

EXPLANATORY MEMORANDUM TO

THE CARBON ACCOUNTING (PROVISION FOR 2019) REGULATIONS 2021

2021 No. 189

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 Carbon Accounting Regulations 2009 (“the 2009 Regulations”)¹, the Carbon Accounting (2013-2017 Budgetary Period) Regulations 2015 (“the 2015 Regulations”)² and the Carbon Accounting (Provision for 2018) Regulations 2020 (“the 2020 Regulations”)³, for the second year (2019) 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 second year (2019) of the third budgetary period (2018-2022). At the time of finalising policy for these Regulations, EU future relationship negotiations were ongoing, and so we were unable to determine whether the current method of accounting for emissions in the traded sector (power and heavy industry) and domestic aviation that are set out in Regulations 3 and 4 of the 2020 Regulations could continue after the end of the transition period. However, provision in respect of 2019 could not be further delayed as it is needed in time for the 2019 Annual Statement of Emissions which, under section 16 of the Act, must be laid before Parliament by 31 March 2021 – and so the decision was taken to make provision for just one year (2019), as the 2020 Regulations did in respect of 2018. Further carbon accounting regulations will be made in early 2022 for the third year of the third budgetary period (2020) as a minimum.
- 3.2 Section 27(5) of the Act requires the Carbon Accounting Regulations to contain provision for calculating and cancelling any excess emission allowances under targets imposed by systems of international law (e.g. under the Kyoto Protocol) compared to those targets under the Act. The 2009 Regulations set out these provisions relating to

¹ The Carbon Accounting Regulations 2009: <https://www.legislation.gov.uk/ukxi/2009/1257/contents/made>

² The Carbon Accounting (2013-2017 Budgetary Period) Regulations 2015
<https://www.legislation.gov.uk/ukxi/2015/775/contents/made>

³ The Carbon Accounting (Provision for 2018) Regulations 2020
<https://www.legislation.gov.uk/ukxi/2020/115/contents/made>

the first commitment period of the Kyoto Protocol (2008-2012). In the 2015 Regulations and 2020 Regulations a replacement provision was not included for the second commitment period of the Kyoto Protocol (“KP2”) (2013-2020) because the Doha Amendment, which sets out emission targets for the second commitment period, had not been fully ratified. Recent ratification of the Doha Amendment by the required number of countries means the UK’s obligations under KP2 came into force on 31st December 2020, and the UK is due to be assigned emissions allowances (Assigned Amount Units or AAUs) that can be used to meet its international obligations under KP2.

- 3.3 However, as described in 3.1, it has not yet been possible to finalise the method for accounting of emissions in the traded sector for the whole of the third budgetary period. Therefore, it is also not yet possible to set out a meaningful provision for calculating excess emissions allowances under KP2 relative to carbon budgets. Inclusion of this calculation will be reviewed for carbon accounting regulations to be made in early 2022 for the third year of the third budgetary period (2020) as a minimum. It will not in any case be necessary to apply the calculations required by section 27(5) until 2023 at the earliest, when UK emissions under KP2 can be finalised following international review.

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) 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). The 2009 Regulations were the first regulations to be made under sections 26 and 27, and the 2015 Regulations and the 2020 Regulations were also made under these powers, but certain provisions in those regulations relate to specific carbon budget periods or years.

- 6.2 The Regulations provide the accounting system for the second year (2019) 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 2019;
 - c) providing a mechanism to account for domestic aviation (flights between UK airports) during 2019, which is included in the EU ETS;
 - d) 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 2019 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).

7. Policy background

What is being done and why?

- 7.1 The Act mandates a legally binding framework for the UK to achieve its goal 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 net zero 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 Climate Change Act 2008 (2050 Target Amendment) Order 2019 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. To set the trajectory towards this target, 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.
- 7.4 The principal reason for updating the Regulations is to ensure the accounting for the EU ETS and domestic aviation covers the second year (2019) of the third carbon budget period.

EU ETS (stationary installations)

- 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 year (2019) 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. For the first three years (2018-2020) 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 level⁴. 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 (47,667,411⁵), the volume of EU allowances freely allocated a share of the New Entrants Reserve to stationary UK operators (1,694,795⁶), and the volume of allowances in the EU-wide auction pot to be auctioned by the UK to stationary operators (55,062,000⁷). Therefore, the UK ‘notional’ cap (which is expressed as the “annual allocation”) totals 104,424,206 units.

- 7.6 The 2019 Annual Statement of Emissions will contain further background on this calculation.

Domestic Aviation

- 7.7 The Regulations provide a mechanism to account for domestic aviation during the second year (2019) of the third budgetary period which is the same as the mechanism used during the second budgetary period under the 2015 Regulations and for 2018 under the 2020 Regulations. 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 budgets⁸.

- 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 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 2019 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

⁴ Further information on how the ETS operates:

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

⁵ European Union Registry, verified emissions report 2019 (April 2020)

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

⁶ European Union Registry, verified emissions report 2019 (April 2020)

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

⁷ European Commission, correspondence with estimated volumes of general allowances to be auctioned, May 2020.

⁸ 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.

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 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 2019 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 2019 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 second year (2019) of the third carbon budget period, the Regulations will be updated again in early 2022 for the third year (2020) as a minimum.
- 14.2 The Regulations do 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: carbonbudgets@beis.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Sarah James at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Rt Hon Anne-Marie Trevelyan MP at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.