

PART 1

INTRODUCTORY

Citation and commencement

1. These Regulations may be cited as the Carbon Reduction Commitment (Allocation of Allowances for Payment) Regulations [2010] and come into force on the day after the day on which they are made.

Interpretation

2.—(1) In these Regulations—

- (a) “account” means an account established by the Environment Agency as required by article [78] of the Order;
- (b) “account holder” means any person in whose name an account subsists;
- (c) “additional allocation” means an allocation of allowances conducted in accordance with Part 3 of these Regulations;
- (d) “additional allocation period” means such period as is determined in accordance with regulation 8;
- (e) “allocation period” means a main allocation period or an additional allocation period;
- (f) “allowance” means an allowance allocated and issued by the Environment Agency pursuant to these Regulations;
- (g) “first additional allocation period” means the period of ten working days starting on the 5th working day of May 2011;
- (h) the “first scheme year” means the period from 1st April 2010 to 31st March 2011;
- (i) “main allocation” means an allocation of allowances conducted in accordance with Part 2 of these Regulations;
- (j) “main allocation period” means such period as is specified in regulation 5;
- (k) “the Order” means the Carbon Reduction Commitment Order [2010](a);
- (l) “participant” means any person, or any combination of persons, required to participate in the scheme in accordance with Part 2 of the Order or article [46] of the Order;
- (m) “payment amount” means the amount required to be paid for an allowance at an allocation;
- (n) “Registry” means the Registry established under article 83 of the Order;
- (o) “scheme” means the trading scheme established by the Order;
- (p) “second additional allocation period” means the period of ten working days starting on the 15th working day of May 2011;
- (q) the “second scheme year” means the period from 1st April 2011 to 31st March 2012;
- (r) the “third scheme year” means the period from 1st April 2012 to 31st March 2013;
- (s) “working day” means 9am to 5pm on Mondays to Fridays, excluding: bank holidays, within the meaning of section 1 of the Banking and Financial Dealings Act 1971(b); Good Friday; and, when it falls on a day that would otherwise be a working day, Christmas Day.

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

- (a) “compliance account”;

(a) S.I. [].
(a) 1971 c.80.

- (b) “scheme year”;
- (c) “third party”.

Conduct of allocations

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

(2) The Environment Agency must conduct main allocations during the main allocation periods specified in regulation 5.

(3) The Environment Agency must conduct additional allocations during the additional allocation periods determined in accordance with regulation 8.

Requests for allocation of allowances

4.—(1) An account holder wishing to be allocated allowances must, using such facilities as are provided by the Registry, submit a request to the Environment Agency specifying—

- (a) the number of allowances that the account holder wishes to acquire,
- (b) the main allocation period or additional allocation period in respect of which the account holder wishes to be allocated those allowances,
- (c) the name of the account holder making the request,
- (d) the account to which the allowances allocated are to be issued.

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

(3) An account holder may only make a request to be allocated allowances in respect of an allocation period which, at the time of the request, has commenced.

PART 2

MAIN ALLOCATIONS

Main allocation periods

5.—(1) Main allocations must be conducted during the following periods—

- (a) between 1st April 2011 and 29th April 2011, in respect of the first and second scheme years,
- (b) between 1st April 2012 and 27th April 2012, in respect of the third scheme year.

(2) Where a day referred to in paragraph (1) is not a working day, the main allocation period is to begin, or end, as appropriate, on the next working day.

Main allocations

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

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

(3) 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.

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

Payment for allowances at a main allocation

- 7.—(1) The payment amount for each allowance at a main allocation is £12.
- (2) A participant who requests the allocation of allowances at a main allocation must make payment in full for the allowances requested.
- (3) Payment must be made no later than the tenth working day beginning with the day after the last day of the main allocation period.

PART 3

ADDITIONAL ALLOCATIONS

Additional allocation periods

- 8.—(1) Each additional allocation period lasts for ten working days.
- (2) In respect of the first scheme year the starting days for the additional allocation periods are—
- (a) the 5th and 15th days of May and June 2011,
- (3) In respect of the second scheme year the starting days for the additional allocation periods are—
- (a) the 5th day of August, September, October, November and December 2011,
 - (b) the 5th day of January, February and March 2012,
 - (c) the 15th day of April 2012,
 - (d) the 5th and 15th days of May and June 2012,
- (4) In respect of the third scheme year the starting days for the additional allocation periods are:
- (a) the 5th day of August, September, October, November and December 2012,
 - (b) the 5th day of January, February and March 2013,
 - (c) the 15th day of April 2013,
 - (d) the 5th and 15th days of May and June 2013.
- (5) References in sub-paragraphs (2)(a), (3)(a) to (d) and (4)(a) to (d) to a day are to be construed as references to a working day.

Additional allocations

- 9.—(1) An account holder may make a request to be allocated allowances at an additional allocation.
- (2) An account holder who requests the allocation of allowances at an additional allocation must—
- (a) pay any deposit required in accordance with regulation 12,
 - (b) pay any amount required in accordance with regulation 14(3),
 - (c) pay any fee required in accordance with regulation 15.

Community tradeable emissions allowances

- 10.—(1) Where an account holder makes a request to be allocated allowances at an additional allocation the Environment Agency must not issue any allowances to that account holder until the Environment Agency has complied with, as appropriate, paragraph (2) or paragraph (3).
- (2) After the first additional allocation period, the Environment Agency must, pursuant to article [91(1)] of the Order, acquire the same number of Community tradeable emissions allowances as the total number of allowances—

- (a) that account holders have requested to be allocated in respect of that additional allocation, and
- (b) in respect of which deposits have been paid.

(3) After the second and each subsequent additional allocation the Environment Agency must, pursuant to article [91(1)] of the Order, acquire sufficient Community tradeable emissions allowances so that in respect of each such additional allocation it has acquired the same number of Community tradeable emissions allowances as the total number of allowances—

- (a) that account holders have requested to be allocated in respect of that additional allocation, and
- (b) in respect of which deposits have been paid.

(4) The Environment Agency must comply with its obligations in paragraphs (2) and (3) to acquire Community tradeable emissions allowances as soon as reasonably practicable after the relevant allocation and no later than six working days after the last day of the additional allocation period.

Calculation of the payment amount for allowances at an additional allocation

11.—(1) The payment amount for each allowance requested in an additional allocation period is to be determined according to this regulation.

(2) The payment amount for each allowance requested in the first additional allocation period is the higher of—

- (a) £12, or
- (b) the mean price of the Community tradeable emissions allowances acquired by the Environment Agency pursuant to regulation 10(2).

(3) The payment amount for each allowance requested in the second and subsequent additional allocation periods is the higher of—

- (a) £12, or
- (b) the mean price of the Community tradeable emissions allowances acquired by the Environment Agency pursuant to regulation 10(3).

(4) The Environment Agency must announce the payment amount for each allowance no later than one working day after it has acquired Community tradeable emissions allowances pursuant to regulation 10(2) or 10(3).

Deposit for allowances requested at an additional allocation

12.—(1) An account holder who requests the allocation of allowances at an additional allocation must make payment of a deposit for each allowance requested no later than the fourth working day after the last day of the additional allocation period in respect of which the request is made.

(2) The deposit amount for each allowance for the first, second and third additional allocation periods is £12.

(3) The deposit amount for each allowance for the fourth and each subsequent additional allocation period is to be determined in accordance with regulation 13.

(4) On the first day of each additional allocation period, the Environment Agency must announce—

- (a) the deposit amount for each allowance for that additional allocation period,
- (b) the total number of Community tradeable emissions allowances it has acquired for the purposes of the scheme, but in respect of which it has not issued allowances,
- (c) the mean price which the Environment Agency paid for the Community tradeable emissions allowances referred to at paragraph (b).

Determination of deposit amount for allowances at certain additional allocations

13.—(1) The deposit amount for each allowance at the fourth and each subsequent additional allocation is the higher of—

- (a) £12, and
- (b) the payment amount for Community tradeable emissions allowances acquired by the Environment Agency, pursuant to regulation 10(3), following the specified additional allocation period.

(2) For the purposes of this regulation the “specified additional allocation period” is the additional allocation period which fulfils both of the following conditions—

- (a) it commenced more than 20 working days before the start of the additional allocation period for which the deposit amount is being determined, and
- (b) it is the most recent additional allocation period in respect of which the Environment Agency, pursuant to regulation 10(3), acquired Community tradeable emissions allowances.

Reconciliation of deposit amount and payment amount and set-off

14.—(1) Where the deposit amount exceeds the payment amount, the Environment Agency—

- (a) may deduct from the deposit amount the amount of such fees which have, pursuant to regulation 15(2) or 15(3), been notified to the account holder as payable, and
- (b) must refund to the account holder who paid the deposit any balance as soon as reasonably practicable.

(2) Where the deposit amount is equal to the payment amount, the Environment Agency may retain the deposit as payment for the allowances.

(3) Where the deposit amount is less than the payment amount, the Environment Agency may retain the deposit as part-payment for the allowances and the account holder making the request must pay the balance no later than ten working days after the announcement of the payment amount.

(4) Where the deposit amount is less than the payment amount and the account holder making the request does not pay the balance within the period required by regulation 14(3) the Environment Agency—

- (a) must not issue any allowances to the account holder who requested the allowances, and
- (b) may retain the deposit.

PART 4

GENERAL

Fees

15.—(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 additional allocations the Environment Agency must, no later than one working day after it has acquired Community tradeable emissions allowances pursuant to regulation 10(2) or 10(3), notify the account holder who has requested the allocation of allowances of the amount of fees.

(3) Where no Community tradeable emissions allowances are acquired pursuant to regulation 10(2) or 10(3), the Environment Agency must, as soon as reasonable practicable after the last day of the additional allocation period, notify the account holder who has requested the allocation of allowances of the amount of fees.

(4) Any fees required to be paid pursuant to a notice given under paragraph (2) must be paid no more than ten working days after the date on which such notification is received by the account holder requesting the allocation of allowances.

(5) The Environment Agency may refuse to issue allowances until fees have been paid in full.

Payments

16.—(1) 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 participant or third party making the payment,
- (c) into a bank account nominated by the Environment Agency,
- (d) in sterling.

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

(3) In this regulation “credit institution” has the meaning given to it by paragraph 4.1(a) of Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast)(a).

Issue of allowances

17. On receipt of payment in full for allowances, the Environment Agency must, as soon as reasonably practicable, issue the number of allowances requested—

- (a) in the case of a main allocation, to the participant’s compliance account; and
- (b) in the case of an additional allocation, to the participant’s compliance account or to such third party account as is specified by the account holder making the request for the additional allocation.

Issue of excess allowances

18.—(1) If the Environment Agency issues allowances to an account holder in excess of the number of allowances which should have been issued to that account holder in accordance with an allocation (“excess allowances”), when the transfer of excess allowances comes to that account holder’s notice, the account holder must as soon as reasonably practicable notify the Environment Agency.

(2) Where an excess transfer 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,
- (b) notify the account holder that the allowances have been cancelled.

(3) In the event that an account holder sells or otherwise deals in any excess allowances the Environment Agency may require that account holder to pay the payment amount announced for the allocation in respect of which the transfer of excess allowances was made.

(4) Payment required to be made under paragraph (3) must be made by the date specified by the Environment Agency.

(5) If payment required under paragraph (3) is not received in full by the date specified by the Environment Agency, any outstanding amount is payable by the account holder on demand.

(a)

Financial provision

19. Save for any sums received by the Environment Agency by way of fees pursuant to regulation 15, 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

20.—(1) Any notice to be given under these regulations by the Environment Agency must be given in writing.

(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 paragraph (2)(c), a person's proper address may be taken as—

- (a) its principal place of business in the United Kingdom,
- (b) its email contact point,
- (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, or the email address of a partner or a person having that control or management.

(4) For the purpose of 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 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 participant 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 a participant, a director or,
- (c) in cases other than a company, 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 participant 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 a participant, any partner or employee in respect of whom contact details have been provided.

(8) In any other case, 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 18(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.

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 Carbon Reduction Commitment Order 2010. The regulations set out provision as to who will conduct allocations, the two categories of allocation (main allocations and additional allocations), the timing of requests to be allocated allowances, the payment for and issue of allowances, how the deposit price will be calculated for additional allocations, the consequences of late or non-payment and the consequences of a transfer of excess allowances.

Part 1 makes introductory provision relating to the conduct of allocations and the way in which requests for the allocation of allowances are to be made.

Regulation 3 sets out that the Environment Agency must conduct allocations of allowances in return for payment and that allocations must be conducted in the periods set out in regulations 5 and 8.

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 an allocation period.

Part 2 sets out the provisions specific to main allocations.

Regulation 5 provides for the periods during which main allocations will take place.

Regulation 6 provides that only participants in the Carbon Reduction Commitment scheme may make requests for allowances during main allocations 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 and that payment for allowances must be made no later than ten working days after the last day of the main allocation period.

Regulation 8 sets out the provisions as to the periods during which additional allocations will take place.

Regulation 9 provides that any account holder may make requests for additional allocations during an additional allocation period. An account holder must pay for all allowances requested.

Regulation 10 sets out requirements relating to the acquisition by the Environment Agency of Community tradeable emissions allowances. The Environment Agency must acquire Community tradeable emissions allowances equivalent to the number of requests for allowances which have been paid for in full.

Regulation 11 provides that the price for each allowance at an additional allocation will be the higher of £12 or the mean price of Community tradeable emissions allowances acquired by the Environment Agency under regulation 10. The Environment Agency must announce the price no later than one working day after the Community tradeable emissions allowances have been acquired.

Regulation 12 requires account holders requesting allowances at additional allocations to pay a deposit, no later than the fourth working day after the end of the allocation period. The deposit amount for the first, second and third allocations will be £12. The deposit amount for the fourth and subsequent allocations is set out in regulation 13. On the first day of each allocation period, the Environment Agency must announce the deposit amount, the number of Community tradeable emissions allowances it has acquired for the purposes of the scheme but in respect of which it has not issued allowances and the mean price paid for those allowances.

Regulation 13 provides that the deposit amount for the fourth and subsequent additional allocations is the higher of £12 or the payment amount for Community tradeable emissions allowances acquired by the Environment Agency in the most recent additional allocation at which Community tradeable emissions allowances were acquired, as long as that additional allocation began more than 20 working days before the allocation in question.

Regulation 14 sets out provision for the reconciliation of the deposit amount and the payment amount. Where the deposit amount exceeds the payment amount, the Environment Agency must refund the outstanding balance, but may retain any amount which it has notified the account holder is due for payment of fees under regulation 15. Where the deposit equals the payment amount the Environment Agency retains the deposit. Where the deposit amount is less than the payment amount the Environment Agency may retain the deposit as part-payment and the account holder must pay the balance no later than ten working days after the announcement of the payment amount. In the event of late or non-payment of the balance of the money owed, the Environment Agency must not issue any additional allowances and may retain the deposit.

Part 4 makes general provision relating to fees, payments, issue of allowances, financial matters and notices.

Regulation 15 provides for the Environment Agency to charge fees determined by the costs incurred from allocating allowances. Fees must be paid within ten working days from the date of notification, otherwise the Environment Agency may refuse to issue allowances.

Regulation 16 sets out how payments must be made.

Regulation 17 provides that once payment has been received the Environment Agency must effect the transfer of allowances to the relevant account specified by the account holder.

Regulation 18 sets out provision in the event that excess allowances are transferred. This regulation requires the account holder to notify the Environment Agency of any excess allowances that are transferred. If a transfer 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 19 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 20 sets out provisions for the service of notice by Environment Agency.

[These Regulations are covered by the full impact assessment produced in relation to the Carbon Reduction Commitment 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 [] and is annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website].