

HOUSE OF LORDS

Merits of Statutory Instruments Committee

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33rd Report of Session 2010–12

Drawing special attention to:

# **Draft Carbon Budget Order 2011**

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*The Select Committee on the Merits of Statutory Instruments*

The Committee has the following terms of reference:

The Committee shall, subject to the exceptions in paragraph (2), consider—

every instrument (whether or not a statutory instrument), or draft of an instrument, which is laid before each House of Parliament and upon which proceedings may be, or might have been, taken in either House of Parliament under an Act of Parliament;

every proposal which is in the form of a draft of such an instrument and is laid before each House of Parliament under an Act of Parliament,

with a view to determining whether or not the special attention of the House should be drawn to it on any of the grounds specified in paragraph (3).

The exceptions are—

remedial orders, and draft remedial orders, under section 10 of the Human Rights Act 1998; draft orders under sections 14 and 18 of the Legislative and Regulatory Reform Act 2006, and subordinate provisions orders made or proposed to be made under the Regulatory Reform Act 2001;

Measures under the Church of England Assembly (Powers) Act 1919 and instruments made, and drafts of instruments to be made, under them.

The grounds on which an instrument, draft or proposal may be drawn to the special attention of the House are—

that it is politically or legally important or gives rise to issues of public policy likely to be of interest to the House;

that it may be inappropriate in view of changed circumstances since the enactment of the parent Act;

that it may inappropriately implement European Union legislation;

that it may imperfectly achieve its policy objectives.

The Committee shall also consider such other general matters relating to the effective scrutiny of the merits of statutory instruments and arising from the performance of its functions under paragraphs (1) to (3) as the Committee considers appropriate, except matters within the orders of reference of the Joint Committee on Statutory Instruments.

*Members*

The members of the Committee are:

Rt Hon. Baroness Butler-Sloss GBE

Lord Eames OM

Rt Hon. Lord Goodlad (*Chairman*)

Baroness Hamwee

Lord Hart of Chilton

Lord Lucas

Lord Methuen

Rt Hon. Baroness Morris of Yardley

Lord Norton of Louth

Lord Plant of Highfield

Rt Hon. Lord Scott of Foscote

*Registered interests*

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Declared interests for this Report are in the Appendix.

*Publications*

The Committee's Reports are published by the Stationery Office by Order of the House in hard copy and on the internet at [www.parliament.uk/parliamentary\\_committees/merits.cfm](http://www.parliament.uk/parliamentary_committees/merits.cfm)

*Contacts*

If you have a query about the Committee or its work, please contact the Clerk of the Merits of Statutory Instruments Committee, Delegated Legislation Office, House of Lords, London SW1A 0PW; telephone 020 7219 8821; fax 020-7219 2571; email [merits@parliament.uk](mailto:merits@parliament.uk). The

Committee's website, [www.parliament.uk](http://www.parliament.uk), has guidance for the public on how to contact the Committee if you have a concern or opinion about any new item of secondary legislation.

*Statutory instruments*

The National Archives publishes statutory instruments on the internet on behalf of the Government at [www.legislation.gov.uk/ukxi](http://www.legislation.gov.uk/ukxi), together with an explanatory memorandum (a short, plain-English explanation of what the instrument does) for each instrument.

# Thirty-third Report

## INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

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**The Committee has considered the following instruments and has determined that the special attention of the House should be drawn to them on the grounds specified.**

### **Draft Carbon Budget Order 2011**

*Date laid: 17 May 2011*

*Parliamentary Procedure: affirmative*

*Summary: The Climate Change Act 2008 requires the Secretary of State to: ensure that the net UK carbon account for 2050 is at least 80% lower than the 1990 baseline; and set five year carbon budgets representing the maximum level of the net UK carbon account for these budgetary periods. This draft Order sets the carbon budget for 2023 to 2027, the fourth budgetary period. The draft Order has been laid with an Explanatory Memorandum, an Impact Assessment and a supporting policy statement. Given the position of the fourth carbon budget in the UK's framework for reducing greenhouse gas emissions, there are a number of strategic issues which the House may wish to explore further. These include: the ambitious nature of the fourth carbon budget; the importance of the supporting package of policy initiatives; and whether the draft Order will provide sufficient certainty for investors. The Government has also laid the draft Climate Change Act 2008 (Credit Limit) Order 2011 which 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.*

**This Order is drawn to the special attention of the House on the grounds that it gives rise to issues of public policy likely to be of interest to the House.**

1. The Climate Change Act 2008 requires the Secretary of State to ensure that the net UK carbon account for 2050 is at least 80% lower than the 1990 baseline. 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. 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 (Explanatory Memorandum (EM) paragraphs 4.1 and 4.2).
2. The Draft Carbon Budget Order 2011 ("the draft Order") sets the carbon budget for 2023 to 2027, the fourth budgetary period, at 1,950 million tonnes of carbon dioxide equivalent. The draft Order follows the advice of the Committee on Climate Change. The first three carbon budgets were set by the Carbon Budgets Order 2009, which was drawn to the special attention of the House by the Committee on the ground that it gave rise to issues of public policy likely to be of interest to the House [MSIC 15th Report of Session 2008-09; 7 May 2009]. The draft Order is accompanied by the draft Climate Change Act 2008 (Credit Limit) Order 2011 which 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. Besides the EM, the draft Order has been laid with an Impact Assessment (IA), and was the subject of an oral statement by Lord Marland, Parliamentary Under-Secretary of State at the Department of Energy and Climate Change [HL Deb 17 May 2011 cols 1289-1300]. The Government has published a policy statement<sup>1</sup> further explaining their proposals for the fourth carbon budget (the “policy statement”). The Committee recognises the complexity of this area, and notes the efforts made by the Government to provide Parliament and others with a comprehensive account of the development of the policy.
4. Given the position of the fourth carbon budget in the UK’s framework for reducing greenhouse gas emissions, the draft Order raises a number of strategic issues which the House may wish to explore further.

#### **An ambitious target**

5. The Government is clear that the fourth carbon budget is ambitious. However, the policy statement says that the budget is based on the best evidence available and on analysis that taking ambitious early action is more cost-effective than delaying it and leaving emissions reductions to later (policy statement paragraphs 14 and 15). The policy statement also says that because the fourth carbon budget is further ahead in time than the previous three budgets, there is greater uncertainty about the technical feasibility and risks (policy statement paragraph 14). The IA provides detailed discussion around some of the issues, including: the limitations of the evidence base (IA page 27); uncertainties around international negotiations (IA page 19); and whether international aviation and shipping are included in the scope of the carbon budgets in the future (IA page 39).

#### **Climate change and energy initiatives**

6. Whether the UK can stay within the level of the fourth carbon budget will depend to a large extent on the Government’s other initiatives on climate and energy policy. The policy statement identifies a number of initiatives, such as the Green Deal which it says will boost action by households and businesses in energy efficiency measures (policy statement page 10), and the early investment in Carbon Capture and Storage (policy statement page 3). However, a key development will be the package of measures to help the energy-intensive industries adjust to the low carbon industrial transformation while remaining competitive, and the Government does not intend announcing these until the end of the year (policy statement page 10).

#### **Certainty for investors?**

7. When the draft Order was laid, the Government said<sup>2</sup> that it would give investors the certainty they need to invest in clean energy. However, some of the commentary<sup>3</sup> has suggested that the situation may be more nuanced,

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<sup>1</sup> ‘Implementing the Climate Change Act 2008: the Government’s proposal for setting the fourth carbon budget - Policy Statement, May 2011 (Available at: [http://www.decc.gov.uk/en/content/cms/what we do/lc\\_uk/carbon\\_budgets/carbon\\_budgets.aspx](http://www.decc.gov.uk/en/content/cms/what_we_do/lc_uk/carbon_budgets/carbon_budgets.aspx))

<sup>2</sup> UK proposes Fourth Carbon Budget (Press notice): DECC press release 17 May 2011

<sup>3</sup> For example: ‘EEF disappointed with Carbon Budget decision’ – available on *EEF – The Manufacturers Organisation* website at: <http://www.eef.org.uk/policy-media/releases/uk/2011/EEF-disappointed-with-Carbon-Budget-decision.htm>; ‘Carbon budget welcomed’ – available on the *Friends of the Earth* website at: [http://www.foe.co.uk/news/carbon\\_budgets\\_30837.html](http://www.foe.co.uk/news/carbon_budgets_30837.html); and ‘Climate change policy tracker – 6th edition’

with the European negotiations being cited by some as a complicating factor. The Government will review the budget in 2014 to ensure consistency with the EU Emissions Trading System (policy statement page 4). Although the 2014 review was debated following the oral statement [HL Deb 17 May 2011 cols 1289-1300], given the importance of this issue the House may wish to revisit it when the draft Order is debated.

## OTHER INSTRUMENTS OF INTEREST

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### ***Export Control (Eritrea and Miscellaneous Amendments) Order 2011***

8. This Order makes provision relating to the enforcement of certain restrictive measures against Eritrea set out in Council Regulation (EU) 667/2010 of 26 July 2010. The measures include: restrictions on the provision to any person or entity in Eritrea of technical and financial assistance related to military activities and goods; restrictions on the supply of military equipment and related technical and financial assistance to designated persons or entities outside Eritrea; and travel restrictions and asset freezes against those designated persons or entities (Explanatory Memorandum (EM) paragraph 4.1). The Order also includes a technical amendment to the Export Control (North Korea) Order 2007 which updates the reference to the EU Regulation concerning restrictive measures against North Korea (EM paragraph 7.4).

### ***Export Control (Iran) Order 2011***

9. This Order makes provisions relating to the enforcement of certain restrictive measures against Iran set out in Council Regulation (EU) No 961/2010 of 25 October 2010. The measures include restrictions on trade in dual-use goods and technology, as well as equipment which may be used for internal repression, restrictions on trade in key equipment and technology for the Iranian oil and gas industry, restrictions on financing of certain Iranian related enterprises and restrictions on Iranian investment in the uranium mining and nuclear industry. The Explanatory Memorandum (EM) says the Order is in line with the Government's policy to implement EU legislation in a timely and appropriate manner (EM paragraph 7.3).

### ***Export Control (Syria and Miscellaneous Amendments) Order 2011***

10. This Order makes provision relating to the enforcement of certain restrictive measures against Syria set out in Council Regulation (EU) No 442/2011. The measures include prohibitions on trade, technical assistance, financing, financial assistance or brokering in equipment which may be used for internal repression and restrictions on the provision of technical assistance, financing or financial assistance related to the goods and technology listed in the Common Military List of the European Union to any entity or body in Syria or for use in Syria. The Explanatory Memorandum (EM) says that the Government considers that in order to give effect to the UK's European obligations in respect of Syria, it is necessary for the Order to come into effect as soon as possible (EM paragraph 3.3). The Committee also recently identified the Syria (Asset-Freezing) Regulations 2011 (SI 2011/1244) concerning asset freezing measures in relation to Syria as an instrument of interest [MSIC 32nd Report of Session 2010-12; 25 May 2011].

### ***Disabled Persons (Badges for Motor Vehicles) (England) (Amendment) Regulations 2011***

11. The instrument amends the Disabled Persons (Badges for Motor Vehicles) (England) Regulations 2000 to extend eligibility for a disabled person's parking permit ("Blue Badge"). The amendments close the loophole for disabled children between the ages of 2 and 3 years with certain medical conditions. They also simplify the system for certain service personnel and war veterans ("SPWV") assessed as having a permanent disability which

causes them inability or considerable difficulty in walking. SPWV Badge holders will have “continuous automatic entitlement” to a Blue Badge, meaning they will remain eligible without needing to undergo any further assessment (like those who are registered blind). This is the first phase of amendments following an extensive review of the scheme, a further set of regulations is expected in the autumn and a few changes will require primary legislation when the opportunity arises.

## **INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE**

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**The Committee has considered the instruments set out below and has determined that the special attention of the House need not be drawn to them.**

### **Draft Instruments subject to affirmative approval**

Climate Change Act 2008 (Credit Limit) Order 2011  
 Communications Act 2003 (Maximum Penalty for Contravention of Information Requirements) Order 2011  
 Co-operation in Public Protection Arrangements (UK Border Agency) Order 2011  
 Immigration (Provision of Physical Data) (Amendment) Regulations 2011  
 Nationality, Immigration and Asylum Act 2002 (Juxtaposed Controls) (Amendment) Order 2011  
 Legal Services Act 2007 (Appeals from Licensing Authority Decisions) Order 2011  
 Legal Services Act 2007 (The Law Society and The Council for Licensed Conveyancers) (Modification of Functions) Order 2011

### **Instruments subject to annulment**

SI 2011/1213 Transfer of Functions (Museum and Other Staff) Order 2011  
 SI 2011/1279 Tractor etc (EC Type-Approval) (Amendment) Regulations 2011  
 SI 2011/1294 Occupational Pension Schemes (Contracting-out) Amendment Regulations 2011  
 SI 2011/1296 Export Control (Eritrea and Miscellaneous Amendments) Order 2011  
 SI 2011/1297 Export Control (Iran) Order 2011  
 SI 2011/1301 Investment Bank Special Administration (England and Wales) Rules 2011  
 SI 2011/1304 Export Control (Syria and Miscellaneous Amendments) Order 2011  
 SI 2011/1307 Disabled Persons (Badges for Motor Vehicles) (England) (Amendment) Regulations 2011  
 SI 2011/1327 Medicines (Miscellaneous Amendments) Order 2011  
 SI 2011/1328 Family Procedure (Amendment) Rules 2011  
 SI 2011/1329 Magistrates' Courts (Enforcement or Variation of Orders Made in Family Proceedings and Miscellaneous Provisions) Rules 2011  
 SI 2011/1331 Community Legal Service (Financial) (Amendment) Regulations 2011  
 SI 2011/1345 Adoption and Children (Scotland) Act 2007 (Consequential Provisions) (Amendment) Order 2011  
 SI 2011/1347 Yarmouth (Isle of Wight) Harbour Revision Order 2011

SI 2011/1366 Immigration Services Commissioner (Application Fee) Order 2011

SI 2001/1367 General Pharmaceutical Council (Continuing Professional Development and Consequential Amendments) Rules Order of Council 2011

## **APPENDIX: INTERESTS AND ATTENDANCE**

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Committee Members' registered interests may be examined in the online Register of Lords' Interests at [www.publications.parliament.uk/pa/ld/ldreg.htm](http://www.publications.parliament.uk/pa/ld/ldreg.htm). The Register may also be inspected in the House of Lords Record Office.

For the meeting on 14 June 2011 Members declared no interests.

### ***Attendance:***

The meeting was attended by L. Eames, L. Goodlad, B. Hamwee, L. Norton of Louth and L. Plant of Highfield.