ENVIRONMENT, CLIMATE CHANGE AND LAND REFORM COMMITTEE

AGENDA

8th Meeting, 2018 (Session 5)

Tuesday 6 March 2018

The Committee will meet at 10.30 am in the Robert Burns Room (CR1).

1. **Decision on taking business in private:** The Committee will decide whether to take items 3 and 4 in private.

2. **Subordinate legislation:** The Committee will consider the following negative instrument:

   The Carbon Accounting Scheme (Scotland) Amendment Regulations 2018 (SSI 2018/40)

3. **Scotland's Marine Environment:** The Committee will consider its approach to this work.

4. **Work programme:** The Committee will review its work programme, including considering draft correspondence to the Equalities and Human Rights Committee and its approach to its 2017-18 Annual Report.

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Clerk to the Environment, Climate Change and Land Reform Committee
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The papers for this meeting are as follows—

**Agenda item 2**

Subordinate Legislation Cover Note

**Agenda item 3**

PRIVATE PAPER

**Agenda item 4**

PRIVATE PAPER

PRIVATE PAPER
Procedure for Negative Instruments

1. Negative instruments are instruments that are “subject to annulment” by resolution of the Parliament for a period of 40 days after they are laid. All negative instruments are considered by the Delegated Powers and Law Reform Committee (on various technical grounds) and by the relevant lead committee (on policy grounds). Under Rule 10.4, any member (whether or not a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument. If the motion is agreed to, the Parliamentary Bureau must then lodge a motion to annul the instrument for consideration by the Parliament.

2. If that is also agreed to, Scottish Ministers must revoke the instrument. Each negative instrument appears on a committee agenda at the first opportunity after the Delegated Powers and Law Reform Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually be continued to a later meeting to allow correspondence to be entered into or a Minister or officials invited to give evidence. In other cases, the Committee may be content simply to note the instrument and agree to make no recommendation on it.

**Title of Instrument:** Carbon Accounting Scheme (Scotland) Amendment Regulations 2018 (SSI 2018/40)

**Type of Instrument:** Negative

**Laid Date:** 8 February 2018

**Circulated to Members:** 8 February 2018

**Meeting Date:** 6 March 2018

**Minister to attend meeting:** No

**Motion for annulment lodged:** No

**Drawn to the Parliament’s attention by the Delegated Powers and Law Reform Committee?** No

**Reporting deadline:** 26 March 2018
Recommendation
3. The Committee is invited to consider any issues which it wishes to raise on these instruments/this instrument.

Background
4. The Scottish Government has provided a detailed briefing on the background to the regulations. This can be found at Annexe B.

5. A copy of the Scottish Government’s Explanatory and Policy Notes are included in Annexe A.

Purpose
6. These Regulations amend the Carbon Accounting Scheme (Scotland) Regulations 2010. The 2010 Regulations make provision about carbon units and carbon accounting for the purposes of Part 1 of the Climate Change (Scotland) Act 2009.

Delegated Powers and Law Reform Committee
7. At its meeting on 20 February 2017, the Committee considered the instrument and determined that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit.

Clerks
Environment, Climate Change and Land Reform Committee
Scottish Government Explanatory Note

These Regulations amend the Carbon Accounting Scheme (Scotland) Regulations 2010. The 2010 Regulations make provision about carbon units and carbon accounting for the purposes of Part 1 of the Climate Change (Scotland) Act 2009.

Regulation 2(2) inserts regulation 8D to provide a method for determining whether an amount of carbon units is to be credited to or debited from the net Scottish emissions account for 2016(a). Regulation 2(3) inserts a provision to set out the information to be included in a register for 2016. No business and regulatory impact assessment has been prepared for these Regulations as no impact upon business, charities or voluntary bodies is foreseen.

Scottish Government Policy Note

The above instrument is made in exercise of the powers conferred by sections 13(5), 20(1) and 96(2) of the Climate Change (Scotland) Act 2009 (“the Act”) and all other powers enabling the Scottish Ministers to do so. The instrument is subject to the negative procedure.

Policy Objectives

The purpose of the Carbon Accounting Scheme (Scotland) Amendment Regulations 2018 (“the Regulations”) is to make provision for the circumstances and manner in which carbon units may be credited to, or debited from, the net Scottish emissions account for 2016.

In particular, the Regulations amend the Carbon Accounting Scheme (Scotland) Regulations 2010 so as to require the Scottish Ministers, by 30 June 2018, to calculate whether an amount of carbon units is to be credited to, or debited from, the net Scottish emissions account for 2016.

This calculation has two components:

- In relation to “aviation activities”\(^1\), whether the amount of emissions in respect of Scotland from such activities in 2016 is more or less than the “aviation cap” for 2016;
- In relation to “other activities”\(^2\), whether the amount of carbon units surrendered in respect of such activities in Scotland as a result of the operation of the EU ETS in the “relevant period”\(^3\) for 2016 is more or less than the “fixed installation cap” for 2016.

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\(^2\) These are those activities, other than aviation activities, listed in Annex I of Directive 2008/87/EC.

\(^3\) The use of a 16 month relevant period reflects the fact that surrenders in relation to activities occurring during 2016 can occur during the early part of the following calendar year.
The new provisions mirror those used for the calculation of the net Scottish emissions account for the year 2015. A paper setting out how the “aviation cap” and the “fixed installation cap” for 2016 have been determined has been published by the Scottish Government\(^4\).

**Background**

For the purposes of the Act, the net Scottish emissions account means the aggregate amount of “net Scottish emissions” (emissions plus “removals” such as carbon sequestration by woodland), reduced or increased by the amount of “carbon units” credited to it, or debited from it, in accordance with the Carbon Accounting Scheme (Scotland) Regulations 2010.

**Consultation**

The UK Committee on Climate Change and the UK Government were consulted on the method for crediting or debited carbon units, in respect of Scotland, as a result of the operation of the EU ETS.

**Financial Effects**

A Business and Regulatory Impact Assessment (BRIA) is not required, as the instrument will not, in itself, impose new regulatory burdens on businesses, charities or the voluntary sector.

Scottish Government
Energy and Climate Change Directorate
February 2018

**Annexe B**

**Briefing from Scottish Government on the instrument**

**THE CARBON ACCOUNTING SCHEME (SCOTLAND) AMENDMENT REGULATIONS 2018 BACKGROUND INFORMATION**

All of the emission reduction targets under the Climate Change (Scotland) Act 2009 (the “2009 Act”) are based on emissions “adjusted” to account for the operation of the EU Emissions Trading Scheme (the “EU ETS”).

The calculations required to perform this adjustment are set out in the Carbon Accounting Scheme (Scotland) Regulations 2010 (the “2010 Regulations”).

The 2010 Regulations originally contained provisions to undertake the EU ETS adjustment calculations for the target years 2010, 2011 and 2012 (during phase II of the ETS). To allow for statutory reporting to occur on target years from 2013 onwards (during phase III of the ETS), sets of amendment regulations introducing

new calculation provisions have been required on a yearly basis from 2015 onwards. The two-year delay reflects the time taken to produce emission statistics.

The present SSI contains the fourth set of routine technical amendments\(^5\), by amending the 2010 Regulations to introduce provisions for undertaking the EU ETS adjustment calculation for the target year 2016. This will allow for statutory reporting to occur on the 2016 annual target, once emissions statistics for that year become available later in 2018.

The UK Committee on Climate Change and the UK Government were consulted on the approach to undertaking an EU ETS adjustment calculation for Scotland. The calculation used for 2016 mirrors that used for previous years and has two components:

- In relation to emissions from fixed installations in Scotland (e.g. power stations), the amount of carbon units surrendered in respect of the operation of the EU ETS is compared to Scotland’s share of the EU-wide “fixed installation cap”.
- In relation to emissions from aviation, the amount of emissions in respect of Scotland from such activities is compared to the EU-wide “aviation cap”.

Further detail on the calculation, and how this relates to the statutory emissions accounting basis of the 2009 Act, is set out in the Policy Note accompanying the SSI.

A paper setting out the analytical methodology for determining Scotland’s share for 2016 of the EU-wide “fixed installation cap” and “aviation cap” has been published by Scottish Government analysts\(^6\). This methodology has not changed from previous years.

The present SSI relates solely to accounting rules for emissions which took place during 2016. As such, it is not affected by any uncertainties regarding future participation in the EU ETS.

One of the proposals the Scottish Government has consulted on for a forthcoming Climate Change Bill, in line with advice from the UK Committee on Climate Change, relates to basing future emissions reduction targets on actual Scottish emissions, without any adjustment accounting for the operation of the EU ETS. However, for the time being the “adjusted” accounting requirements of the 2009 Act – including the need for the present SSI - continue to apply.

**ENERGY AND CLIMATE CHANGE DIRECTORATE**  
**SCOTTISH GOVERNMENT**  
**FEBRUARY 2018**

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\(^5\) The previous three sets of amendment regulations are SSI 2015/189, SSI 2016/46 and SSI 2017/121.