

EXPLANATORY MEMORANDUM TO

THE CARBON ACCOUNTING (PROVISIONS FOR 2018) REGULATIONS 2020

2020 No. 115

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy and is laid before Parliament by Command of Her Majesty.
- 1.2 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 first year (2018) of the third carbon budget period (2018-2022).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The Regulations are made for the first year (2018) of the third budgetary period and a further update will be required in early 2021 for the second year (2019) as a minimum. At the time of drafting, the Regulations cannot be made for the entire period, as the UK’s post-EU exit carbon pricing policy is being developed following the government’s consultation on “The Future of UK Carbon Pricing”, which was published last year. However, provision in respect of 2018 cannot be further delayed as it is needed in time for the 2018 Annual Statement of Emissions which, under section 16 of the Act, must be laid before Parliament by 31 March 2020.
- 3.2 At the time of the update for 2013-2017 (the Carbon Accounting (2013-2017 Budgetary Period) Regulations 2015 (S.I. 2015/775)), officials noted in the Explanatory Memorandum that it was impossible for the Secretary of State to comply with section 27(5) of the Act. That impossibility persists. Put simply, section 27(5) is about the relationship between targets under the Act and systems of international law where carbon units, as defined in the 2009 Regulations, are allocated to the UK. However, until the Doha Amendment to the Kyoto Protocol comes into force (it has not currently been ratified by enough States for that to happen), there is nothing for section 27(5) to bite on.
- 3.3 The Committee will note that the definition of carbon units in the 2009 Regulations is being updated in one respect, via the definition of “European Union allowance” (see regulation 6(2)). In the Department’s view, this does not mean the Regulations should be affirmative under section 28(2)(b) of the Act since the Regulations do not “specify a carbon unit of a kind not previously specified”; indeed, had the original definition of

¹ The 2009 Carbon Accounting Regulations:
<https://www.legislation.gov.uk/ukdsi/2009/9780111478516/contents>

European Union allowance been in line with the amendment here, the 2009 Regulations would have worked in exactly the same way. Unfortunately, however, the original definition worked by reference to EU legislation that has since been superseded.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.4 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the whole of the United Kingdom.
- 4.2 The territorial application of this instrument is the whole of the United Kingdom together with UK coastal waters and the UK sector of the continental shelf (see section 89 of the Act).

5. European Convention on Human Rights

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

6. Legislative Context

- 6.1 The Regulations are made pursuant to sections 26 and 27 of the Act, which provide for the Secretary of State to make regulations for carbon accounting. They are an important part of the system set up by the Act for limiting greenhouse gas emissions. Under the Act, there is a 2050 target for reducing emissions (section 1, recently amended – see paragraph 7.2) and the Government sets limits on emissions for successive five year periods (carbon budgets, set under sections 4 and 8). These provisions work by reference to the “net UK carbon account”, defined in section 27. The amount of the net UK carbon account depends in part on carbon accounting regulations made under section 27 (see below).
- 6.2 The 2009 Regulations were the first regulations to be made under sections 26 and 27, but certain provisions in those regulations are specific to the first carbon budget period. The Regulations provide the accounting system for the first year (2018) of the third carbon budget period (2018-2022) 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 ETS other than in respect of aviation during 2018;
 - (b) providing a mechanism to account for domestic aviation (flights between UK airports) during 2018, which is included in the EU ETS;
 - (c) requiring the Secretary of State, at the end of the third carbon budget period, to cancel any carbon units bought on international markets or otherwise acquired by the Secretary of State in respect of 2018 to help meet the third carbon budget (this is extremely unlikely to be needed but section 27(4) requires the Regulations to ensure that carbon units held by the Secretary of State for this purpose are put beyond use);

- (d) making consequential amendments to the 2009 Regulations (including a necessary update to a definition and correcting a reference to a “calculation” rather than the “cancellation” of units).

7. Policy background

What is being done and why?

- 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 demonstrates, at home and abroad, the Government’s commitment to taking the action necessary to avoid dangerous climate change.
- 7.2 The Climate Change Act 2008 (2050 Target Amendment) Order 2019 amended section 1 of the Act to put into statute the UK’s net zero target to reduce greenhouse gas emissions by at least 100% by 2050 compared to emissions in 1990 which represent the baseline.
- 7.3 To set the trajectory towards the 2050 target established under it, and help provide certainty for business planning and investment, the Act establishes a system of “carbon budgets” capping emissions over successive five-year periods.
- 7.4 As mentioned above, the 2050 target and the carbon budgets work by reference to the “net UK carbon account”. This is the number we need to compare against the carbon budgets to determine whether we have met them, and the net UK carbon account for 2050 will determine whether the 2050 target has been met. 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 otherwise been debited or credited in accordance with carbon accounting regulations.
- 7.5 The principal reason for updating the Regulations is to ensure the accounting for the EU ETS at stationary installations and domestic aviation covers the first year (2018) of the third carbon budget period.

EU ETS (stationary installations)

- 7.6 The Regulations provide a mechanism to account for credits and debits as a result of the operation of the EU ETS during the first year (2018) of the third 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 or relate to units which could have been used at an earlier time (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.
- 7.7 For the first year (2018) of the third budgetary period, the rules governing operation of the EU ETS third phase are such that Member States do not receive a national cap as

the EU ETS is operated at installation level². 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 cap are replicated to create a ‘notional’ cap. The notional cap is created by adding together the volume of EU allowances freely allocated to stationary UK operators (49,449,564)³, the volume of EU allowances freely allocated a share of the New Entrants Reserve to stationary UK operators (1,808,943)⁴, and the volume of allowances in the EU-wide auction pot to be auctioned by the UK to stationary operators (101,053,000)⁵. Therefore, the UK ‘notional’ cap (which is expressed as the “annual allocation”) totals 152,311,507 units.

- 7.8 The 2018 Annual Statement of Emissions will contain further background on this calculation.

Domestic Aviation

- 7.9 The Regulations provide a mechanism to account for domestic aviation during the first year (2018) of the third budgetary period which is the same as the mechanism used during the second budgetary period under the Carbon Accounting (2013-2017 Budgetary Period) Regulations 2015. Whilst the EU ETS provides an EU-wide cap for aviation emissions and units to confirm UK compliance it does not provide a cap for UK only domestic aviation (flights between UK airports) 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 budgets⁶.
- 7.10 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 is set at 95% of the estimated UK share. The Schedule to the Regulations sets out the methodology to be used for the calculation. The 2018 Annual Statement of Emissions will contain background on this calculation but in summary there are three steps to the calculation:

- a. **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.
- b. **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

² Further information on how the ETS operates, can be found here:

<https://www.gov.uk/participating-in-the-eu-ets>

³ European Union Registry, verified emissions report 2018 (April 2019)

https://ec.europa.eu/clima/policies/ets/registry_en#tab-0-1

⁴ European Union Registry, verified emissions report 2018 (April 2019)

https://ec.europa.eu/clima/policies/ets/registry_en#tab-0-1

⁵ Intercontinental Exchange

<https://www.theice.com/marketdata/reports/148>

⁶ 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

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.

- c. **Apply a reduction to the resulting figure:** For 2018 the cap will be 95% of this annual average.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 This instrument does not give rise to the need for any consolidation.

10. Consultation outcome

- 10.1 There was no public consultation required by the Regulations.

11. Guidance

- 11.1 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 Annual Statement of Emissions for 2018 will contain further information relevant to calculating the net UK carbon account.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because there is no, or no significant, impact on businesses, charities, voluntary bodies or the public sector.

13. Regulating small business

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is that, as the Regulations are for the first year (2018) of the third carbon budget period, a further update will be required in early 2021 for the second year (2019) as a minimum.
- 14.2 The Regulation does not include a statutory review clause as the legal obligations in this regard under the Small Business, Enterprise and Employment Act 2015 do not apply.

15. Contact

- 15.1 Rachel Armitage at the Department for Business, Energy and Industrial Strategy, Telephone: 0300 068 6230 or email: rachel.armitage@beis.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Sarah Bishop, Deputy Director for Carbon Budgets, at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Rt Hon Kwasi Kwarteng MP at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.