EXPLANATORY MEMORANDUM TO

THE CLIMATE CHANGE ACT 2008 (CREDIT LIMIT) ORDER 2011

2011 No. [ ]

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

2.2 The Climate Change Act 2008 (Credit Limit) Order 2011 sets a limit on the use of international carbon units that may be used to help meet the carbon budget which runs from 2013 to 2017.

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

3.1 None.

4. Legislative Context

4.1 Under the Climate Change Act 2008 ("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. The limit for the second budgetary period (2013-2017) must be set no later than 30 June 2011 (section 11).

4.2 The Carbon Accounting Regulations 2009[1] set out what the "carbon units"[2] are for the purposes of Part 1 of the Act, and the circumstances in which they are to be debited from and credited to the net UK carbon account for the first budgetary period which covers 2008-12. The Climate Change Act 2008 (Credit Limit) Order 2011 makes reference to carbon units credited to or debited from the net UK carbon account in respect of each year of the 2013-2017 budgetary period in accordance with regulations which have yet to be made under section 27(3) of the Act in respect of that budgetary period. Accordingly, the Government will be bringing forward proposals amending the 2009 Regulations that will apply to the 2013-2017 budgetary period in due course.

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:

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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

2 The following are carbon units; assigned amount units, European Union allowances, certified emission reductions, emission reduction units and removal units. Each carbon unit has a value of 1 tonne of carbon dioxide equivalent.

"In my view the provisions of the Climate Change Act 2008 (Credit Limit) Order 2011 are compatible with the Convention rights."

7. Policy background

- What is being done and why

7.1 "Carbon credits" (or, in the language of the Act, carbon units credited to the net UK carbon account) are units representing reductions in emissions. The carbon units for the purposes of the Act are set out in the Carbon Accounting Regulations 2009 which apply for the first carbon budget period of 2008-2012. As explained above, the Government will be bringing forward proposals amending the Carbon Accounting Regulations 2009 which will apply to the second carbon budget period of 2013-2017 in due course.

7.2 The use of carbon credits in meeting carbon budgets was controversial during the passage of the Climate Change Bill, and this is reflected in the Act by a requirement placed 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 Government must have regard to the need for UK domestic action on climate change.

7.3 Article 3 of the Climate Change Act 2008 (Credit Limit) Order 2011 sets the limit on the net use of carbon units for the second budgetary period (2013–2017) at 55, 000,000 tonnes of carbon dioxide equivalent, but that limit excludes any net use of credits which results from the operation of the European Union Emissions Trading System ("the EU ETS").

7.4 The 55,000,000 tonnes of carbon dioxide equivalent limit is consistent with the flexibility mechanism provided by international rules under the EU Effort Sharing Decision ("EU ESD")[3] which applies to the non-traded sector (i.e. sectors outside the EU ETS) from 2013 to 2020. The Government is not planning to use credits to help meet the second carbon budget but the limit would allow the use of credits purely as a contingency, in the event that expected domestic emissions reductions are not fully realised, and is strongly committed to meeting the second budget through domestic action alone The EU ESD sets out a collective EU percentage reduction target for 2020, as part of which the UK is required to reduce its greenhouse gas emissions in the non-traded sector by 16 per cent on 2005 levels through binding annual reduction targets from 2013 to 2020 . In meeting these reduction targets, the EU ESD provides flexibility mechanisms which allow the limited use of credits, such as Certified Emission Reductions (CERs) generated by the Clean Development Mechanism. The annual limit on the use of credits is 3 per cent of Member States' 2005 non-traded sector emissions which for the UK is calculated to be approximately 55,000,000 tonnes of carbon dioxide equivalent in total over the five year second carbon budget period.

7.5 For the traded sector, where the EU ETS applies, participants have their emissions capped and must surrender a sufficient number of European Union Allowances ("EUAs") to cover their emissions in each scheme period. Participants may also surrender, up to a specified limit, other types of carbon units representing the same amount of carbon dioxide (or equivalent) to offset part of their emissions, including CERs generated under the Clean Development Mechanism in developing countries.

7.6 The scheme operates at European level, and it is theoretically possible

3 Decision No 406/2009/EC of the European Parliament and of the Council of 23rd April 2009 on the effort of Member States to reduce their greenhouse gas emissions to meet the Community's greenhouse gas emission reduction commitments up to 2020

for United Kingdom's emissions covered by the scheme to increase; that is acceptable under the EU ETS because any such increase would be offset by emissions reductions elsewhere and the overall EU ETS cap would still be met.

7.7 For that reason, the Government considers any crediting and debiting of carbon units which results from the EU ETS should be ignored in determining whether the limit has been reached, and that this is justified because the EU ETS sets a fixed cap at European level on the emissions it covers, and limits the use of carbon units representing emissions reductions outside the EU to contribute to that cap, leading to overall reductions in emissions. This approach is permitted under section 11(5) of the Act.

- Consolidation

7.8 None

8. Consultation outcome

8.1 The Act does not require public consultation on the issue of setting the credit limit for the second carbon budget period covered by the order to which this Explanatory Memorandum relates.

8.2 However, there are 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 credit limit for each budgetary period.

8.3 The Committee on Climate Change advised Government to set a zero limit on the use of carbon units in sectors outside the EU ETS (the 'non-traded' sector) for the second carbon budget since use of credits would, in its view, substitute for appropriate domestic action[4].The Devolved Administrations either agreed with the Committee's recommendation or had no objection to setting a zero limit.

9. Guidance

9.1 No guidance has been published in relation to the matters contained in the Order, because none is considered to be required. This memorandum provides a full explanation of the background.

10. Impact

10.1 The impact on business, charities or voluntary bodies is none.

10.2 The impact on the public sector is none.

10.3 An Impact Assessment is attached to this memorandum and will be published on the DECC website: http://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.

4 The Committee on Climate Change's advice on setting the second carbon budget credit limit can be found here: http://www.theccc.org.uk/news/press-releases/923-ccc-advises-that-government-meets-carbon-budgets-through-domestic-action-alone-and-not-through-use-of-offset-credits-22-march-11

12. Monitoring & review

12.1 The Government is currently working with EU partners to try to secure an EU 2020 reduction target of 30%, an increase from the current requirement to reduce emissions by 20% against the 1990 baseline. Should an agreement be reached to do so at EU level, and following negotiations to determine the burden share for each Member State, the Government may need to tighten the second (2013-17) and third carbon budgets(2018-22) and re-consider the role of carbon credits in meeting them.

13. Contact

Suzanne Al-Dabbagh at the Department of Energy and Climate Change Tel: 0300 068 5230 or email: suzanne.al-dabbagh@decc.gsi.gov.uk can answer any queries regarding the instrument.