

**EXPLANATORY MEMORANDUM TO  
THE CLIMATE CHANGE ACT 2008 (2020 TARGET,  
CREDIT LIMIT AND DEFINITIONS) ORDER 2009**

**2009 No.**

**THE CARBON BUDGETS ORDER 2009**

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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 instruments**
  - 2.1 These Orders form part of an implementation package for the Climate Change Act 2008 (“the Act”).
  - 2.2 The Climate Change Act 2008 (2020 Target, Credit Limit and Definitions) Order 2009 (“the 2020 Target Order”) amends the level of the 2020 target in section 5(1)(a) of the Act, sets a limit on the use of carbon credits that may be used to meet the first carbon budget and, finally, defines “international aviation” and “international shipping” for the purposes of section 30 of the Act.
  - 2.3 The Carbon Budgets Order 2009 (“the Budgets Order”) sets the first three carbon budgets.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**

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 account of carbon units which have been credited and debited in accordance with regulations – to 80% below the level of net UK emissions in 1990, by 2050 (section 1).
  - 4.2 With a view to meeting that target, the Secretary of State must set five-year “carbon budgets” representing the maximum level of the net UK carbon account for budgetary periods. The first three carbon budgets, covering the 2008-2012, 2013-2017 and 2018-2022 budgetary periods, must be set before 1st June 2009 (sections 4 and 8).
  - 4.3 The carbon budget which includes the year 2020 must not exceed an amount in section 5(1)(a) – currently this requires a reduction in net carbon

dioxide emissions of at least 26% below 1990 levels. The Secretary of State has the power to amend this target in certain circumstances (section 6) and, during the passage of the Climate Change Bill, the Minister promised to exercise the power after taking advice from the Committee on Climate Change (established under Part 2 of the Act).

4.4 The Secretary of State has a duty to set a limit on the net amount of carbon units that can be credited to the net UK carbon account for each budgetary period. The limit for the first budgetary period (2008-2012) must be set no later than 1st June 2009 (section 11).

4.5 The targets and budgets in the Act do not include emissions from “international aviation” and “international shipping” (section 30(1)). The Secretary of State has a power to define by order what is to be regarded as international aviation and international shipping for that purpose (section 30(2)).

4.6 These Orders have been laid before Parliament alongside the Carbon Accounting Regulations 2009. Those Regulations set out what the “carbon units” are for the purposes of Part 1 of the Act, and the circumstances in which they are to be debited from and credited to the net UK carbon account. 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 Climate Change Act 2008 (2020 Target, Credit Limit and Definitions) Order 2009 and the Carbon Budgets Order 2009 are compatible with the Convention rights.”

## **7. Policy background**

### ***Amendment of the target for 2020***

7.1 During the final stages of the passage of the Climate Change Bill, the percentage target for 2050 in section 1 was amended from 60% to 80% following advice from the shadow Committee on Climate Change. At the same time, on the Committee’s advice, the default gas coverage of the targets and budgets in the Bill was changed to include all greenhouse gases rather than just carbon dioxide.

7.2 The level of the 2020 target was not amended, so provision was added – in what is now section 5(4) – to ensure that compliance is calculated by

reference only to carbon dioxide emissions. The purpose of that amendment was to ensure that the 2020 target did not become less stringent simply because the default gas coverage had changed.

7.3 In moving that the House of Lords should agree to the amendments, the Minister, Lord Hunt of Kings Heath said:

“As noble Lords will know, on 1 December the committee will provide its formal advice on the implications for the 2020 target of their advice on the 2050 target. We do not think that a change should be made to the 2020 target before we receive this advice, especially as we closely linked the committee’s advice to the first three carbon budgets. We want to ensure that we get the 2020 target right. ...

... We accept that we will have to amend the target soon to account for the inclusion of the other greenhouse gases. As I have said, we simply do not consider it appropriate to make a change to the 2020 target until we have received the committee’s advice on this issue.”

(Lords Hansard, 17th November 2008, Col 960)

7.4 The Committee on Climate Change advised on the level of the 2020 target on 1st December 2008 together with its advice on the first three carbon budgets. The Committee recommended that an ‘interim’ 2020 target – the appropriate target in the absence of a further global agreement – should be set at a level equivalent to a 29% reduction in carbon dioxide emissions. The Committee considers that an equivalent target covering all greenhouse gases would be 34%. That level is consistent with the United Kingdom’s share of the overall European Union targets under the Climate and Energy package agreed in December 2008.

7.5 The Government accepts and agrees with the Committee’s advice, which was also supported by the devolved administrations, so Article 2 of the 2020 Target Order amends the 2020 target in section 5(1)(a) to 34%. The repeal of section 5(4) means that the new target covers emissions of all targeted greenhouse gases.

### ***The first three carbon budgets***

7.6 Carbon budgets are the total permissible level of the net UK carbon account for each five year period, beginning with 2008–2012. Article 2 of the Budgets Order sets the first three carbon budgets, following the advice of the Committee on Climate Change of 1st December 2008. The carbon budget for 2018–2022 complies with the 2020 target already in the Act (26% carbon dioxide) and with the target as amended by the 2020 Target Order (34% greenhouse gas).

7.7 The carbon budgets have been set at a level broadly at the “interim” level recommended by the Committee on Climate Change, but adjusted to take into account the final outcome of the EU package agreed in December. That

has led to a slight decrease in the level of the budgets below those recommended by the Committee. This approach has been supported by the devolved administrations.

7.8 The Government has set out its response to the Committee's advice in more detail in a document published alongside the Orders, with an explanation of how the factors in section 10 of the Act have been taken into account and an overview of how the budgets will be met. The document can be found here: [www.hm-treasury.gov.uk/bud\\_bud09\\_index.htm](http://www.hm-treasury.gov.uk/bud_bud09_index.htm)

7.9 The Government is required by section 14 of the Act to publish a full report of its proposals and policies for meeting the carbon budgets as soon as is reasonably practicable after setting the carbon budgets. That report will be published later in 2009.

### ***The limit on the net use of credits for the first carbon budget***

7.10 "Carbon credits" (or, in the language of the Act, carbon units credited to the net UK carbon account) are units representing reductions in emissions. The carbon units for the purposes of the Act are set out in the draft Carbon Accounting Regulations 2009, the sister instrument to the Orders covered by this memorandum. The Explanatory Memorandum for those regulations gives more background on the policy in that area.

7.11 The use of carbon credits in meeting carbon budgets was controversial during the passage of the Climate Change Bill, and this is reflected in the Act by a requirement placed on the Secretary of State to set a limit on the net amount of carbon units that can be credited to the net UK carbon account during each budgetary period.

7.12 Article 3 of the 2020 Target Order sets the limit on the net use of carbon units for the first budgetary period (2008–2012) at zero units, but that limit excludes any net use of credits which results from the operation of the European Union Emissions Trading System ("the EU ETS"), and EU ETS units acquired as part of the proposed Carbon Reduction Commitment trading scheme.

7.13 Under the EU ETS, participants have their emissions capped and must surrender a sufficient number of European Union Allowances ("EUAs") to cover their emissions in each scheme period. Participants may also purchase other types of carbon units representing the same amount of carbon dioxide (or equivalent) to cover their emissions, including Certified Emissions Reductions (CERs) generated under the Clean Development Mechanism in developing countries. However, the use of these units is limited under the UK's National Allocation Plan for the current phase of the EU ETS (2008–2012).

7.14 The scheme operates at European level, and it is theoretically possible for United Kingdom's emissions covered by the scheme to increase; that is acceptable under the EU ETS because any such increase would be offset by

emissions reductions elsewhere and the overall EU ETS cap would still be met.

7.15 It is difficult to predict exactly how many carbon units will enter and leave the United Kingdom each year under the EU ETS; if UK emissions covered by the scheme increased and the use of credits arising from the scheme rose above the level of a cap set for the purposes of the Act, the only way to offset the increase in emissions would be to reduce emissions in the other sectors of the economy at very short notice, which would almost certainly be economically inefficient.

7.16 For that reason, the Government considers any crediting and debiting of carbon units which results from the EU ETS should be ignored in determining whether the limit has been reached, and that this is justified because the EU ETS sets a fixed cap at European level on the emissions it covers, and limits the use of carbon units representing emissions reductions outside the EU to contribute to that cap, leading to overall reductions in emissions. This approach is permitted under section 11(5) of the Act.

7.17 The limit on the net use of credits also excludes EUAs which are acquired through a trading scheme made under Part 3 of the Act. The proposed Carbon Reduction Commitment trading scheme, which is currently under consultation, will include a “safety valve” mechanism which will allow participants to ask the scheme administrator to purchase EUAs to offset emissions in excess of their cap under the scheme. Because that mechanism will contribute to a reduction in the number of EUAs available to EU ETS participants, the Government considers it appropriate to exclude those units from the credit limit. This safety valve mechanism has been designed as an option of last resort for participants and the Government therefore expects no more than 5 million tonnes of carbon dioxide (or equivalent) per annum will be purchased through the mechanism in the last two years of the 2008-2012 budgetary period.

### ***The definitions of “international aviation” and “international shipping”***

7.18 Emissions from international aviation and international shipping are not included in the targets and budgets in the Act, although there is provision in section 10(2)(i) requiring them to be taken into account in relation to carbon budgets. The Secretary of State may make regulations to provide for their inclusion (and must do so, or explain to Parliament why these regulations have not been made, by 31st December 2012); no regulations have yet been made.

7.19 The Secretary of State has the power to define, by order, what is to be regarded as “international aviation” or “international shipping”. If the power is not exercised, the terms will be given their natural and ordinary meaning in the context of the Act. That would give rise to the possibility that definitions might be adopted that are different from those used for international reporting purposes.

7.20 In order to avoid that possibility, which would then require the preparation of two sets of emissions figures, article 4 of the 2020 Target Order provides definitions which reflect international reporting practice. The definitions put beyond doubt possible ambiguities, such as how to treat flights into or out of the United Kingdom which have interim stops.

7.21 The definitions are only intended to set out which emissions are not included in the targets and budgets in the Act. They cannot be used as universal definitions of international aviation and international shipping, and they do not state how emissions from international aviation and international shipping are to be allocated to different countries.

## **8. Consultation outcome**

8.1 The Act does not require public consultation on any of the issues covered by the orders to which this Explanatory Memorandum relates. However, there are specific consultation requirements:

- the 2020 target: the Secretary of State must obtain and take into account the Committee on Climate Change’s advice and any views expressed by the devolved administrations;
- carbon budgets: the Secretary of State must take into account the Committee on Climate Change’s advice under section 34 and any views expressed by the devolved administrations;
- credit limit: the Secretary of State must take into account the Committee on Climate Change’s advice under section 34(1)(b) in relation to the budgetary period, and must consult the devolved administrations;
- definitions of “international aviation” and “international shipping”: no consultation requirements, but the Secretary of State has consulted the devolved administrations.

8.2 The Secretary of State is also required to publish certain statements setting out how the views of the devolved administrations have been taken into account. If any new targets or the carbon budgets are set at levels which differ from the Committee on Climate Change’s advice, the Secretary of State must publish statements setting out the reasons for those decisions. Those statements have been published, and can be found at the link in paragraph 7.8.

## **9. Guidance**

9.1 No guidance has been published in relation to the matters contained in the orders, because none is considered to be required. This memorandum provides a full explanation of the background and the Government has, alongside this order, published a document setting out more information about the matters contained in the Orders. It can be found at the link in paragraph 7.8.

## **10. Impact**

10.1 An Impact Assessment (IA) of the EU Climate and Energy package, the revised EU Emissions Trading System Directive and meeting the UK non-traded target through UK carbon budgets has been published. Owing to the close links between the levels of the carbon budgets and the UK's obligations under the EU Climate and Energy package their impacts have been considered together in the same IA. The IA has been attached as an Annex to this memorandum, and can also be obtained from the website of the Department of Energy and Climate Change:

[www.decc.gov.uk/en/content/cms/what\\_we\\_do/lc\\_uk/carbon\\_budgets/carbon\\_budgets.aspx](http://www.decc.gov.uk/en/content/cms/what_we_do/lc_uk/carbon_budgets/carbon_budgets.aspx)

10.2 The net benefits of the UK's mitigation action set out by carbon budgets is subject to considerable uncertainty. The avoided damages from UK greenhouse gas emissions is a function of the level of global action. The best estimate of the net benefits, in a world where the UK acts to reduce emissions in concert with the rest of the world, is a net benefit of £223.5 billion. Should the UK's mitigation action be unilateral, and not lead to any future co-ordinated global action, then carbon budgets are estimated to carry a net cost of £10.5 billion. This underlines the importance of achieving a global deal.

## **11. Regulating small business**

11.1 The legislation does not apply to small business.

## **12. Monitoring & review**

12.1 The Committee on Climate Change recommended two sets of budgets – an “intended” level to be set following an international agreement to reduce greenhouse gas emissions in the period after 2012, and an “interim” level to be set before an agreement is reached. In accordance with this, this Order sets the levels of the 2020 target and the first three carbon budgets at the “interim” level (with a small adjustment to reflect developments at EU level since the Committee reported).

12.2 A new international agreement is being negotiated and will be the focus of the UN climate change conference in Copenhagen in December 2009. As the Committee recommends, both the level of the budgets and the 2020 target will need to be reconsidered in the light of an agreement, and of subsequent negotiations at EU level to determine the burden share for each Member State of a new target adopted by the EU.

12.3 It is unlikely that the limit on the net use of credits for the first budget period will need to be reconsidered following an international agreement, because any agreement will only come into effect after the first budget period has ended. The level of the net UK carbon account will be kept under review through annual statements of emissions as required under Section 16 of the Act, and monitored to ensure that the first carbon budget is being met.

12.3 The definitions of international aviation and international shipping will be kept under review to ensure that they continue to reflect international reporting practice, and will be amended as necessary.

### **13. Contact**

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