EXPLANATORY MEMORANDUM TO

THE CLIMATE CHANGE ACT 2008 (CREDIT LIMIT) ORDER 2021

2021 No. 749

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.

2. Purpose of the instrument

2.1 The Climate Change Act 2008 (Credit Limit Order) 2021 sets a limit on the number of carbon units that may be used to meet the fourth carbon budget which runs from 2023 to 2027.

2.2 This SI sets the limit on the net use of carbon units for the fourth budgetary period (2023-2027) at 55,000,000 carbon units, with each unit representing one tonne of carbon dioxide equivalent.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

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)

3.2 The territorial application of this instrument includes Scotland and Northern Ireland.

3.3 The powers under which this instrument is made cover the entire United Kingdom (see 'The Climate Change Act 2008') and the territorial application of this instrument is not limited either by the Act or by the instrument.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is to the whole of the United Kingdom.

4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

5.1 The Minister of State, Rt Hon Anne-Marie Trevelyan has made the following statement regarding Human Rights:

"In my view the provisions of the Climate Change Act 2008 (Credit Limit) Order 2021 are compatible with the Convention rights."

6. Legislative Context

6.1 The Climate Change Act 2008 ("the Act") requires the Secretary of State to reduce the 'net UK carbon account'' – the amount of net UK emissions after taking account of carbon units which have been credited and debited in accordance with regulations – to 100% below the level of net UK emissions in 1990, by 2050 (section 1).

6.2 With a view to meeting that target, the Secretary of State must set five year "carbon budgets'' representing the maximum level of the net UK carbon account for budgetary periods. The first five carbon budgets, covering the 2008-2012, 2013-2017, 2018-2022, 2023-2027 and 2028-2032 budgetary periods, have already been set. The sixth carbon budget, covering 2033-2037 must be set by 30 June 2021 (sections 4 and 8).

6.3 Under the Act, the Secretary of State has a duty to set a limit on the net amount of carbon units that can be credited to the net UK carbon account for each budgetary period.

6.4 The Carbon Accounting Regulations 2009 (S.I. 2009/1257) (the "2009 CARs") set out what "carbon units" are for the purposes of Part 1 of the Act; and the circumstances in which carbon units are to be debited from and credited to the "net UK carbon account" are set out in carbon accounting regulations made under section 27(3) of the Act. The latest carbon accounting regulations, made in respect of 2019, are the Carbon Accounting (Provision for 2019) Regulations 2021 (S.I. 2021/189).

6.5 The Climate Change Act 2008 (Credit Limit) Order 2021 makes reference to carbon units that will be credited to, or debited from, the net UK carbon account with respect to each year of the 2023 to 2027 budgetary period. The accounting treatment for this period is yet to be determined; it will either be on the basis of the 2009 CARs, or bespoke regulations for the period (which, if required, would be made under section 27(3) of the Act no later than March 2025).

7. Policy background

What is being done and why?

7.1 Carbon units represent the reduction, or avoidance of, greenhouse gas emissions overseas.

7.2 The Act places a requirement on the Secretary of State to set a limit on the net amount of carbon units that can be credited to the net UK carbon account during each budgetary period. In addition, section 15 of the Act requires that the Government must have regard to the need for UK domestic action on climate change.

7.3 Article 2 of this instrument sets the limit on the net use of carbon units for the fourth budgetary period (2023-2027) at 55,000,000 carbon units, with each unit representing one tonne of carbon dioxide equivalent.

7.4 This limit excludes any net use of credits which result from the operation of the European Union Emissions Trading System ("the EU ETS"). The exclusion is required because, while the UK Emissions Trading Scheme replaced the UK's participation in the EU ETS on 1 January 2021, Northern Ireland electricity generators continue to participate in the EU ETS and so will receive EU ETS allowances within the fourth budgetary period.

7.5 The UK is currently projected to meet the fourth carbon budget. However, factors outside the Government's direct control could change this assessment at short notice. The credit limit is considered to provide an appropriate level of flexibility to account for the uncertainty about future emissions. The ability to purchase credits could also enable the UK to support mitigation action in developing countries. A purchase of credits would contribute to the development of a global carbon market, which would reduce the global cost of action on climate change.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union or 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 The Act does not require public consultation on the issue of setting the credit limit for the fourth carbon budget covered by the Order to which this Explanatory Memorandum relates.

10.2 However, there are some specific consultation requirements contained in the Act. The Secretary of State must take into account the advice of the Committee on Climate Change's advice provided under section 34(1)(b) in relation to the budgetary period and must consult the Devolved Administrations before laying the draft Order proposing the credit limit for each budgetary period.

10.3 The Secretary of State has taken into account the views of the Committee on Climate Change who advised Government that there should be no use of credits to meet the fourth carbon budget. The government also consulted the Devolved Administrations in reaching a decision on the credit limit. This is set out in the Impact Assessment.

11. Guidance

11.1 No guidance has been published in relation to the matters contained in the Order, because the memorandum, alongside the Impact Assessment, provides the full background to the Government's decision.

12. Impact

12.1 There is no, or no significant, impact on business, charities, or voluntary bodies.

12.2 There is no impact on the public sector.

12.3 A full Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website.

13. Regulating small business

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

14. Monitoring & review

14.1 We will continue to track progress of emission projections against the fourth carbon budget, and to update our published emission projections annually.

15. Contact

15.1 The Carbon Budgets Team at the Department for Business, Energy and Industrial Strategy email: carbonbudgets@beis.gov.uk can be contacted with any queries regarding the instrument.

15.2 Sarah James, Deputy Director for Net Zero and 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 Anne-Marie Trevelyan MP (Minister for Business, Energy and Clean Growth) at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.