EXPLANATORY MEMORANDUM TO

THE CARBON BUDGET ORDER 2011

2011 No. XXXX

1. This explanatory memorandum has been prepared by the Department of Energy and Climate Change and is laid before Parliament by Command of Her Majesty.

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

2. Purpose of the instrument

2.1 The Carbon Budget Order 2011 sets the carbon budget for the fourth budgetary period (2023 – 2027) (the fourth carbon budget).

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

None

4. Legislative Context

4.1 The Climate Change Act 2008 ("the Act") requires the Secretary of State to ensure that the "net UK carbon account" for 2050 is at least 80% lower than the 1990 baseline (section 1). The net UK carbon account is the amount of net UK emissions of targeted greenhouse gases for a period reduced by the amount of carbon units credited to the net UK carbon account and increased by the amount of carbon units debited from the net UK carbon account for that period. The Secretary of State must make regulations about the circumstances in which carbon units may be credited to or debited from the UK net carbon account under section 27 of the Act[1] The '1990 baseline' is defined in the Climate Change Act 2008 as 1990 emissions of carbon dioxide, methane and nitrous oxide and 1995 emissions for the fluorinated gases.

4.2 With a view to meeting the 2050 target, the Secretary of State must set five year "carbon budgets" representing the maximum level of the net UK carbon account for these budgetary periods. The fourth carbon budget must be set not later than the 30 June 2011 (sections 4(2)(b) and 8).

4.3 The Carbon Budgets Order 2009 (S.I. 2009/1259) sets the first three carbon budgets for the purposes of section 4(2)(a) of the Act. These carbon budgets cover the periods 2008-2012, 2013-2017, 2018-2022. A separate Explanatory Memorandum was prepared in relation to them.

---

1 The Carbon Accounting Regulations 2009 and the Carbon Accounting (Amendment) Regulations 2009, SI 2009 No. 1257 and SI 2009 No. 3146, respectively, available from: www.opsi.gov.uk/si/si2009/uksi_20091257_en_1 and www.opsi.gov.uk/si/si2009/uksi_20093146_en_1

4.4 The fourth carbon budget is subject to the affirmative resolution procedure as per section 8(3) of the Act.

5. Territorial Extent and Application

5.1 This instrument extends to the whole of the United Kingdom.

6. European Convention on Human Rights

The Minister of State, Gregory Barker MP has made the following statement regarding Human Rights:

"In my view the provisions of The Carbon Budget Order 2011 are compatible with the Convention rights."

7. Policy background

The fourth carbon budget

7.1 The fourth carbon budget is the total permissible level of the net UK carbon account for the five year period 2023–2027. The level is set out in Article 2 of The Carbon Budget Order 2011, following the advice of the Committee on Climate Change on 7 December 2010. The proposed fourth carbon budget level is consistent with the 2050 target specified in Article 1 of the Act, as required by section 8(2)(a) of the Act. The Carbon Budget Order 2011 is of political and legal importance in that it fulfils the requirements as set out in section 4(2)(b).

7.2 The Government has set out its response to the Committee's advice in more detail in the document 'Implementing the Climate Change Act 2008; The Government`s proposal for setting the fourth carbon budget' published alongside this Order. This includes an explanation of how the factors in section 10 of the Act have been taken into account.

7.3 The Government is required by section 14 of the Act to publish a report of its proposals and policies for meeting the carbon budgets as soon as is reasonably practicable after setting the carbon budgets. That report will be published later this year 2011.

The definitions of "international aviation" and "international shipping"

7.4 Emissions from international aviation and shipping are not included in the targets and budgets set out in the Act. The Act does however place a requirement on the Secretary of State to make regulations to provide for their inclusion by 31 December 2012, or explain to Parliament why these regulations have not been made. As of the date of laying the Carbon Budgets Order 2011 no regulations have yet been made.

8. Consultation outcome

8.1 The Act does not require public consultation on the issue covered by the Order to which this Explanatory Memorandum relates. However, there are some specific consultation requirements. The Secretary of State must take into account the Committee on Climate Change's advice 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.

8.2 The Secretary of State is also required to publish a statement setting out how the views of the Devolved Administrations have been taken into account as per section 9(3) of the Act, this is set out in the document, 'Implementing the Climate Change Act 2008; the Government`s proposal for setting the fourth carbon budget'.

9. Guidance

9.1 No guidance has been published in relation to the matters contained in the Order. This memorandum, alongside the document, 'Implementing the Climate Change Act 2008; the Government`s proposal for setting the fourth carbon budget', provide the full background to the Government's decision. This document can be found at the following: www.decc.gov.uk/en/content/cms/what_we_do/lc_uk/carbon_budgets/carbon_budgets.aspx.

10. Impact

10.1 An Impact Assessment (IA) on the fourth carbon budget level has been published. This presents the analytical evidence that informs the setting of the proposed level of the fourth carbon budget. It also sets out the need for the UK to be on a cost effective emissions pathway to 2050 in order to meet its statutory obligations contained within the Act. The IA can be found at www.decc.gov.uk/en/content/cms/what_we_do/lc_uk/carbon_budgets/carbon_budgets.aspx, and has been attached as an Annex to this Memorandum.

10.2 The Cost of meeting the fourth carbon budget level would depend heavily on how we choose to meet it, with the least cost path incurring a net cost of £1.9bn over the fourth carbon budget period, rising to a net cost of £7bn if we met the budget purely through cutting emissions in the UK. These figures represent net costs over the 5 year period of the fourth carbon budget only, and no other period, and assume that the EU ETS cap is tightened sufficiently. The fourth carbon budget impact assessment (IA) explains how these costs have been arrived at. The can be found at www.decc.gov.uk/en/content/cms/what_we_do/lc_uk/carbon_budgets/carbon_budgets.aspx.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 Section 21 of the Act provides a power to amend an order setting a carbon budget where certain criteria can be satisfied. In particular, the UK may need to amend the level of the fourth carbon budget in the future following developments in scientific knowledge about climate change or European or international law or policy.

13. Contact

David Bull at the Department of Energy and Climate Change Tel: 0300 068 6996 or email: David.Bull@Decc.gsi.gov.uk can answer any queries regarding the instrument.