EXPLANATORY MEMORANDUM TO

THE COMMUNITY EMISSIONS TRADING SCHEME (ALLOCATION OF ALLOWANCES FOR PAYMENT) REGULATIONS 2012

2012 No. 2661

1. This explanatory memorandum has been prepared by HM Treasury and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This instrument makes provision in relation to the auction process for allocating Community tradeable emissions allowances in the UK under the European Union Emissions Trading Scheme.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 Directive 2003/87/EC established a scheme for trading in greenhouse gas emission allowances within the Community. The scheme, known as the European Union Emissions Trading System ("the ETS"), started to operate in 2005 as a mechanism for EU countries to meet their Kyoto greenhouse gas emissions reductions targets.

4.2 Commission Regulation (EU) No 1031/2010 of 12 November 2010 (the "Auctioning Regulation") governs the timing, administration and other aspects of auctioning under the ETS for a new phase (Phase III) of trading in Community emissions allowances.

4.3 Except for regulation 6(1)(a), these Regulations are made by the Treasury for and in connection with the allocation of Phase III allowances, and include provision as to the persons by whom allocations are to be conducted.

4.4 Regulation 6(1)(a), which repeals section 16(3) of the Finance Act 2007, is made by the Secretary of State for Energy and Climate Change under section 2(2) of the European Communities Act 1972. The Secretary of State is designated for the purposes of section 2(2) in relation to the environment.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation no statement is required.

7. Policy background

7.1 The ETS is a scheme which involves capping emissions at EU level and then trading in emissions allowances. The ETS facilitates trading in allowances for approximately 12,000 installations (EU wide) and covers about half of the UK's carbon emissions. In addition, aviation emissions have been included in the ETS since 1st January 2012, and 15% of aviation allowances are subject to auction.

7.2 Phase III of the ETS will cover emissions from 1st January 2013. Phase III will run until 2020 and is expected to see a dramatic rise in the level of allowance auctioning by Member States. The EU Auctioning Regulation was introduced to govern the timing, administration and other aspects of auctioning under Phase III of the ETS. There is provision in the Auctioning Regulation for auctioning of Phase III allowances to begin before 1st January 2013. Under Phase II up to 10 per cent of allowances were subject to auction. Under Phase III up to 50 per cent will be subject to auction.

7.3 Although the Auctioning Regulation is directly applicable, some elements need to be implemented by domestic legislation. This instrument makes provision as follows:

7.3.1 for the appointment by the Treasury of an auctioneer who will act on behalf of the UK Government as the 'seller' of the UK's emissions allowances;

7.3.2 for the appointment by the Treasury of an auction platform which will run the competitive auction process on behalf of the UK Government;

7.3.3 for payment of revenue that accrues from UK auctions of Community tradeable emissions allowances into the Consolidated Fund

7.3.4 for the revocation of the Community Emissions Trading Scheme Regulations 2008, which govern the auction process under Phase II of the ETS and will no longer be required for auctions in the UK when auctioning under Phase II has been completed;

7.3.5 for repeal of section 16(3) of the Finance Act 2007, which requires the appointment of an independent person to oversee the functioning of auctions (under Phase III of the ETS a single EU auction monitor will oversee auctions carried out on all platforms in the EU, so that section 16(3) is incompatible with the Auctioning Regulation);

7.3.6 for saving the 2008 Regulations and section 16(3) for the purpose of final auctioning of allowances under Phase II of the ETS (it is anticipated that there will be no auctioning of Phase II allowances after the end of 2012).

7.4 The instrument does not amend or consolidate any existing legislation.

8. Consultation outcome

8.1 None but Directive 2003/87/EC has been amended, most recently in 2009, and the amendments have been subject to public consultation.

9. Guidance

9.1 None

10. Impact

10.1 No impact assessment has been prepared for this Instrument because there is no impact on business, charities or other bodies in the voluntary sector, and because no material impact on the public sector is foreseen.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 While no specific review is planned for this instrument, it will be reviewed in connection with any amendments to the Auctioning Regulation or any further requirements relating to the ETS (or other changes), which may need to be implemented in UK law by way of an amendment to the instrument.

13. Contact

Annie Gascoyne at the Treasury: 0207 270 4323 or email: Annie.Gascoyne@hmtreasury.gsi.gov.uk can answer any queries regarding the instrument.