

2009 No. 1257

CLIMATE CHANGE

The Carbon Accounting Regulations 2009

Made - - - - *20th May 2009*

Coming into force - - *31st May 2009*

A draft of this instrument has been laid before and approved by a resolution of each House of Parliament, in accordance with sections 28(2)(a) and 91(1) of the Climate Change Act 2008 (“the Act”)(a).

Before the draft was so laid, the Secretary of State—

- (a) consulted the Scottish Ministers, the Welsh Ministers and the Department of the Environment in Northern Ireland, in accordance with section 28(4)(a) of the Act(b); and
- (b) obtained and took into account the advice of the Committee on Climate Change, in accordance with section 28(5)(a) of the Act.

Accordingly the Secretary of State, in exercise of the powers conferred by sections 26(1) and (2), 27 and 90(3) of the Act, makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Carbon Accounting Regulations 2009 and come into force on 31st May 2009.

Interpretation

2.—(1) In these Regulations—

“assigned amount unit” means a unit issued—

- (a) under Article 7(3) of Decision No 280/2004/EC(c) of the European Parliament and of the Council concerning a mechanism for monitoring Community greenhouse gas emissions and for implementing the Kyoto Protocol; or
- (b) by a party to the Kyoto Protocol which is not subject to that Decision;

“credit account” has the meaning given by regulation 4(1);

“the Emissions Trading Directive” means Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC(d);

(a) 2008 c. 27.

(b) See the definitions of “national authority” and “the relevant Northern Ireland department” in sections 95 and 96 of the Act.

(c) O.J. No. L 49, 19.2.2004, p. 1.

(d) O.J. No. L 275, 25.10.2003, p. 32; amended by Directive 2004/101/EC, O.J. No. L 338, 13.11.2004, p. 18.

“the EU ETS” means the European Union Emissions Trading Scheme established under the Emissions Trading Directive as implemented by the Greenhouse Gas Emissions Trading Scheme Regulations 2005(a);

“European Union allowance” means an assigned amount unit converted into an allowance for the purposes of the EU ETS in accordance with Article 45 of the Registries Regulation;

“the Kyoto Protocol” means the Kyoto Protocol to the UNFCCC signed at Kyoto on 11th December 1997;

“the Registries Regulation” means Commission Regulation (EC) No 2216/2004 for a standardised and secured system of registries pursuant to Directive 2003/87/EC of the European Parliament and of the Council and Decision No 280/2004/EC of the European Parliament and of the Council(b);

“the registry administrator” means the Environment Agency, being the body appointed as the registry administrator for the UK registry for the purposes of the Registries Regulation;

“the relevant share of the UK assigned amount” means the amount of the UK assigned amount which is attributable to UK emissions;

“removal unit” means a unit issued under Article 3 of the Kyoto Protocol;

“the UK assigned amount” means 3,412,080,630 tonnes of carbon dioxide equivalent, being the assigned amount for the United Kingdom in the Annex to Commission Decision 2006/944/EC(c) determining the respective emission levels allocated to the Community and each of its Member States under the Kyoto Protocol pursuant to Council Decision 2002/358/EC;

“the UK registry” means the registry established for the United Kingdom in accordance with the Registries Regulation; and

“the UNFCCC” means the United Nations Framework Convention on Climate Change signed at New York on 9th May 1992.

(2) In these Regulations “cancellation” of a carbon unit means voluntary cancellation in accordance with the Registries Regulation; and a unit is “cancelled” if the Secretary of State instructs the registry administrator to transfer it to the account known as the “National Cancellation Account” in the UK registry.

(3) In these Regulations “operator” and “installation” have the meanings given by regulation 2 of the Greenhouse Gas Emissions Trading Scheme Regulations 2005, and “surrender” means surrender in accordance with regulation 10(3) of those Regulations.

Carbon units

3.—(1) For the purposes of Part 1 of the Climate Change Act 2008 the following are carbon units—

- (a) assigned amount units;
- (b) European Union allowances;
- (c) certified emission reductions;
- (d) emission reduction units; and
- (e) removal units.

(2) Each carbon unit has a value of 1 tonne of carbon dioxide equivalent.

(3) In this regulation—

“certified emission reduction” means a unit issued under Article 12 of the Kyoto Protocol and the decisions adopted under the UNFCCC or the Kyoto Protocol; and

(a) S.I. 2005/925; amended by S.I. 2005/2903, 2006/737, 2007/465, 2007/1096, 2007/3433 and 2007/3538.

(b) O.J. No. L 386, 29.12.2004, p. 1; amended by Commission Regulation (EC) No 916/2007, O.J. No. L 200, 1.8.2007, p. 5.

(c) O.J. No. L 358, 16.12.2006, p. 87.

“emission reduction unit” means a unit issued under Article 6 of the Kyoto Protocol and the decisions adopted under the UNFCCC or the Kyoto Protocol.

Duty to request the opening of a credit account

4.—(1) It is the duty of the Secretary of State, as soon as is reasonably practicable after these regulations come into force, to instruct the registry administrator to open an account (“the credit account”) in the UK registry for the purpose of holding carbon units which are to be credited to the net UK carbon account in accordance with regulation 5.

(2) Unless paragraph (3) applies, carbon units in the credit account may only be transferred out of the credit account for the purposes of cancellation and no other request to transfer a carbon unit is to be regarded as an instruction to the registry administrator for the purposes of the Registries Regulation.

(3) The registry administrator may treat a request to transfer a carbon unit out of the credit account for purposes other than cancellation as an instruction only if it is satisfied that—

- (a) no declaration under regulation 5(2)(b) has been made in respect of that carbon unit; and
- (b) the carbon unit was transferred to the credit account by mistake.

(4) Any carbon unit transferred out of the credit account in accordance with paragraph (3) is to be returned to the account from which it was originally transferred.

Power to credit carbon units to the net UK carbon account

5.—(1) Carbon units may be credited to the net UK carbon account as follows.

(2) A carbon unit is credited to the net UK carbon account if—

- (a) a person transfers the carbon unit to the credit account; and
- (b) a Minister of the Crown declares that the carbon unit is credited to the net UK carbon account.

(3) A declaration under paragraph (2)(b)—

- (a) must state the year in respect of which the carbon unit is to be credited; and
- (b) may be made in such manner and at such time as the Minister of the Crown considers appropriate.

(4) No Minister of the Crown may make a declaration under paragraph (2)(b)—

- (a) in respect of any removal unit that was originally issued to the United Kingdom; or
- (b) if the Minister reasonably believes that the carbon unit has been used to offset greenhouse gas emissions which are not UK emissions.

(5) If a Minister of the Crown is minded not to make a declaration in respect of a carbon unit transferred to the credit account by the Scottish Ministers, the Welsh Ministers or a Northern Ireland department then the Minister of the Crown must consult that national authority before making a final decision.

Crediting and debiting of carbon units as a result of the operation of the EU ETS during the 2008–2012 budgetary period

6.—(1) It is the duty of the Secretary of State, in respect of each year of the 2008–2012 budgetary period, to calculate whether an amount of carbon units is to be credited to or debited from the net UK carbon account as a result of the operation of the EU ETS.

(2) Calculations under this regulation are to be performed annually, and must be performed—

- (a) in respect of 2008, by 15th June 2009; and
- (b) in respect of any subsequent year of the 2008–2012 budgetary period (“Year X”), by 31st May in Year X+1.

(3) In order to determine whether carbon units are to be credited or debited in respect of 2008, the Secretary of State must calculate whether the total amount of carbon units surrendered by operators of installations in the United Kingdom in the 16 months preceding 1st May 2009 is greater or less than 245,991,207.

(4) In order to determine whether carbon units are to be credited or debited in respect of Year X, the Secretary of State must calculate whether the total amount of carbon units surrendered by operators of installations in the United Kingdom in the 12 months preceding 1st May in Year X+1 is greater or less than 245,991,207.

(5) If the amount of carbon units surrendered is greater than 245,991,207, an amount of carbon units equal to the difference is to be credited to the net UK carbon account in respect of the appropriate year.

(6) If the amount of carbon units surrendered is less than 245,991,207, an amount of carbon units equal to the difference is to be debited from the net UK carbon account in respect of the appropriate year.

Debiting to reflect the disposal of carbon units during the 2008–2012 budgetary period

7.—(1) It is the duty of the Secretary of State to calculate whether an amount of carbon units is to be debited from the net UK carbon account in respect of each year of the 2008–2012 budgetary period.

(2) Calculations under this regulation are to be performed annually, and must be performed—

- (a) in respect of 2008, by 15th June 2009; and
- (b) in respect of any subsequent year of the 2008–2012 budgetary period (“Year X”), by 31st May in Year X+1.

(3) In order to determine whether carbon units are to be debited in respect of 2008, the Secretary of State must calculate whether the UK holding of carbon units on 31st December 2008 was less than the relevant share of the UK assigned amount.

(4) If so, an amount of carbon units equal to the difference is to be debited from the net UK carbon account in respect of 2008.

(5) In order to determine whether carbon units are to be debited in respect of Year X, the Secretary of State must calculate whether the UK holding of carbon units on 31st December in Year X was less than—

- (a) the UK holding of carbon units on the 31st December in Year X–1; and
- (b) the relevant share of the UK assigned amount.

(6) If so, then an amount of carbon units calculated in accordance with paragraph (7) is to be debited from the net UK carbon account in respect of Year X.

(7) The amount of carbon units to be debited is an amount equal to whichever is the lesser of the differences calculated in accordance with paragraph (5).

(8) In this regulation “the UK holding of carbon units”—

- (a) means the total amount of carbon units held in the accounts called the “2008–2012 AAU Holding Account (Issuance)” and the “National Retirement Account” in the UK registry; and
- (b) is deemed to include the total number of European Union allowances to be allocated to operators of installations in the United Kingdom in accordance with Part 3 of the Greenhouse Gas Emissions Trading Scheme Regulations 2005, regardless of whether those allowances have been issued to those operators.

Duty to cancel carbon units at the end of the 2008–2012 budgetary period

8.—(1) It is the duty of the Secretary of State, during a period beginning with 1st January 2013 and ending with 15th May 2014, to ensure that carbon units have been cancelled in accordance with this regulation.

- (2) Each carbon unit in the credit account must be cancelled.
- (3) An additional amount of carbon units must be cancelled, calculated as follows—

$$A = B - C - D + E + F - G$$

Where—

- A is the additional amount of carbon units to be cancelled;
- B is the relevant share of the UK assigned amount;
- C is the level of the carbon budget;
- D is the amount of carbon units cancelled under paragraph (2);
- E is the amount of carbon units cancelled under paragraph (2) in relation to which no declaration was made under regulation 5(2)(b);
- F is the net amount of emissions of targeted greenhouse gases into the atmosphere due to land use, land use change and forestry activities in the United Kingdom during the 2008–2012 budgetary period, calculated in accordance with international carbon reporting practice; and
- G is the net amount of emissions of targeted greenhouse gases into the atmosphere due to land use, land use change and forestry activities in the United Kingdom during the 2008–2012 budgetary period, calculated in accordance with paragraphs 3 and 4 of Article 3 of the Kyoto Protocol.

(4) If the Secretary of State fails to cancel the required amount of carbon units in accordance with this regulation then, immediately after the expiry of the period mentioned in paragraph (1), an amount of carbon units equal to the shortfall is to be debited from the net UK carbon account in respect of the 2008–2012 budgetary period.

Duty to maintain a register of transactions

9.—(1) It is the duty of the Secretary of State to maintain a register containing information about the carbon units credited to and debited from the net UK carbon account under these Regulations.

(2) In relation to carbon units transferred to the credit account under regulation 5, the register must contain details of—

- (a) the type of carbon unit transferred;
- (b) the date of transfer to the credit account;
- (c) the date of any declaration that the carbon unit is to be credited to the net UK carbon account; and
- (d) the year in respect of which the carbon unit is to be credited.

(3) In relation to carbon units to be credited or debited in accordance with regulation 6, the register must contain details of—

- (a) the date on which the calculation was performed;
- (b) the figures used in the calculation;
- (c) the amount of carbon units to be credited to or debited from the net UK carbon account; and
- (d) the year in respect of which that amount of carbon units is to be credited or debited.

(4) In relation to carbon units to be debited in accordance with regulation 7, the register must contain details of—

- (a) the date on which the calculation was performed;
- (b) the figures used in the calculation;
- (c) the amount of carbon units to be debited from the net UK carbon account;
- (d) the year in respect of which that amount of carbon units is to be debited.

(5) In relation to carbon units required to be cancelled in accordance with regulation 8, the register must contain details of—

- (a) the date on which the calculation was performed;
- (b) the figures used in the calculation;
- (c) the amount of carbon units required to be cancelled;
- (d) the amount of carbon units cancelled;
- (e) the date of cancellation; and if necessary
- (f) the amount of units to be debited from the net UK carbon account in respect of the 2008–2012 budgetary period.

Date 20th May 2009

Joan Ruddock
Parliamentary Under Secretary of State
Department of Energy and Climate Change

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which come into force on 31st May 2009, make provision about carbon units and carbon accounting for the purposes of Part 1 of the Climate Change Act 2008 (“the Act”).

Regulation 3 sets out the units that count as carbon units for the purposes of carbon accounting.

Regulation 4 places a duty on the Secretary of State to open a credit account in the UK registry in which carbon units that are to be credited to the net UK carbon account can be held. Once a carbon unit has been moved to the credit account it can only be taken out for the purpose of cancellation, unless the registry administrator is satisfied that certain conditions are met.

Regulation 5 provides a power to credit carbon units to the net UK carbon account. Under this regulation, carbon units may be transferred to the credit account by any person but are only credited to the net UK carbon account if a Minister of the Crown makes a declaration to that effect. There are limits on the circumstances in which a declaration can be made.

Regulation 6 sets out the circumstances in which carbon units are to be credited to and debited from the net UK carbon account during the 2008–2012 budgetary period as a result of the operation of the European Union Emissions Trading Scheme.

Regulation 7 makes provision for carbon units to be debited from the net UK carbon account during the 2008–2012 budgetary period where carbon units have been disposed of in the course of a given year.

Regulation 8 places duties on the Secretary of State to meet the requirements of section 27(4) and (5) of the Act in respect of the 2008–2012 budgetary period. The Secretary of State is required to cancel all the units in the credit account and to cancel a further amount of units representing the difference in stringency between the carbon budget and so much of the United Kingdom’s assigned amount under the Kyoto protocol as is attributable to net UK emissions.

Regulation 9 places a duty on the Secretary of State to maintain a register containing details of the amounts of carbon units credited to and debited from the net UK carbon account and the amounts of carbon units cancelled in accordance with regulation 8.

No Impact Assessment has been prepared for this Order as no impact on the private or voluntary sectors is foreseen.

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STATUTORY INSTRUMENTS

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£5.50

