasonably practicable, issue the allowances during the following secondary allocation period.

(a) 2000 c.8.

(b) O.J. No.L.267, 10.10.2009, p.7.

Issue of excess allowances

11.—(1) Where it comes to the notice of the Environment Agency that it has issued to an account holder allowances in excess of the number of allowances which have been validly requested and paid for, 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.

(2) The provisions of paragraph (1) do not apply in the event that an account holder sells or otherwise deals in any excess allowances.

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

- (a) must not cancel the excess allowances, and
- (b) may require that account holder to pay £12 multiplied by the number of excess allowances.

(4) If payment required under paragraph (3) 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 by the Environment Agency and each member of a group is jointly and severally liable to comply with such a demand.

(5) Any outstanding amount under regulation 11(4) is recoverable as a civil debt by the Environment Agency.

Financial provision

12.—(1) 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.

(2) Any sums received by the Secretary of State under or by virtue of these Regulations shall be paid 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 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) that person's 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.

- (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 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.
- (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 who has authority to deal with the Environment Agency on behalf of the account holder on a day-to-day basis.
- (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 who has authority to deal with the Environment Agency on behalf of the account holder on a day-to-day basis.
- (9) 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 addressing and transmitting the electronic communication.
- (10) 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.

23rd May 2012

James Duddridge
Brooks Newmark
Two of the Lords Commissioners of Her Majesty's Treasury

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 to the Secretary of State and that main allocations must be conducted in the periods set out in regulation 5. Special allocations (which are allocations made to an account holder who has received an enforcement notice or 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 must conduct allocations requested during the primary allocation period but not yet allocated).

Regulation 6 provides that only account holders of a compliance account 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 only a partial payment is made, the Environment Agency may allocate allowances up to the value of which payment has been received. 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 an allocation is £12. Payment for allowances must be made no later than the last day of a primary allocation period. Payment for allowances at a special allocation must be made no later than the date specified in the enforcement notice, or within 5 working days of the effective date of a civil penalty notice or the determination of an appeal against an enforcement or civil penalty notice.

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 on time the Environment Agency must issue allowances to the account holder. If payment is received on time but allowances are not issued during the primary allocation period, they are to be issued during the following secondary allocation period.

Regulation 11 sets out provision in the event that excess allowances 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 other than fees received by the Environment Agency under or by virtue of the Regulations is to be paid to Secretary of State and that the Secretary of State is to pay any money received 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 Memorandum to the CRC Energy Efficiency Scheme Order 2010 which is available alongside the instrument on www.legislation.gov.uk.

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