
STATUTORY INSTRUMENTS

2012 No. 1906

**The Financial Services and Markets Act 2000
(Regulated Activities) (Amendment) Order 2012**

PART 3

CONSEQUENTIAL AND MISCELLANEOUS AMENDMENTS

Amendment of the Financial Services and Markets Act 2000

3.—(1) The Financial Services and Markets Act 2000 is amended as follows.

(2) In section 39(4)(1) (exemption of appointed representatives), after “markets in financial instruments directive” insert “or contained in the emission allowance auctioning regulation”.

(3) In section 45 (variation etc. on the Authority’s own initiative), after subsection (2B)(2), insert—

“(2C) Without prejudice to the generality of subsections (1) and (2), the Authority may, in relation to an authorised person who has permission to carry on the regulated activity specified in article 24A of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, exercise its power under this section to vary the Part 4 permission of the person concerned by removing that activity from those to which the permission relates if it appears to the Authority that that person has seriously and systematically infringed the provisions of paragraph 2 or 3 of Article 59 of the emission allowance auctioning regulation.”.

(4) In section 59(8) (approval for particular arrangements), after “the single market directives” insert “or the emission allowance auctioning regulation”.

(5) In section 66(2)(3) (disciplinary powers), after “the markets in financial instruments directive or the UCITS directive” insert “or by the emission allowance auctioning regulation”.

(6) In section 138(6)(b) (general rule-making power), after “the single market directives” insert “or the emission allowance auctioning regulation”.

(7) In section 168(4)(j)(4) (appointment of persons to carry out investigations in particular cases), insert at the end “or made by the emission allowance auctioning regulation”.

(8) In section 205(5) (public censure), after “the UCITS directive” insert “or by the emission allowance auctioning regulation”.

(9) In section 206(1)(6) (financial penalties), after “the UCITS directive” insert “or by the emission allowance auctioning regulation”.

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- (1) Section 39(4) was amended by [S.I. 2007/126](#).
(2) Section 45(2B) was inserted by [S.I. 2007/126](#).
(3) Section 66(2) was amended by [S.I. 2007/126](#) and [2011/1613](#).
(4) Paragraph (j) was inserted into section 168(4) by [S.I. 2007/126](#).
(5) Section 205 was amended by [S.I. 2007/126](#) and [2011/1613](#).
(6) Section 206(1) was amended by [S.I. 2007/126](#) and [2011/1613](#).

(10) In section 206A(2)(7) (suspending permission to carry on regulated activities etc.), in the definition of “relevant requirement”, omit the word “or” before paragraph (e), and at the end of that paragraph insert—

“; or

(f) by the emission allowance auctioning regulation.”.

(11) In section 380(6)(a)(i)(8) (injunctions), after “the UCITS directive” insert “or by the emission allowance auctioning regulation”.

(12) In section 382(9)(a)(i)(9) (restitution orders), after “the UCITS directive” insert “or by the emission allowance auctioning regulation”.

(13) In section 384(7)(a)(10) (power of Authority to require restitution), after “the UCITS directive” insert “or by the emission allowance auctioning regulation”.

(14) In section 417(1)(11) (definitions), in the definition of “investment services and activities”—

(a) at the end of paragraph (a), omit “and”;

(b) at the end of paragraph (b), insert—

“and

(c) Article 6(5) of the emission allowance auctioning regulation;”.

(15) In section 418 (carrying on regulated activities in the United Kingdom), after subsection (6), insert—

“(7) For the purposes of subsection (2)(b) and (c), the emission allowance auctioning regulation is a single market directive.”.

(16) In section 425(1)(a)(12) (expressions relating to authorisation elsewhere in the single market), after ““EEA State”,” insert ““emission allowance auctioning regulation”,”.

(17) In Schedule 1, paragraph 6(13)(monitoring and enforcement)—

(a) in sub-paragraph (1), after “under this Act, insert “by the emission allowance auctioning regulation”;

(b) in sub-paragraph (3), after “under this Act”, insert “, the emission allowance auctioning regulation,”.

Amendment of Schedule 3 to the Financial Services and Markets Act 2000

4.—(1) Schedule 3 to the Financial Services and Markets Act 2000 (EEA passport rights) is amended as follows.

(2) After paragraph 4C (the market in financial instruments directive)(14), insert—

“The emission allowance auctioning regulation

4D. “The emission allowance auctioning regulation” means Commission Regulation (EU) No 1031/2010 of 12 November 2010 on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances pursuant to Directive [2003/87/EC](#) of the

(7) Section 206A was inserted by section 9 of the Financial Services Act [2010 \(c. 28\)](#), and subsection (2) was amended by [S.I. 2011/99](#) and [2011/1613](#).

(8) Paragraph (a)(i) of section 380(6) was amended by [S.I. 2007/126](#) and [2011/1613](#).

(9) Paragraph (a)(i) of section 382(9) was amended by [S.I. 2007/126](#) and [2011/1613](#).

(10) Section 384(7)(a) was amended by [S.I. 2007/126](#) and [2011/1613](#).

(11) The definition of “investment services and activities” was inserted by [S.I. 2007/126](#).

(12) Section 425(1)(a) was substituted by [S.I. 2003/2066](#), and amended by [S.I. 2004/3379](#); [2006/2975](#); [2007/126](#) and [2007/3253](#).

(13) Paragraphs 6(1) and (3) of Schedule 1 were each amended by [S.I. 2007/126](#) and [2011/1613](#).

(14) Paragraph 4C of Schedule 3 was inserted by [S.I. 2006/2975](#).

European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community.”.

(3) In paragraph 5 (EEA firm)—

- (a) at the end of sub-paragraph (e), omit “or”;
- (b) at the end of sub-paragraph (f)(15), insert—
“; or

- (g) a person who has received authorisation under Article 18.2 of the emission allowance auctioning regulation.”.

(4) In paragraphs 6(b)(16) (EEA authorisation), 7(b) (EEA right), 9 (home state regulator) and 11 (host state regulator), after “single market directive” insert “or, as the case may be, the emission allowance auctioning regulation”.

(5) In paragraph 12 (firms qualifying for authorisation), after sub-paragraph (6)(17), insert—

“(7) Sub-paragraph (2) does not apply to an EEA firm which falls within paragraph 5(a), (b) or (g), and only provides services in the exercise of its right under Article 18 of the emission allowance auctioning regulation.

(8) An EEA firm which falls within paragraph 5(g) qualifies for authorisation.

(9) An EEA firm which falls within paragraph 5(a) or (b) but does not qualify for authorisation under sub-paragraph (1) or (2) qualifies for authorisation under this sub-paragraph if it—

- (a) has received authorisation from its home state regulator under Article 18.3 of the emission allowance auctioning regulation; and
- (b) is seeking to provide services or establish a branch in the United Kingdom in the exercise of the EEA right arising under that provision.”.

(6) In paragraph 13 (establishment), in sub-paragraph (4), in the definition of “host state rules”—

- (a) in paragraph (a), after “single market directive” insert “or for the purposes of the emission allowance auctioning regulation”, and
- (b) in paragraph (b), after “that directive” insert “or for the purposes of that regulation”.

(7) In paragraph 14 (services), in sub-paragraph (4), in the definition of “host state rules”—

- (a) in paragraph (a), after “single market directive” insert “or for the purposes of the emission allowance auctioning regulation”, and
- (b) in paragraph (b), after “that directive” insert “or for the purposes of that regulation”.

(8) In paragraph 15(1A)(18) (grant of permission), for “paragraph 15A(3)” substitute “paragraphs 15A(3) and 15ZA(1)”.

(9) After paragraph 15, insert—

“Grant of permission: bidding for emission allowances

15ZA.—(1) A firm that qualifies for authorisation as a result of paragraph 12(1) or (2) has permission to receive, transmit or submit a bid on behalf of its clients in the exercise of its rights under Article 18.3 of the emission allowance auctioning regulation if it has received authorisation under that provision from its home state regulator.

(15) Sub-paragraph (f) of paragraph 5 of Schedule 3 was substituted by [S.I. 2011/1613](#).

(16) Paragraph 6 of Schedule 3 was substituted by [S.I. 2003/1473](#).

(17) Sub-paragraph (6) of paragraph 12 of Schedule 3 was inserted by [S.I. 2007/3253](#).

(18) Paragraph 15(1A) of Schedule 3 was inserted by [S.I. 2003/2066](#).

(2) Permission under sub-paragraph (1) is to be treated as being on terms equivalent to those appearing in the authorisation granted to the firm pursuant to Article 18.3 of the emission allowance auctioning regulation.

(3) A firm which qualifies for authorisation as a result of paragraph 12(9) has permission to receive, transmit and submit a bid on behalf of its clients in the exercise of its rights under Article 18.3 of the emission allowance auctioning regulation.

(4) A firm which qualifies for authorisation as a result of paragraph 12(8) has permission to receive, transmit and submit a bid on its own account or on behalf of clients of its main business under Article 18.2 of the emission allowance auctioning regulation.

(5) The permissions referred to in sub-paragraphs (3) and (4) are to be treated as being on terms equivalent to those appearing in the authorisation granted to the firm pursuant to Article 18.2 or 18.3 of the emission allowance auctioning regulation.”.

(10) In paragraph 19 (establishment)—

(a) in sub-paragraph (1)(19), after “(5ZA)(20)” insert “, (5ZB)”.

(b) after sub-paragraph (5ZA), insert—

“(5ZB) This paragraph does not apply to a UK firm having an EEA right which is subject to the conditions of the emission allowance auctioning regulation, in respect of its exercise of that EEA right.”.

(11) In paragraph 20 (services)—

(a) in sub-paragraph (1)(21), for “sub-paragraph (4D)”(22) substitute “sub-paragraphs (4D) and (4E)”;

(b) after sub-paragraph (4D), insert—

“(4E) This paragraph does not apply to a UK firm having an EEA right which is subject to the conditions of the emission allowance auctioning regulation, in respect of its exercise of that EEA right.”.

Amendment of the Financial Services and Markets Act 2000 (Appointed Representatives) Regulations 2001

5. In regulation 2(1) of the Financial Services and Markets Act 2000 (Appointed Representatives) Regulations 2001(23) (description of business for which appointed representatives are exempt)—

(a) renumber sub-paragraph (aa) as (za);

(b) after that sub-paragraph, insert—

“(zb) an activity of the kind specified by article 24A of the Regulated Activities Order (bidding in emissions auctions), where that activity does not consist either of a person dealing on his own account or of the execution of orders on behalf of clients within the meaning of Part 3 of Schedule 2 to that Order;”;

(c) in sub-paragraph (d), for “(aa)” substitute “(za)”.

(19) Sub-paragraph (1) of paragraph 19 of Schedule 3 was amended by S.I. 2003/1473 and 2007/3253.

(20) Paragraph 19(5ZA) was inserted by S.I. 2007/3253.

(21) Sub-paragraph (1) of paragraph 20 of Schedule 3 was amended by S.I. 2007/3253.

(22) Sub-paragraph (4D) of paragraph 20 of Schedule 3 was inserted by S.I. 2007/3253.

(23) S.I. 2001/1217; regulation 2(1) was amended by S.I. 2001/2508 and sub-paragraph (aa) of regulation 2(1) was inserted by S.I. 2003/1476; there are other amending instruments but none is relevant.

Amendment of the Financial Services and Markets Act 2000 (Professions) (Non-exempt Activities) Order 2001

6. In article 4 of the Financial Services and Markets Act 2000 (Professions)(Non-exempt Activities) Order 2001(24) (activities to which exemption from the general prohibition does not apply), after paragraph (c), insert—

“(ca) article 24A (bidding in emissions auctions);”.

Amendment of the Money Laundering Regulations 2007

7. Regulation 3 of the Money Laundering Regulations 2007(25) is amended as follows—

(a) in paragraph (2), after “(within the meaning of the banking consolidation directive)”, insert “, or when it bids directly in auctions in accordance with the emission allowance auctioning regulation on behalf of its clients”;

(b) for paragraph (3)(c), substitute—

“(c) a person, other than a person falling within Article 2 of the markets in financial instruments directive, whose regular occupation or business is the provision to other persons of an investment activity on a professional basis, when providing or performing investment services or activities (within the meaning of that directive) or when bidding directly in auctions in accordance with the emission allowance auctioning regulation on behalf of clients;”;

(c) after paragraph (3)(c), insert—

“(ca) a person falling within Article 2(1)(i) of the markets in financial instruments directive, when bidding directly in auctions in accordance with the emission allowance auctioning regulation on behalf of clients of the person’s main business.”.

Amendment of the Recognised Auction Platforms Regulations 2011

8.—(1) The Recognised Auction Platforms Regulations 2011(26) are amended as follows.

(2) In regulation 5(6)(a) (procedure), for “its intention to do so” substitute “its decision”.

(3) After regulation 5, insert—

“Power to impose civil penalties

5A.—(1) If the Authority considers that a recognised auction platform has contravened any requirement in Article 19, 20(7), 21(1) or (2), or 54 of the emission allowance auctioning regulation, it may impose upon on the auction platform a penalty of such amount as it considers appropriate, and for this purpose, “appropriate” means effective, proportionate and dissuasive.

(2) The Authority must not impose a penalty on a person under paragraph (1) where there are reasonable grounds for it to be satisfied that the person took all reasonable steps and exercised all due diligence to ensure that the requirement was complied with.

(3) In deciding whether a person has failed to comply with the requirements referred to in paragraph (1), the Authority must consider whether the person concerned followed any relevant guidance issued by the Authority.

(24) S.I. 2001/1227, amended by S.I. 2001/3650, 2002/682, 2004/2737 and 2006/1969; there are other amending instruments but none is relevant.

(25) S.I. 2007/2157, amended by S.I. 2011/99, S.I. 2011/2699 and S.I. 2011/2833; there are other amending instruments but none is relevant.

(26) S.I. 2011/2699.

(4) If the Authority is entitled to impose a penalty on a person under this regulation in respect of a particular matter, it may, instead of imposing a penalty in respect of that matter, publish a statement censuring the person.

(5) A penalty under this regulation is payable to the Authority.

Procedure for civil penalties

5B.—(1) If the Authority proposes to take action against a person under regulation 5A, it must give that person a warning notice.

(2) A warning notice about a proposal to impose a penalty must state the amount of the proposed penalty.

(3) A warning notice about a proposal to publish a statement must set out the terms of the proposed statement.

(4) If the Authority decides to take action against a person under regulation 5A, it must without delay give the person a decision notice.

(5) A decision notice about the imposition of a penalty must state the amount of the penalty.

(6) A decision notice about the publication of a statement must set out the terms of the statement.

(7) If the Authority decides to take action against a person under regulation 5A, that person may refer the matter to the Tribunal.

(8) In this regulation “the Tribunal” has the meaning given in section 417 of the Act⁽²⁷⁾.

(9) Sections 387, 389 to 391, 393 and 394 of the Act apply to notices given in accordance with this regulation.

(10) Section 388 of the Act applies to notices given in accordance with this regulation and references in subsection (1)(e)(i) of that section to “any right to have a matter referred to the Tribunal which is given by this Act” shall include a right to have a matter referred to the Tribunal under this regulation.”

(27) The definition of “the Tribunal” was inserted in section 417 by [S.I. 2010/22](#).