EXPLANATORY MEMORANDUM TO

THE CARBON ACCOUNTING (AMENDMENT) REGULATIONS 2009

2009 No. 3146

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 amend an error in regulation 6 of the Carbon Accounting Regulations 2009 ("the Original Regulations").[1] The regulations adjust the amount of carbon units to be used in determining in each year the amount of units to be credited to or debited from the net UK carbon account as a result of the operation of the European Union Emissions Trading System (EU ETS). This ensures that the annual amounts add up to the UK allocation under the EU ETS for the 2008-2012 period.

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

3.1 None

4. Legislative Context

4.1 The Climate Change Act 2008 requires the Secretary of State to reduce the "net UK carbon account" – the amount of net UK emissions after taking into account 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 The Original Regulations made under the Climate Change Act 2008 introduced the rules for calculating the net UK carbon account in each year of the first budgetary period. These regulations correct an error in the Original Regulations and are also made under the Climate Change Act 2008.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

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

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[1] SI 2009/1257

7. Policy background

7.1 Regulation 6 of the Original Regulations 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 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.

7.2 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.

7.3 The Original regulations contain an error whereby the sum of the annual allocations against which the EU ETS results are compared does not equal the UK's final EU ETS allocation for the 2008-2012 period. These regulations provide an amended annual allocation for each year in the period 2009 to 2012 to ensure that the sum of the annual allocations equals the UK's final allocation under the EU ETS.

7.4 The calculation in respect of 2008 has already been performed using the incorrect figure, in accordance with the deadline in the Original Regulations. The annual allocation for 2008 is unchanged in these regulations from the amount in the Original Regulations, which cannot be amended with retrospective effect. This will not result in an inaccuracy in the final level of the net UK carbon account for the budget period 2008 to 2012, however, as the allocations for 2009 to 2012 have been adjusted to compensate.

7.5 The amount of units to be credited to, or debited from, 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. The first of these, relating to 2008, must be produced by 31 March 2010.

7.6 These amending regulations are being issued free of charge as they correct an error in the Original regulations.

8. Consultation outcome

8.1 These regulations were not consulted on but the approach they take is consistent with proposals contained in a consultation on the carbon accounting system, which ran from 28 October 2008 to 19 January 2009. A significant majority of the forty-three respondents supported our proposals, which informed the content of the Original Regulations.

8.2 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 DECC published guidance to stakeholders as to how the accounting system will operate when the Original Regulations were introduced, which 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

The guidance will be updated to reflect the amended regulations when they are laid in Parliament.

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 are designed to operate during the first budgetary period (2008-2012). They will need to be reviewed by 2012, primarily 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

John Christopher at DECC Tel: 0300 068 5235 or email: john.christopher@decc.gsi.gov.uk can answer any queries regarding the instrument.