EXPLANATORY MEMORANDUM TO

THE CLIMATE CHANGE (TARGETED GREENHOUSE GASES) ORDER 2022

2022 No. [XXXX]

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 His Majesty.

2. Purpose of the instrument

2.1 This Statutory Instrument extends the scope of emissions captured and reported under the Climate Change Act 2008 ("the CCA") by including nitrogen trifluoride ("NF_3") as a targeted greenhouse gas from the coming into force of this instrument. This means that NF_3 emissions will be included within the scope of emissions for the Annual Statement of Emissions 2021 (published by 31st March 2023), the full accounting period for the UK's Third Carbon Budget ("CB3"), and for subsequent carbon budgets.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The impact of this instrument primarily falls on the Secretary of State, who has reporting requirements in relation to greenhouse gases and targeted greenhouse gases. Those new requirements will not be onerous and do not require immediate changes in behaviour in the public sector. Other impacts are similarly not onerous nor require immediate changes in behaviour. The small number of large and medium size businesses which are involved in the production or consumption of NF_3 will have additional reporting requirements but these will not be significantly more onerous than before (indeed many such businesses already voluntarily report on NF_3 emissions, as recommended in current guidance, and the process of reporting on other greenhouse gases is well-established) and will not require such businesses to adopt different patterns of behaviour. As a result, the instrument will come into force at the earliest date after approval (one day after the day it is made) to ensure alignment with international reporting practice and to make this important contribution to meeting the global climate objective as soon as possible.

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 whole of the United Kingdom together with UK coastal waters and the UK sector of the continental shelf (see section 89 of the CCA).

5. European Convention on Human Rights

5.1 The Rt Hon Graham Stuart MP has made the following statement regarding Human Rights:

"In my view the provisions of the Climate Change (Targeted Greenhouse Gases) Order 2022 is compatible with the Convention rights."

6. Legislative Context

6.1 The CCA 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 at least 100% below the level of net UK emissions in 1990, by 2050 (section 1).

6.2 The CCA also requires the Secretary of State to set a "carbon budget" for each five-year period and to ensure the net UK carbon account for that period does not exceed this budget (section 4).

6.3 The CCA uses the term "targeted greenhouse gas" to describe gases covered by the target and budgets in the Act. This instrument will add NF_3 to the list of targeted greenhouse gases in the CCA.

6.4 The UK is required under the CCA to report greenhouse gas emissions consistently with international reporting practices. As of 2021, all international reporting practice has been to include NF_3 as a targeted greenhouse gas. Adding NF_3 to the list of targeted greenhouse gases under the CCA will enable its inclusion in the Annual Statement of Emissions ("ASE") for 2021, which will be reported to Parliament by 31st March 2023 as required under the CCA. The base year (against which progress to reduce emissions is measured) will be set for NF_3 emissions as 1995, consistent with other targeted greenhouse gases and as communicated to the UNFCCC[1].

6.5 In order to be a targeted greenhouse gas, a gas must be a greenhouse gas within the meaning given in section 92 of the CCA. That definition is therefore also amended by this instrument. The term "greenhouse gas" in section 92 is referenced in other UK legislation. The amendment to section 92 will apply to all legislation referring to section 92 except in the case of the Occupational Pension Schemes (Climate Change Governance and Reporting) Regulations 2021 and corresponding regulations in Northern Ireland (the Occupational Pension Schemes (Climate Change Governance and Reporting) Regulations (Northern Ireland) 2021). A review of these pension regulations is scheduled for 2023. The amendments maintain the existing meaning of "greenhouse gas" for those Regulations and the issue will be considered further as part of the planned review.

7. Policy background

7.1 NF_3 is a potent greenhouse gas primarily used in the manufacture of electronics. NF_3 has not previously been reported under the CCA as a targeted greenhouse gas, and so is not included when assessing progress against the UK's carbon budgets.

7.2 In 2013, the UNFCCC mandated the inclusion of NF_3 in all national greenhouse gas inventories ("GHGI"), and it was included in the list of target gases in the 2nd commitment period of the Kyoto Protocol (2013-2020).

[1] The UK's Nationally Determined Contribution under the Paris Agreement https://www.gov.uk/government/publications/the-uks-nationally-determined-contribution-communication-to-the-unfccc

7.3 NF_3 emissions are already captured within UK greenhouse gas emissions publications[2] and its Nationally Determined Contribution as communicated under Article 4 of the Paris Agreement[3].

7.4 Emissions from NF_3 are currently less than 0.01MtCO_2e per year. The inclusion of NF_3 as a targeted greenhouse gas under the CCA will therefore not materially impact on delivery against the UK's carbon budgets.

7.5 NF_3 emissions will be included within the CCA targeted greenhouse gases list with a base year for NF_3 emissions of 1995.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / 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 instrument does not require public consultation, however there are some specific consultation requirements.

10.2 The Secretary of State must obtain and take into account advice from the Committee on Climate Change ("CCC") before making regulations to designate a new targeted greenhouse gas and set its base year.

10.3 The Secretary of State has obtained and taken into account the advice of the CCC[4]. The CCC has advised that NF_3 should be included as a targeted greenhouse gas.

10.4 The Secretary of State must also consult the Scottish Ministers, the Welsh Ministers and the Department of Agriculture, Environment and Rural Affairs in Northern Ireland before making the NF_3 provisions. Each has been consulted and are satisfied with the content of the Order.

10.5 As this instrument amends primary legislation in a way which affects areas of devolved legislative competence, consent will be sought from the Senedd Cymru via a Statutory Instrument Consent Motion.

11. Guidance

11.1 No guidance has been published in relation to the matters contained in the Order.

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[2] 2020 UK Greenhouse Gas Emissions, Final Figures https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1051408/2020-final-greenhouse-gas-emissions-statistical-release.pdf

[3] The UK's Nationally Determined Contribution under the Paris Agreement https://www.gov.uk/government/publications/the-uks-nationally-determined-contribution-communication-to-the-unfccc

[4] The CCC. Letter: Inclusion of Nitrogen Trifluoride (NF_3) as a targeted greenhouse gas https://www.theccc.org.uk/publication/letter-inclusion-of-nitrogen-trifluoride-nf3-as-a-targeted-greenhouse-gas/

12. Impact

12.1 A full Impact Assessment has not been prepared for this instrument because, in line with Better Regulation guidance, the Government considers that the net impact on businesses will be less than £5 million a year. Due to this limited impact, a de minimis assessment has been carried out.

12.2 There is no, or no significant, impact on the public sector. There is no, or no significant, impact on business, charities or voluntary bodies. This instrument will bring NF_3 into scope of reporting requirements under the Companies Act 2006, and Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008. This may impact a small number of UK businesses. The overall impact relating to these reporting requirements is expected to be small due to: the small number of businesses involved in the production or consumption of NF_3; pre-existing guidance already requesting voluntary reporting of NF_3; and exemptions that exist to prevent Streamlined Energy and Carbon Reporting ("SECR") placing undue costs on businesses which may apply given the likely small scale of NF_3 emissions at corporate level.

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 makes regulatory provision to the extent that it has an impact on business reporting requirements, as described in paragraph 12.2 of this Memorandum. The instrument does not include a statutory review clause in respect of such regulatory provision as, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, the Rt Hon Graham Stuart MP has made the following statement:

"A statutory review clause has not been included as the impacts of the regulatory provision will not be significant and there are no other factors which would make it desirable to include a review clause."

15. Contact

15.1 David Barker (Senior Policy Advisor, Carbon Accounting) Telephone: 07500 336391 Email: David.Barker@beis.gov.uk at the Department for Business, Energy and Industrial Strategy can be contacted with any queries regarding the instrument.

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

15.3 The Rt Hon Graham Stuart MP at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.