EXPLANATORY MEMORANDUM TO

THE CARBON ACCOUNTING (2013-2017 BUDGETARY PERIOD) REGULATIONS 2015

2015 No. 775

1. This explanatory memorandum has been prepared by the Department of Energy and Climate Change and is laid before Parliament by Command of Her Majesty.

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

2. Purpose of the instrument

2.1 These Regulations ("the Regulations") update the carbon accounting system which is used to monitor compliance with the targets for reducing greenhouse gas emissions introduced by the Climate Change Act 2008 ("the Act"). The Regulations update the accounting system, as set out in the 2009 Carbon Accounting Regulations ("the 2009 Regulations")[1] for the second carbon budget period (2013-2017). They also make some amendments to the 2009 Regulations, to correct a minor error and to update regulation 9 so that it refers to the Regulations.

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

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3.1 The Regulations are made, in part, under powers in section 27 of the Act. This provides that regulations made under this section must make provision for the matters set out in sections 27(3), (4) and (5). There is ongoing uncertainty at both international and European level as to the total amount of carbon units to be allocated to the United Kingdom 2013-2017. For this reason, it has not been possible to make regulations which comply with section 27(5). However, it is the Department's view that the duties on the Secretary of State in sections 27(3), (4) and (5) are severable and that the inability to comply with section 27(5) is not a justification for failing to comply with sections 27(3) and (4).

21 Day Rule

3.2 The Regulations are to be made on 18th March 2015, laid before Parliament on 23rd March 2015 and the intention is that they will come into force on 24th March 2015. Therefore, the Department is not observing the usual 21 day rule for negative resolution instruments as the Regulations are to come into force 1 day after being laid. The

[1] 1 The 2009 Carbon Accounting Regulations: http://www.legislation.gov.uk/uksi/2009/1257/contents/made amended by the Carbon Accounting (Amendment) Regulations 2009/3146: http://www.legislation.gov.uk/uksi/2009/3146/pdfs/uksi_20093146_en.pdf

Department apologises for this. The reasons for not observing the 21 day rule in this case are as follows:

a) Section 16(10) of the Act requires that the Secretary of State must lay the annual statement of UK emissions for 2013 before Parliament by no later than 31st March 2015. Due to the dissolution of Parliament before the end of March 2015, it is the intention to publish the statement on 25th March 2015. To ensure that the methodology used to calculate the annual statement of emissions has a legislative base before the statement is published, and to avoid retrospective provision, it is necessary for the Regulations to come into force before the annual statement is laid.

b) The intention was to make regulations which contained provision for the matters set out in sections 27(3), (4) and (5) of the Act. It was only recently concluded that, because of a lack of certainty at the international and European level, it would not be possible to comply with section 27(5) at the current time. The Department then needed to think carefully about whether or not to proceed with making regulations, before concluding that making the Regulations was the appropriate course of action. In order for the Regulations to come into force before the annual statement is laid, it has therefore become necessary to breach the 21 day rule.

The Department notes that, although this does not excuse the breach of the 21 day rule, the Regulations only place obligations upon the Secretary of State, so no individuals will be affected by the change in the law and thereby prejudiced by the breach of the rule.

4. Legislative Context

4.1 These regulations are made pursuant to sections 26 and 27 of the Climate Change Act 2008, which provide for the Secretary of State to make regulations for carbon accounting.

4.2 The 2009 Regulations were the first regulations to be made under these powers, but certain provisions in those Regulations are specific to the first carbon budget period. The Regulations provide the accounting system for the second carbon budget period (2013-2017) by:

a) providing a mechanism to account for credits and debits to the net UK carbon account as a result of the operation of the EU Emissions Trading System ("EU ETS") during the second carbon budget period;

b) providing a mechanism to account for domestic aviation during the second carbon budget period. Under the Climate Change Act, the net UK carbon account must contain emissions generated by domestic aviation. Under the 2009 Regulations these were accounted for within the non-traded sector of the UK's emissions but for the second carbon budget period they must be included in the traded sector following the inclusion of aviation emissions in the EU ETS; and

c) placing a duty on the Secretary of State to cancel carbon units remaining in the credit account at the end of the second carbon budget period. Regulation 4 of the 2009 Regulations established a "credit account" in the UK registry which is the dedicated route through which carbon units can be credited to the net UK carbon account voluntarily. Regulation 4 also provides a mechanism for returning carbon units, where a UK Minister has not declared that they be credited to the net UK carbon account and where they have been transferred into the credit account in error, to the account from which they were originally transferred. Any other carbon units in the credit account can only be removed in order to be cancelled. This provides a safeguard to ensure that credited carbon units cannot be used to offset any other emissions, or "double counted". Regulation 5 of the Regulations ensures that these carbon units are cancelled at the end of the second carbon budget period.

4.3 The Regulations also amend the 2009 Regulations to correct an error and to apply certain provisions in the 2009 Regulations, on maintaining a register, to these Regulations. This will ensure that the register records information about carbon units cancelled and carbon units credited to and debited from the net UK carbon account for the second carbon budget period.

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 Act mandates a legally binding framework for the UK to achieve its goals of reducing greenhouse gas emissions and ensure steps are taken towards adapting to the impacts of climate change. It puts the UK firmly on a pathway to becoming a low carbon economy. It also demonstrates, at home and abroad, the Government's commitment to taking the action necessary to avoid dangerous climate change.

7.2 The Act puts into statute the UK's targets to reduce greenhouse gas emissions by at least 80% by 2050, and to reduce carbon dioxide emissions by at least 34% by 2020, compared to emissions in 1990 which represent the baseline. To set the trajectory towards these targets, and help provide certainty for business planning and investment, the Act establishes a system of "carbon budgets" capping emissions over successive five-year periods.

7.3 The Act established the concept of the "net UK carbon account", which is the number we compare against the carbon budgets to determine whether we are meeting them. The net UK carbon account is calculated by taking net UK emissions for a given period and then taking account of carbon units representing emissions reductions that have been brought into the UK from other countries (“credits”) or that have been debited or credited in accordance with carbon accounting regulations.

Accounting for the EU ETS and domestic aviation during the 2013-2017 Budgetary Period

7.4 The principle reason for updating the carbon accounting system in the Regulation is to reflect changes to the operation of the EU ETS Phase III and changes to how we account for domestic aviation emissions.

EU ETS

7.5 The Regulations provide a mechanism to account for credits and debits as a result of the operation of the EU ETS during the second carbon budget period. The underlying policy rationale is that any amount of emissions from EU ETS operators in the UK in excess of the UK’s cap on emissions under the system (which is expressed as the “annual allocation”) must be considered as a credit, as this suggests operators have bought units from overseas to offset UK emissions (as the EU ETS rules allow). Conversely, where emissions from the EU ETS sector are lower than the cap, the difference between these two must be considered a debit, as this suggests operators are either in possession of, or have sold excess units which have not been used to offset emissions in the UK but could be used to offset emissions elsewhere or at a different time.

7.6 For the second budgetary period, the rules governing operation of the EU ETS third phase changed and Member States no longer receive a national cap as the EU ETS is now operated at installation level. The net carbon account replicates a cap for the traded sector. Therefore, in place of using a fixed cap as defined in EU legislation (as was the case for the first carbon budget period), components of the previous cap are replicated to create a ‘notional’ cap. The notional cap is created by adding together the volume of EU allowances freely allocated[2] to stationary UK operators, the volume of allowances in the EU-wide auction pot to be auctioned by the UK to stationary operators, and an estimated share of the New Entrants Reserve (NER). The methodology for estimating the UK’s share of the EU-wide cap (excluding the NER which is a new element of the EU ETS) is consistent with the methodology applied when originally calculating the traded sector component when setting the second and third carbon budgets. Schedule 1 of the regulations sets out the methodology to be used for the calculation. The 2013 Annual Statement of emissions will contain background on this calculation.

Domestic Aviation

7.7 The Regulations provide a mechanism to account for domestic aviation during the second carbon budget period. Historically domestic aviation emissions have been reported

[2] Further information on how the ETS operates, including background on free allocation, can be found here: https://www.gov.uk/participating-in-the-eu-ets

in the “non-traded” sector of the UK’s emissions but since 1 January 2012 aviation has been included in the EU ETS. As a result of being included in the EU ETS, domestic aviation is now included in the “traded sector” of the budgets. Whilst the EU ETS provides an EU-wide cap for aviation emissions and units to confirm compliance it does not provide a cap for UK only domestic aviation emissions and so it is not possible to distinguish between domestic aviation emissions and international aviation emissions, which are excluded for the purposes of carbon budgets[3].

7.8 Using civil aviation data from the UK greenhouse gas inventory submitted under the EEA, and published on the European Environment Agency website, the steps listed below are used to estimate a fixed cap against which we will report emissions from UK domestic aviation. This approach uses a baseline of total European Economic Area (EEA) domestic flights (i.e. total flights within individual EU countries plus Norway, Liechtenstein and Iceland), and an estimate of what share of this total can be attributed to the UK. The cap declines through time (by 95% in 2013-2020), reflecting the ambition to reduce emissions from aviation. Schedule 2 of the Regulations sets out the methodology to be used for the calculation. The 2013 Annual Statement of emissions will contain background on this calculation but in summary there are three steps to the calculation:

1. **Calculate a baseline of total EU domestic aviation:** The baseline is the average of 2004-06 EEA domestic aviation emissions (flights within individual EEA countries). 2004-06 is used as this is a common baseline used for EU environmental targets.
2. **Calculate UK share and apply to the baseline:** The UK’s share of EEA domestic emissions is taken from 2010. The UK’s domestic aviation emissions are compared to total EEA domestic aviation emissions in this year (data for both are taken from the EU inventories as reported by the European Environment Agency). 2010 is used because this was the benchmarking year for the allocation of free allowances to aircraft operators. This UK share of EEA domestic aviation is then applied to the 2004-06 EEA average.
3. **Set a declining trajectory in line with ambitions to reduce emissions:** For 2013-20, the cap will be 95% of this annual average.

8. Consultation outcome

8.1 There was no public consultation required by these regulations.

9. Guidance

9.1 It is the responsibility of Government to determine compliance with carbon budgets, and the regulations do not place any requirements, or have any users, outside Government. The 2013 Annual Statement of Emissions will contain further information relevant to performing the net carbon.

[3] Under section 30 of the Act. The Climate Change Act 2008 (2020 Target, Credit Limit and Definitions) Order 2009, sets out a definition of “international aviation” for the purposes of section 30.

10. Impact

9.1 As there are no impacts on the public sector, business, charities or voluntary bodies an Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The regulations update the carbon accounting system for the second carbon budget period (2013-2017) but aspects will need to be reviewed for this and future budgetary periods

13. Contact

13.1 Andy Smith at the Department of Energy and Climate Change Tel: 03000686848 or email: carbonbudgets@decc.gsi.gov.uk can answer any queries regarding the instrument.