

**EXPLANATORY MEMORANDUM TO
THE CARBON ACCOUNTING REGULATIONS 2009**

2009 No.

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

2. Purpose of the instrument

2.1 These regulations introduce a carbon accounting system which will be used to monitor compliance with the targets for reducing greenhouse gas emissions introduced by the Climate Change Act 2008 (“the Act”).

2.2 The regulations specify the carbon units to be used for carbon accounting and set out the circumstances in which carbon units may be credited to and must be debited from the net UK carbon account. They also establish a mechanism for keeping track of carbon units and for cancelling units to ensure consistency between the UK carbon accounting system and existing international systems which the UK is party to.

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

3.1 None.

4. Legislative Context

4.1 The Act requires the Secretary of State to reduce the “net UK carbon account” – the amount of net UK emissions after taking into account of carbon units which have been credited and debited in accordance with regulations – in order to meet five-year carbon budgets beginning with the period 2008-2012, as well as longer term targets for 2020 and 2050.

4.2 These regulations make that system work by stating what the carbon units are, and making provision for the circumstances in which units are credited and debited, as required by sections 26 and 27. As they are the first such regulations made under this requirement, they are subject to the affirmative procedure.

4.3 This instrument has been laid before Parliament alongside two other instruments made pursuant to the Act – the Carbon Budgets Order 2009 and the Climate Change Act 2008 (2020 Target, Credit Limit and Definitions) Order 2009. A separate explanatory memorandum has been prepared in relation to them.

5. Territorial Extent and Application

5.1 This instrument extends to the whole of the United Kingdom.

6. European Convention on Human Rights

6.1 The Parliamentary Under-Secretary of State for Energy and Climate Change, Joan Ruddock, has made the following statement regarding Human Rights:

“In my view the provisions of the Carbon Accounting Regulations 2009 are compatible with the Convention rights.”

7. Policy background

7.1 The Act introduces a clear, credible and 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 creates a new approach to managing and responding to climate change in the UK through setting ambitious targets, taking powers to help achieve them, and strengthening the institutional framework. This represents a major contribution to a global deal on climate change and 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 26% by 2020, compared to emissions in 1990 which represent the baseline.¹ 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 Three budgets will be set ahead at any time, beginning with the periods 2008–2012, 2013–2017 and 2018–2022. The Committee on Climate Change, an independent expert body established by the Act, advises Government on what the level of the budgets should be,² and will report annually to Parliament on progress towards meeting the targets and budgets.

7.4 The Act establishes 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 – it must not exceed the level of the budget at the end of each budgetary period. 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 have left the UK (“debits”).

¹ The Climate Change Act 2008 (2020 Target, Credit Limit and Definitions) Order 2009 proposes an amendment to section 5 of the Act so as to require the third carbon budget to be set at a level that is equivalent to a reduction in greenhouse gas emissions of at least 34% below 1990 levels.

² The Committee’s first report, providing advice on the level of the first three budgetary periods, was published in December 2008. Available from: www.theccc.org.uk/reports

7.5 These regulations meet the requirement in the Act to put in place a system for carbon accounting for approval by Parliament. They set out the detailed rules and procedures for calculating the net UK carbon account, and for tracking the various types of carbon unit which may be counted towards our targets and budgets. This will be used to determine compliance with the targets and budgets established by the Act.

7.6 **Regulation 3** sets out the units that count as carbon units for the purposes of carbon accounting. The units designated in the regulations are the units used to monitor and track emissions under United Nations and European Union rules, which have been subject to significant scrutiny and are accepted internationally as representing genuine and verifiable emissions reductions. Using internationally recognised carbon units for UK carbon accounting will allow the system to be compatible with the existing framework under the Kyoto Protocol and the EU Emissions Trading System (“the EU ETS”).

7.7 **Regulations 4 and 5** establish the mechanism for crediting units to the net UK carbon account. Regulation 4 establishes a “credit account” in the UK registry, which has already been set up to administer the carbon accounting system under the EU and UN frameworks. The credit account will be a dedicated route through which carbon units can be credited to the net UK carbon account voluntarily. Regulation 4 provides a mechanism for returning carbon units which have been transferred into the credit account in error to the account from which they were originally transferred, but any other carbon units 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”.

7.8 Regulation 5 sets out the process by which carbon units may be counted as credits. Carbon units may be transferred to the credit account by any person but will only be counted as credits towards the net UK carbon account if a Minister makes a declaration to that effect. This regulation also places a duty on UK Ministers to consult the other national authorities in the event that they are not minded to count as a credit a unit which the devolved authorities have placed in the credit account, because the final decision might affect the interaction between any regional carbon accounting systems and the net UK carbon account.

7.9 No declaration can be made in respect of a carbon unit that has been used to offset emissions which are not from sources in the UK (e.g. units which have been bought to offset emissions from international aviation), because those emissions are not covered by the targets and budgets in the Act. There is also a rule preventing UK removal units (RMUs) – which are issued in respect of removals of emissions from the atmosphere as a result of land use, land use change and forestry activities – being counted as credits. The rationale here is that counting these units as credits would lead to double counting under the complex international rules on how RMUs are issued. In practice, it is very unlikely that these units will be issued before the period for calculating whether the carbon budget has been met has elapsed; this provision

simply puts beyond doubt that RMUs issued to the UK may not be counted as credits.

7.10 **Regulation 6** provides the mechanism to account for credits and debits as a result of the operation of the EU ETS during the first budgetary period. The underlying 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 in regulation 6 as an annual figure of 245,991,207 tonnes of carbon dioxide equivalent) 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.

7.11 Thus at the end of the first budgetary period (coinciding with the end of Phase II of the EU ETS), any increase or decrease in emissions from the sectors of the economy covered by the EU ETS will be offset by corresponding credits and debits to the net UK carbon account, rendering the scheme neutral in carbon accounting terms. For that reason, credits and debits under regulation 6 are excluded from the calculation of the limit on the net amount of carbon units that can be credited to the net UK carbon account for the 2008–2012 budgetary period – see the memorandum on the Climate Change Act 2008 (2020 Target, Credit Limit and Definitions) Order 2009, laid at the same time as these regulations.

7.12 The number of credits or debits to the net UK carbon account as a result of the EU ETS will be set out in the annual and end-of-budget statements of emissions required by sections 16 and 18 of the Act.

7.13 **Regulation 7** provides the mechanism by which units must be debited from the net UK carbon account. Debits arise where Government disposes of part of its holding of carbon units to another country or other third party. These need to be debited, as the units may be used to offset the emissions of the third party recipient and it would lead to double counting if we were also able to use them to offset UK emissions.

7.14 Debits are calculated on an annual basis, by checking at the end of each year whether our holding of carbon units is less than the previous year's holding. If it is, and it is also below the original allocation of units given to the UK under the Kyoto Protocol (representing the UK's emissions reduction target under the Protocol), then the UK must have disposed of units in the meantime. The units will be debited from the net UK carbon account to reflect this.

7.15 Under the Act the Secretary of State is able to set more demanding domestic targets than those required under the international framework (i.e., for the 2008–2012 budgetary period, the Kyoto Protocol). This means we could meet our Kyoto target and still have carbon units left over in the

registry. It is important that these additional units are not made available to offset emissions in the UK or to be sold to other countries to offset their emissions. **Regulation 8** provides the mechanism, following the end of the budgetary period, for calculating and cancelling the units to put them beyond use.

7.16 In making the calculation, account will be taken of carbon units that are to be cancelled after being placed in the credit account and declared as credits under Regulation 4. Regulation 8 also provides for an adjustment to the calculation to take account of differences in the methodology for calculating net emissions from land use, land use change and forestry under the Kyoto protocol and the methodology followed in respect of carbon budgets (which uses more modern up-to-date international carbon reporting practice).

7.17 In order to provide further transparency and clarity, **regulation 9** places a duty on the Secretary of State to maintain a “register of transactions”. The register will be used to record and provide details of the crediting, debiting and cancellation of carbon units under the regulations. This information will also help provide the information required for the annual and end-of-budget statements required under the Act, which will themselves help provide transparency.

8. Consultation outcome

8.1 A consultation on the proposals for a carbon accounting system ran from 28 October 2008 to 19 January 2009. Forty-three responses were received from a range of stakeholders (individuals, environmental non-Governmental organisations, environmental regulators, environmental consultants, professional services organisations, research organisations, employer representatives, offset providers, electricity companies, water companies, engineering companies). A significant majority of these supported our proposals, and the regulations largely maintain the approach we set out in the consultation document.

8.2 An overarching theme to emerge was the need for further clarity and transparency as to how the carbon accounting rules would work in practice and how the net UK carbon account will be calculated. We have adjusted our approach based on the concern over this issue, for example the requirement in the draft regulations for the Secretary of State to maintain a register to record carbon accounting transactions.

8.3 Several other issues were also raised by respondents which were outside the scope of the consultation. These include the Government’s approach regarding the use of carbon units representing emissions reductions overseas to meet our domestic targets and budgets under the Act. The Government’s approach on whether to use these units is a matter of policy rather than something to be covered in regulations which establish the broad framework of the carbon accounting system. While the regulations provide for the crediting of overseas carbon units, they do not require it except in the case of the EU ETS.

8.4 It is worth noting here that the draft Climate Change Act 2008 (2020 Target, Credit Limit and Definitions) Order 2009 provides that the limit on the net amount of carbon units that can be credited to the net UK carbon account for the 2008–2012 budgetary period should be set at zero, with the exception of credits and debits resulting from the operation of the EU ETS (including EU ETS carbon units used by participants in the Carbon Reduction Commitment proposed to begin in 2010, to offset their emissions).

8.5 In spite of the proposed zero limit, we consider it is appropriate for the Carbon Accounting Regulations to provide the mechanism for crediting carbon units to the net UK carbon account for two reasons. First, including this mechanism from the start ensures continuity in the system for future budget periods when a zero limit may not apply. Second, as described above, there are exceptions to the zero limit relating to the operation of the EU ETS and, furthermore, as the limit applies to the net amount of credits against budgets, it would also be possible for the Government to use credits to offset any debits which would result if it disposed of any of the carbon units it already owns (such as those allocated to the UK under Kyoto).

8.6 A full analysis of consultation responses is available on the Department's website at:
www.decc.gov.uk/en/content/cms/consultations/carbon_account/carbon_account.aspx

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. However, as made clear by the consultation responses, there is considerable interest among stakeholders in the details of how the net UK carbon account will be calculated. DECC has therefore published guidance to stakeholders as to how the accounting system will operate. This is available on the Department's website at:
www.decc.gov.uk/en/content/cms/what_we_do/lc_uk/carbon_budgets/carbon_budgets.aspx

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 The costs associated with establishing and running the carbon accounting system will be borne entirely by Government, and are not expected to be significant.

10.3 An Impact Assessment has not been prepared for this instrument.

10.4 In accordance with Government guidance, as the establishment and operation of the carbon accounting system will not impose any costs on

business or the third sector, and the annual cost to the public sector will be below £5 million, a formal Impact Assessment is not required.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The regulations put in place a carbon accounting system which is designed to operate during the first budgetary period (2008–2012) but aspects of it will need to be reviewed for future budgetary periods.

12.2 The principal reason for the review is the current round of negotiations towards a new international agreement on climate change, which is the focus of the UN climate change conference in Copenhagen in December, and the subsequent introduction of any new EU framework in the light of any decision. A new agreement may, in particular, include new categories of carbon units and new domestic obligations to reduce emissions which will need to be taken into account fully.

12.3 There will also be a need to review the regulations to take account of developments in the EU Emissions Trading Scheme, including the addition to the Scheme of emissions from international aviation from 2012.

13. Contact

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