EXPLANATORY MEMORANDUM TO

THE CARBON ACCOUNTING (DETERMINATION OF EXCESS UK ASSIGNED AMOUNT UNITS) REGULATIONS 2023

2023 No. 577

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Energy Security and Net Zero and is laid before Parliament by Command of His Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 These Regulations make provision under Section 27(5) of the Climate Change Act 2008 ("the Act"), which requires the Secretary of State to determine whether the UK's emissions allowance under international emissions reduction targets are higher than the UK's emissions allowance under domestic carbon budgets. Any excess units representing the difference in stringency between the domestic carbon budget and international targets are to be made unavailable to prevent the UK from using excess emissions allowances to offset greenhouse gas emissions in the UK or elsewhere. The relevant international agreement for these Regulations is the Doha Amendment to the Kyoto Protocol which makes provision for the Second Commitment Period (2013-2020) ("the Second Commitment Period"). The corresponding period under domestic emission reduction targets made under the Act is Carbon Budget 2 (2013-2017) and the first three years of Carbon Budget 3 (2018-2020).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 Provisions have been made, which apply until 31 December 2020, under s27(3) and s27(4) of the Act for debiting and crediting carbon units to reflect United Kingdom's participation in the European Union Emissions Trading Scheme (EU ETS). Following the United Kingdom's exit from the European Union and the end of its participation in the EU ETS, and ahead of any new carbon unit trading arrangements, such as those under Article 6 of the Paris Agreement, no circumstances exist at the time these Regulations are made under which the United Kingdom would trade carbon units. For this reason, no provision is made in these Regulations pursuant to s27(3) and s27(4).

3.2 Until circumstances arise when the UK is again a participant in schemes or arrangements which use carbon units, the UK's accounting will be conducted on a territorial basis without adjustments for trading, pursuant to Section 29 and Section 89 of the Act.

3.3 These Regulations are in respect of only one category of carbon unit created under the Kyoto Protocol, which is Assigned Amount Units that are issued by the UK for the purposes of compliance with its commitments under the Kyoto Protocol, and which the UK will have instructed its national administrator to allocate into its UK KP registry, equating exactly to its assigned amount. Other units created under the Kyoto Protocol – Certified Emissions Reductions (CERs), Emission Reduction Units (ERUs)

and Removal Units (RMUs) - are out of scope of these Regulations as they are additional to the UK's emission reduction target under the Second Commitment Period and which are irrelevant to any determination of excess units for the purpose of s.27(5) of the Act.

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 These Regulations are made pursuant to Section 27 of the Act, which requires the Secretary of State to make Regulations in respect of carbon accounting. They are an important part of the system set up by the Act for limiting greenhouse gas emissions and monitoring progress.

6.2 The Kyoto Protocol was the first international climate change agreement to set legally binding emission reduction commitments for some parties, including the UK. The initial commitment period made under the Kyoto Protocol covered the years 2008 to 2012 ("the First Commitment Period"). In 2012 the Parties to the Kyoto Protocol agreed a Second Commitment Period covering the years 2013 to 2020. This was done by means of the Doha Amendment to the Kyoto Protocol which entered into force on 31 December 2020.

6.3 These Regulations contain provisions to meet Section 27(5) of the Act in relation to Second Commitment Period by:

a) requiring the Secretary of State, as soon as practicable after 31 March 2024, to determine a methodology to estimate the UK's performance against its international carbon unit allocations relative to its domestic carbon budgets.

b) where any excess carbon units exist, to ensure that these are not made available to offset emissions in the UK or elsewhere.

7. Policy background

What is being done and why?

7.1 Under the Kyoto Protocol, the UK was assigned emissions reduction targets. These were implemented in the form of assigned amounts under two periods: The First Commitment Period and the Second Commitment Period. These Regulations deal with the second commitment period.

7.2 The Act mandates a legally binding framework for the UK to achieve its goals of reducing greenhouse gas emissions and ensuring 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.

7.3 The Climate Change Act 2008 (2050 Target Amendment) Order 2019 legislated 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.

7.4 The Act established the concept of the "net UK carbon account", which is the number used to assess performance against the carbon budgets. The net UK carbon account is calculated by taking net UK emissions for a given period and then taking account of carbon units that represent the reduction, or avoidance of, greenhouse gas emissions overseas (credits), or in the UK (debits), that have been credited or debited in accordance with carbon accounting Regulations.

7.5 During the Second Commitment Period tradeable carbon units existed which could have been credited or debited to the net UK carbon account subject to Credit Limit Orders[1]. To date, the UK has not applied any such units against its net carbon account[2].

7.6 Under the Act, the Secretary of State may set demanding domestic targets which are more ambitious than those required under the international agreements such as the Kyoto Protocol. Where domestic carbon budgets are more ambitious than emissions reduction targets under the Kyoto Protocol, the UK will have excess carbon units from its allocation of carbon units that represents its Assigned Amount. These excess units could be sold to other countries or accounted for and applied towards meeting the UK's domestic carbon budgets. Section 27(5) of the Act requires that Regulations are made which contain provision for determining whether the total amount of carbon units allocated to the UK under other emission limitation arrangements represent net UK emissions greater than the Carbon Budget set under the Act. Where such a scheme is less ambitious than the Carbon Budget for the same period, provision must be made to ensure units from that scheme representing the difference are not made available to offset emissions in the UK or sold to other countries to offset their emissions.

7.7 These Regulations set out the methodology that will be used to determine excess AAUs as soon as practicable after 31 March 2024, following the release of final emissions estimates for the fifth year of Carbon Budget 3, when data for previous years will also be updated as required under Section 16(4) of the Act. In making the assessment, account will be taken of differences in the scope, time periods and methodologies under the Kyoto Protocol and the methodology followed in respect of carbon budgets.

7.8 The UK received its allocation allowance (Assigned Amount Units relating to years 2013-2020) in 2021, following the entry into force of Doha Amendment on 31 December 2020. The UK still has accounting obligations in relation to the Second Commitment Period, to demonstrate compliance with its emission limitation commitments. The Kyoto Protocol True-Up process provides the final tally of the

[1] These are set out in the Climate Change Act 2008 (Credit Limit) Order 2011 which sets the limit for 2013-2017 and the Climate Change Act 2008 (Credit Limit) Order 2016 which sets the limit for 2018-2022.
[2] This excludes any net use of credits which result from the operation of the European Union Emissions Trading System.

Party's assigned amount units (AAUs), emissions and removals for the Second Commitment Period.

7.9 The UK undertook the Kyoto Protocol True-Up process for the First Commitment Period in 2018, when the Government agreed to cancel outstanding AAUs. The True-Up process for the Second Commitment Period will be used to cancel these AAUs, as required under Carbon Accounting Regulations 2009.

7.10 The Secretary of State is required to ensure that any excess units should not be made available to offset emissions in the United Kingdom or elsewhere.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union 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.

10.2 The Department has engaged the Devolved Administrations regarding this instrument.

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.

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 A full 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 instrument 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 Rosana Mirkovic (Senior Policy Advisor, Carbon Accounting) at the Department for Energy Security and Net Zero Telephone: 020 7215 5796 or email: carbonbudgets@beis.gov.uk can be contacted with any queries regarding the instrument.

15.2 Joanna Warner and Helen Martin (Deputy Directors, Net Zero Strategy Directorate) at the Department for Energy Security and Net Zero can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Rt Hon Graham Stuart MP at the Department for Energy Security and Net Zero can confirm that this Explanatory Memorandum meets the required standard.