These notes refer to the Climate Change Act 2008 (c.27)
which received Royal Assent on 26th November 2008

CLIMATE CHANGE ACT 2008

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 5: Other provisions

Waste reduction schemes

Section 71 and Schedule 5: Waste reduction schemes

307. This section and Schedule 5 (which it introduces) allow for the making of waste reduction schemes, which are schemes to incentivise occupiers of domestic premises to produce less waste and recycle more of what they produce.

308. *Subsection (1)* provides for Schedule 5 to amend the Environmental Protection Act 1990 (c.43). It does so by adding to that Act a new section 60A, which provides that a waste collection authority whose area is in England may make a waste reduction scheme in accordance with a new Schedule to that Act, Schedule 2AA. It is Schedule 2AA which details what a waste reduction scheme is and how it must be made.

309. *Subsection (2)* provides that Schedule 5 may only be brought into force in accordance with sections 72 to 75, which allow the Secretary of State to designate certain areas where waste collection authorities may make waste reduction schemes on a pilot basis. Following the pilots, the power for authorities to make waste reduction schemes may be rolled out to all other areas in England, if the Secretary of State so decides.

310. *Subsection (3)* provides that for the purposes of sections 72 to 75, "the waste reduction provisions" means the provisions inserted by Schedule 5 and any subordinate legislation made under those provisions.

Schedule 5: Waste reduction schemes

311. *Paragraph 1* inserts a new section, section 60A, into the Environmental Protection Act 1990, allowing a waste collection authority in England to make a scheme in accordance with new Schedule 2AA.

312. *Paragraph 2* inserts a new Schedule, Schedule 2AA, into the Environmental Protection Act 1990 (see below).

313. *Paragraph 3* amends the Environmental Protection Act 1990 by inserting two new subsections into section 46 (receptacles for household waste) and making consequential amendments to section 46. Section 46 allows local authorities to serve a notice requiring occupiers to place waste for collection in receptacles of a kind and number specified. The amendments allow local authorities which are operating waste reduction schemes to require occupiers to place waste for collection in receptacles identified by specified means, either in addition or as an alternative to requiring them to place waste in specified receptacles.

314. *Paragraph 4* amends section 161 of the Environmental Protection Act 1990 (regulations, orders and directions) in order to specify which Parliamentary procedure

shall apply to certain statutory instruments made pursuant to the waste reduction provisions. *Paragraph 4(2)* inserts new section 161(2ZA), which, in combination with paragraph 16(5) of Schedule 2AA, provides that a statutory instrument containing regulations made under paragraph 11 of Schedule 2AA (power to make provision as to administration etc) which modify an Act of Parliament shall be subject to the affirmative resolution procedure. *Paragraph 4(3)* inserts new section 161(4)(aa), which provides that the following orders made pursuant to Schedule 2AA shall be subject to the affirmative resolution procedure: those orders made under paragraph 2(3) (conditions for making waste reduction scheme), 6(2) (requirement of revenue-neutrality), 15(2) (interpretation), or an order made under paragraph 5(1) (charging: supplementary provisions) where paragraph 16(3) applies.

New Schedule 2AA of the Environmental Protection Act 1990

315. *New Schedule 2AA*, consisting of sixteen paragraphs, sets out the detailed rules regarding waste reduction schemes.

316. *Paragraph 1(1)* describes the purpose of a waste reduction scheme, being to provide a financial incentive to produce less domestic waste and recycle more of what is produced, thus reducing the amount of residual domestic waste. *Paragraph 1(2)* provides that a scheme may cover the whole or any part of the area of a waste collection authority, and that it may apply to all domestic premises, to domestic premises other than those of a description specified in the scheme, or to those domestic premises whose descriptions are specified in the scheme.

317. *Paragraph 2(1)* sets out certain conditions which a waste collection authority must have satisfied before it puts a scheme into effect, being (a) that a good recycling service is available to the occupiers of premises within the scheme, and (b) that the scheme takes account of the needs of groups who might be unduly disadvantaged by it, and (c) that the authority has a strategy for preventing, minimising or otherwise dealing with the unauthorised deposit or disposal of waste.

318. *Paragraph 2(2)(a)* defines a "recycling service" as arrangements for the collection of recyclable domestic waste from premises separately from other waste, and *paragraph 2(2)(b)* defines a "good" recycling service as a service which meets the standards specified in guidance issued by the Secretary of State. *Paragraph 2(3)* allows the Secretary of State by order, subject to the affirmative resolution procedure, to amend paragraph 2(1) and (2).

319. *Paragraphs 3 to 6* deal with the rules on how authorities may impose charges and give rebates or make payments within a scheme.

320. *Paragraph 3(1)* states that a waste reduction scheme must provide for a financial incentive which the authority considers will be effective to achieve the purpose of the scheme. Under *paragraph 3(2)*, this incentive may be provided by means of rebates from council tax or by other payments, or by means of charges under paragraph 4, or by any combination of those means.

321. *Paragraph 4(1)* allows a waste reduction scheme to include provision for charging occupiers by reference to the amount of residual waste collected, the size of receptacles used, the number of receptacles, or the frequency of collection, or by any combination of these factors. *Paragraph 4(2)* allows that the scheme may in particular require occupiers, by notice under section 46 of the Environmental Protection Act 1990, to place residual waste in receptacles of a specified kind and/or to identify such receptacles in a specified way.

322. *Paragraph 4(3)* specifies that a charge under paragraph 4 in respect of a receptacle is in addition to any charge under section 46 of the Environmental Protection Act 1990 in respect of the cost of providing the receptacle. *Paragraph 4(4)* specifies that the amount of any charge under paragraph 4 need not be related to the authority's costs.

323. *Paragraph 4(5)* allows a scheme to provide as to the person or persons by whom any charge is payable. *Paragraph 4(6)* allows a scheme to require any charge to be paid in advance on the basis of an estimate of the amount likely to be payable, or to require payments to be made on account or by instalments.

324. *Paragraph 5* sets out supplementary provisions in relation to charging. *Paragraph 5(1)* allows the Secretary of State by order to limit the amount of a charge under paragraph 4 that may be imposed in respect of any premises in any financial year. Paragraph 16(2) and (3) provides that an order under paragraph 5(1) is subject to the negative resolution procedure, except where it is the first such order to be made or if, on subsequent occasions, it increases the charge limit by more than is necessary to reflect changes in the value of money.

325. *Paragraph 5(2)* provides that where an occupier fails to pay a charge under paragraph 4 this does not affect an authority's duty under section 45(1)(a) of the Environmental Protection Act 1990 to arrange for collection of the occupier's household waste.

326. *Paragraph 5(3)* provides that section 45(3) of the Environmental Protection Act 1990, which places a general prohibition on charging for collection of household waste, takes effect subject to the ability of authorities to make charges under paragraph 4.

327. *Paragraph 6(1)* provides that from year to year, and taking one year with another, the aggregate amount of charges under a waste reduction scheme must not exceed the aggregate amount of the rebates or other payments under the scheme. This means that where the payment of charges is required, schemes must be revenue neutral. *Paragraph 6(2)* allows the Secretary of State by order to amend paragraph 6(1). *Paragraph 6(3)* stipulates that any such order amending paragraph 6(1) may also make consequential amendments to paragraph 4(4). Any order under paragraph 6 will be subject to the affirmative resolution procedure.

328. *Paragraph 7(1)* states that an authority must comply with the requirements in paragraph 7(2) and (3) on communicating the provisions of a scheme, before the scheme comes into operation. *Paragraph 7(2)* provides that an authority must publish the scheme in such manner as it considers appropriate. *Paragraph 7(3)* provides that an authority must send to the occupier of any premises within a scheme a notice detailing the requirements of the scheme with regard to collection, any rebates or other payments available and the manner in which they are to be made, and any charges and the manner in which they are to be collected.

329. *Paragraph 8* provides that a scheme must contain provision enabling a person to appeal against any decision affecting, directly or indirectly, that person's entitlement to a rebate or other payment, or liability to pay a charge, under the scheme.

330. *Paragraph 9(1)* provides that an authority must keep a separate account of any rebates or other payments under the scheme and any charges received by it under the scheme. *Paragraph 9(2)* allows any person interested to inspect the account and make copies of it or any part of it, at any reasonable time and without payment. *Paragraph 9(3) and (4)* provide that it is an offence for any person having custody of the account to obstruct intentionally a person exercising their rights under paragraph 9(2), and that a person guilty of such an offence is liable to a fine not exceeding level 3 on the standard scale (currently £1000).

331. *Paragraph 10(1)* provides that where a waste collection authority that operates a scheme is not also the waste disposal authority for that area, the waste disposal authority may pay to the collection authority contributions of such amounts as the disposal authority may determine towards expenditure of the collection authority which is attributable to the scheme. The possibility of such payments by the disposal authority has been provided for because a disposal authority may benefit from a scheme by having less waste to deal with, but such a benefit would arise from the implementation of a waste reduction scheme by the collection authority.

332. *Paragraph 10(2)* provides that the collection authority must supply information to the disposal authority to enable the disposal authority to determine the appropriate level of payment under paragraph 10(1).

333. *Paragraph 11* gives the Secretary of State the power to make regulations as to the administration of waste reduction schemes. Regulations under this paragraph are subject to the negative resolution procedure unless they amend an Act of Parliament (section 161(2ZA) of the Environmental Protection Act 1990).

334. *Paragraph 11(1)* enables such regulations to make provision about how the amount of any rebate or other payment is to be determined and how it is to be given, and how the amount of any charge is to be determined and how it is to be collected or enforced.

335. *Paragraph 11(2)* makes clear that such regulations may in particular provide for appeals against determination or any failure to make a determination, for the appointment of persons or bodies to hear appeals, and for charges to be recoverable, if a county court so orders, as if they were payable under a county court order,

336. *Paragraph 11(3)* allows the regulations to provide that the administration of a waste reduction scheme may be integrated with the administration of council tax (and by sub-paragraph (3)(b) the regulations may provide for consequential modification of council tax legislation).*Paragraph 11(4)* provides further detail on this: in particular, the regulations may provide: (a) for including material relating to the scheme in the council tax demand notice, (b) for applying the procedure for appeals about liability to council tax to questions arising under the scheme, and (c) for applying the procedures on enforcement of council tax liability to any liability under the scheme.

337. *Paragraph 12* allows an authority to use information it obtains under council tax legislation for the purposes of administering a waste reduction scheme.

338. *Paragraph 13(1)* allows an authority to amend or revoke its scheme. *Paragraph 13(2)* provides that, before bringing an amendment into operation, the authority must publish the amended scheme in such manner as it thinks appropriate and, if the amendment affects any matters previously notified to occupiers, send a notice to the occupier of any premises within the scheme explaining the effect of the amendment.

339. *Paragraph 13(3)* states that the amendment or revocation of a scheme does not affect any entitlement or liability under the scheme in respect of a period before the amendment or revocation takes effect. *Paragraph 13(4)* states that the revocation of a scheme does not affect the duty of an authority to comply with paragraph 6(1), the requirement of revenue-neutrality.

340. *Paragraph 14(1)* allows the Secretary of State to issue guidance to waste collection authorities and waste disposal authorities as to the exercise of their functions in relation to waste reduction schemes. *Paragraph 14(2)* provides that any such guidance must be published in such manner as the Secretary of State considers appropriate and may be amended or replaced by further guidance, or revoked. *Paragraph 14(3)* provides that waste collection authorities and waste disposal authorities must have regard to any such guidance.

341. *Paragraph 15(1)* defines the terms “domestic premises”, “domestic waste”, “enactment”, “recyclable waste”, “residual domestic waste” and “specified” used in Schedule 2AA. *Paragraph 15(2)* allows the Secretary of State by order, subject to affirmative resolution, to amend the definition of “domestic premises”. *Paragraph 15(3)* states that references in Schedule 2AA to recycling include re-using and composting.

342. *Paragraph 16* sets out the details of which Parliamentary procedure applies to certain powers within Schedule 2AA to make order and regulations.

343. *Paragraph 16(1)* provides that the affirmative resolution procedure applies to an order made under paragraph 2(3) (amending the conditions for making a scheme), paragraph 6(2) (amending the requirement of revenue-neutrality) or paragraph 15(2) (amending the definition of "domestic premises").

344. *Paragraph 16(2)* and *paragraph 16(3)* provide that the negative resolution procedure applies to an order made under paragraph 5(1) (setting a limit on the amount of the charge), except where it is the first such order to be made or where it increases the limit by more than is necessary to reflect changes in the value of money since the limit was previously set, in which cases the affirmative resolution procedure applies.

345. *Paragraph 16(4)* and *paragraph 16(5)* provide that the negative resolution procedure applies to regulations made under paragraph 11 (making provision as to administration), except where they modify an Act of Parliament, in which case the affirmative resolution procedure applies.

346. *Paragraph 16(6)* provides that where an order or regulations are subject to the affirmative resolution procedure, they must be approved by each House of Parliament before they are made.

Section 72: Waste reduction provisions: piloting

347. This section provides for the piloting of waste reduction schemes.

348. *Subsection (1)* provides that a waste collection authority which wishes to make a pilot waste reduction scheme in its area must submit its proposals to the Secretary of State for approval. If the Secretary of State considers that the proposals are suitable for piloting one or more aspects of the waste reduction provisions, the Secretary of State may make an order designating the area of that authority as a pilot area, so that the authority may make a scheme in accordance with the approved proposals.

349. *Subsection (2)* provides that a maximum of five areas can be designated as pilot areas.

350. *Subsection (3)* stipulates what the Secretary of State's order designating a pilot area must provide. The order must state that the waste reduction provisions shall have effect in relation to that area for the purpose of enabling the authority to make and operate the proposed scheme, and state the period for which the waste reduction provisions are to be allowed to take effect.

351. *Subsection (4)* allows the Secretary of State, in making subordinate legislation or issuing guidance about waste reduction schemes, to make different provision for different pilot areas, and the Secretary of State may exercise these powers at any time after section 72 has come into force (see section 100 – section 72 comes into force two months after the Act receives Royal Assent).

352. *Subsection (5)* provides that, where subordinate legislation in draft would otherwise be treated as a hybrid instrument, it is to proceed in that House as if it were not a hybrid instrument.

Section 73: Waste reduction provisions: report and review

353. *Subsection (1)* imposes on the Secretary of State a duty to lay before Parliament a report on how the waste reduction provisions have operated in each pilot area.

354. *Subsection (2)* provides that the report must contain: a description of the scheme and how it compares with other schemes, a copy of the designation order, a description of how the relevant enactments and guidance in that pilot area differed from that applying in other pilot areas and in areas not designated, and an assessment of whether a scheme has been successful.

355. *Subsection (3)* provides that the Secretary of State's report must also review the waste reduction provisions in the light of their operation in the relevant pilot area or areas.

Section 74: Waste reduction provisions: interim report

356. *Subsection (1)* provides that, if the Secretary of State considers that it will not be possible to lay a report under section 73 in relation to a pilot area within three years of this Act being passed, the Secretary of State must lay an interim report within the three years.

357. *Subsection (2)* provides that the interim report must contain: a description of the scheme and how it differs from other such schemes, a copy of the designating order, and a description of how the enactments and guidance applying in that pilot area differ from those applying in other pilot areas and in non-pilot areas.

358. *Subsection (3)* provides that, where a scheme has not yet been implemented, the interim report must describe progress towards its implementation.

359. *Subsection (4)* provides that, where a scheme has been implemented, the interim report must describe its operation and assess progress towards its objectives, if such an assessment can reasonably be made.

Section 75: Waste reduction provisions: roll-out or repeal

360. *Subsection (1)* states that subsections (2) to (6), which provide for the Secretary of State to roll out or repeal the waste reduction provisions, apply after the Secretary of State has laid a report before Parliament in accordance with section 73.

361. *Subsection (2)* provides two options should the Secretary of State wish to roll out the waste reduction provisions generally so as to allow a scheme to be made for any area. Subsection (2)(a) allows the Secretary of State to make an order providing that the provisions shall come into force generally on a date specified in the order. Alternatively, subsection (2)(b) allows the Secretary of State to make an order making such amendments to the provisions as appear necessary or expedient in the light of how they operated in the pilot areas, and to provide that the provisions as so amended shall come into force generally on a date specified in the order.

362. *Subsection (3)* and*subsection (4)* provide that amendments made by an order under subsection (2)(b) may include provision for the Secretary of State to make subordinate legislation, in which case the amendments should also provide for such subordinate legislation to be subject to either the negative resolution procedure or the affirmative resolution procedure, as the Secretary of State thinks fit.

363. *Subsection (5)* provides that, should the Secretary of State decide not to make an order under subsection (2) which rolls out the waste reduction provisions generally, he must make an order repealing the provisions.

364. *Subsection (6)* provides that any order made under subsection (2)(b) or (5) must be made by affirmative resolution.

Collection of household waste

Section 76: Collection of household waste

365. Section 76 amends section 46 of the Environmental Protection Act 1990 to insert a new subsection (11), which provides that a waste collection authority is not obliged to collect household waste placed for collection in contravention of a requirement under section 46. The amendment applies in both England and Wales.

Charges for single use carrier bags

Section 77 and Schedule 6: Charges for single use carrier bags

366. This section introduces Schedule 6 and allows for the making of regulations about charges for single-use carrier bags.

367. *Subsection (3)* defines who is the relevant national authority for the purposes of making regulations under the Schedule; this is the Secretary of State in relation to England, the Welsh Ministers in relation to Wales and the Department of the Environment in Northern Ireland in relation to Northern Ireland.

368. *Subsection (4)* sets out the circumstances in which the affirmative procedure applies to the making of regulations (that is, where the first set of regulations is made by the relevant national authority under the Schedule, where the regulations contain provisions imposing or providing for the imposition of new civil sanctions, where the regulations increase the maximum amount of a monetary penalty or change the basis on which it is to be determined and where the regulations amend or repeal primary legislation). Otherwise, regulations under the Schedule are subject to the negative resolution procedure.

Schedule 6: Charges for single use carrier bags

369. *Part 1 of Schedule 6* contains enabling powers to make regulations about charges for single use carrier bags.

370. *Paragraph 1* provides a general power for the relevant national authority (defined in section 77(3)) to make regulations about charging by sellers of goods for the supply of single use carrier bags. Powers to define what is meant by "sellers" and by "single use carrier bags" are set out in paragraphs 3 and 5.

371. *Paragraph 2* provides that the regulations may require sellers of goods to charge for single use carrier bags supplied either at the place where the goods are sold, or for the purpose of delivering goods.

372. *Paragraph 3* provides that "sellers" of goods are to be defined in the regulations, including by reference to one or more of the following: a person's involvement in selling goods or a person's interest in the goods or in the premises at or from which the goods are sold. It provides that the regulations may apply to a range of different sellers, including all sellers of goods, sellers named in the regulations and sellers identified by reference to factors specified in the regulations. The factors that may be specified in the regulations may include the place from which the goods are sold, the type and value of goods supplied and the seller's turnover.

373. *Paragraph 4* provides that the regulations may specify the minimum amount that sellers must charge for each single use bag or provide for that amount to be determined in accordance with the regulations.

374. *Paragraph 5* provides that the definition of a 'single-use carrier bag' is to be included in the regulations, which may be by reference to technical specifications such as a bag's size, thickness or composition and/or its intended use.

375. *Paragraph 6* contains powers to appoint an administrator to administer the provisions made by the regulations. It also provides that the regulations may confer powers and duties on the administrator to enable it to carry out its functions.

376. *Paragraph 7* provides that the regulations may require records to be kept in relation to charges made for single use carrier bags, including records relating to the amounts received by the seller by way of charges and the uses to which the proceeds of the charge are put. The regulations may also require that this information is published and

is made available to the relevant national authority, an administrator or members of the public upon request.

377. *Paragraph 8* provides that the regulations may confer powers and duties on an administrator in order to enforce the regulations and in particular, to enable the administrator to obtain relevant documents and information where the administrator reasonably believes that there has been a breach of the regulations.

378. *Part 2 of Schedule 6* sets out the provision that may or must be made in relation to civil sanctions for breaches of other aspects of the regulations made under the Schedule.

379. *Paragraph 9* contains a power for the relevant national authority to include in regulations civil sanctions to deal with breaches of requirements in the regulations. Civil sanctions may take the form of fixed monetary penalties (defined in paragraph 10) and discretionary requirements (defined in paragraph 12).

380. *Paragraph 10* provides that the regulations may grant an administrator a power to issue fixed penalty notices not exceeding £5,000 to any person who breaches the regulations. The notices may only be issued in cases where the administrator is satisfied on the balance of probabilities that a breach of the regulations has occurred.

381. *Paragraph 11* specifies certain minimum requirements that regulations providing for fixed monetary penalties must include. In particular, before the administrator can impose a penalty it must first issue a 'notice of intent'. The person subject to this notice will then have the opportunity to make written representations and objections against the penalty. Alternatively, the person could choose to discharge liability for the penalty by paying a discharge payment of a specified amount which must be no more than the penalty. Any representations or discharge payment must be made within 28 days of receipt of the notice, or such shorter period as prescribed by the notice of intent. If a discharge payment is made, no further action will be taken against that person.

382. After this period, if the administrator chooses to impose the penalty, it must issue a 'final notice' setting out certain specified information such as the grounds for imposing the penalty and how payment may be made. Paragraph 11 also sets out the provision that may be made by regulations as to the right of appeal against the decision to impose a fixed penalty notice and the minimum grounds on which an appeal may be brought.

383. *Paragraph 12* provides that the regulations may grant an administrator the power to impose, by notice, one or more requirements ("discretionary requirements") on a person. These requirements are:

- The payment of a monetary penalty of an amount that the administrator will determine (“variable monetary penalty”);
- To take such steps as may be specified by an administrator within such time period as the administrator may specify to ensure that the incident of non-compliance does not continue or recur (“non-monetary discretionary requirement”).

384. The administrator must be satisfied on the balance of probabilities that a person has breached the regulations before imposing such a requirement. The regulations must provide that variable monetary penalties are capped to a maximum amount to be specified in, or determined in accordance with, the regulations.

385. *Paragraph 13* specifies certain minimum requirements that regulations providing for discretionary requirements must include. In particular, the provisions must require the administrator to serve a notice on the person of its intention to impose discretionary requirements on that person and the time within which the recipient can make representations and objections (which cannot be less than 28 days from receipt of the notice) against the proposed sanction.

386. After the end of the time for making representations and objections, the administrator can then decide whether to impose, withdraw or vary the discretionary requirement or replace it with a different requirement.

387. Where the administrator decides to impose a discretionary requirement, this must be done by way of a notice. The final notice must contain the information set out in sub-paragraph (4), including the person's right of appeal against the sanction.

388. Sub-paragraph (5) sets out the minimum grounds for appeal against the discretionary requirement that must be available.

389. By virtue of *paragraph 14*, the regulations providing for discretionary requirements may also allow an administrator to issue a monetary penalty by notice for the failure to comply with a non-monetary discretionary requirement (a "non-compliance penalty"). Non-compliance penalties are not available for failure to pay a variable monetary penalty. Failure to pay any monetary penalty can lead to the administrator recovering the amount due through civil debt procedures or as if payable under court order (see paragraph 16).

390. *Paragraph 15* provides that an administrator cannot be granted power to impose both a fixed monetary penalty and a discretionary requirement in relation to the same breach.

391. *Paragraph 16* provides that regulations providing for civil sanctions may make provision for discounts for early payment of a monetary penalty and for the payment of interest or a financial penalty for late payment of the original penalty. The total amount of any late payment penalty must not exceed the total amount of the penalty imposed. It provides for the enforcement of unpaid penalties (and any interest or late payment charges) through the civil courts. It also allows the regulations to create a more streamlined process of recovery by treating the penalty as if it were payable under a court order.

392. *Paragraph 17* provides that regulations may confer power on the administrator to recover its costs, by notice, from a person on whom a discretionary requirement is imposed. The costs are those incurred by the administrator in relation to the imposition of the sanction, up to the point of its imposition, and include investigation costs, administration costs and the costs of obtaining expert (including legal) advice. The person is not required to pay any costs he can show have been unnecessarily incurred. It requires that, where a costs notice is served, the person subject to the notice has a right of appeal against the decision of the administrator regarding payment of costs.

393. *Paragraph 18* contains certain procedural provisions for appeals from civil penalties. In particular, it provides that appeals must be heard by the First-tier Tribunal (established under the Tribunals, Courts and Enforcement Act 2007 (c.15)) or another tribunal created under an enactment.

394. *Paragraph 19* provides that the regulations may confer a power on an administrator to issue a publicity notice to a person on whom a civil sanction has been imposed. Such a notice would require the recipient to publicise, at their own cost, that a sanction has been imposed, as well as such other information as may be specified in the regulations. If the person fails to publish the notice as required, the regulations may provide for the administrator to publish the notice and to recover the costs from the person to whom the notice relates.

395. *Paragraph 20* provides that the regulations may make provision for officers of a body corporate and partners of a partnership to be liable to civil sanctions.

396. *Paragraph 21* provides that where an administrator is to have the power to impose civil sanctions, there is to be a corresponding duty on the administrator to publish guidance containing certain information about how it will use its civil sanction powers, including details about fixed monetary penalties and discretionary requirements such as: when they are likely to be imposed, how fixed and variable monetary penalties

will be determined, how liability for penalties may be discharged and the effect of a discharge and on rights of appeal.

397. *Paragraph 22* provides that regulations providing for civil sanctions must secure the publication of reports by the administrator on the use of civil sanctions.

398. *Paragraph 23* provides that civil sanction powers may not be conferred on an administrator in regulations unless the relevant national authority is satisfied that the administrator will comply with better regulation requirements.

399. *Paragraph 24* requires the relevant national authority to review the operation of the civil sanction provisions set out in regulations three years after they come into force and to publish the results of the review.

400. *Paragraph 25* provides the relevant national authority with the power to suspend an administrator's powers to impose civil penalties in certain circumstances by issuing a direction to the administrator. Such directions may be revoked by the relevant national authority. Before issuing a direction, the relevant national authority must consult the administrator and such other persons as it considers appropriate. Any directions issued must be laid before Parliament and must be published.

401. *Paragraph 26* provides for money received from penalties to go the relevant national authority's Consolidated Fund.

402. *Part 3 of Schedule 6* makes further provision about the procedures to be followed when making regulations about charges for single use carrier bags.

403. *Paragraph 27* set out the procedure to be followed where regulations are made by a single national authority. Sub-paragraphs (2) and (3) set out the affirmative resolution procedure applying in Parliament and the devolved legislatures. Sub-paragraphs (4) to (6) set out the negative resolution procedure applying in Parliament and the devolved legislatures. Sub-paragraph (7) allows any regulations that could be made using the negative resolution procedure to be made using the affirmative procedure; this will allow, say, amendments which would otherwise have to be made using different procedures to be made in the same instrument.

404. *Paragraph 28* sets out the procedure where regulations are made jointly between the Secretary of State and/or the Welsh Ministers and/or the Department of the Environment in Northern Ireland. The affirmative and negative procedures apply as they do in paragraph 27. If either House of Parliament or the relevant devolved legislature does not approve the instrument, then the instrument cannot be made.

405. *Paragraph 29* provides that where regulations made under the Schedule would otherwise be treated as a hybrid instrument under the standing orders of either House of Parliament, the instrument is to proceed as if it were not a hybrid instrument.

Renewable transport fuel obligations

Section 78 and Schedule 7: Renewable transport fuel obligations

406. This section introduces Schedule 7 to the Act. Schedule 7 amends Chapter 5 of Part 2 of the Energy Act 2004 which enables the Secretary of State to set up a renewable transport fuel obligations scheme ("RTFO scheme") by order ("RTF order").

407. An RTFO scheme is a scheme that requires specified transport fuel suppliers to produce evidence that for a specified period a specified amount of renewable transport fuel has been supplied at or for delivery to places in the United Kingdom. "Specified" for these purposes means specified in or determined in accordance with the RTF order. A "transport fuel supplier" means a person who, in the course of any business of his, supplies transport fuel at or for delivery to places in the United Kingdom. Renewable transport fuel means:

a) biofuel (a liquid or gaseous fuel that is produced wholly from biomass);

b) blended biofuel (a liquid or gaseous fuel consisting of a blend of biofuel and fossil fuel);

c) any solid, liquid or gaseous fuel (other than fossil fuel or nuclear fuel) which is produced wholly by energy from a renewable source or wholly by a process powered wholly by such energy; or

d) any solid, liquid or gaseous fuel which is of a description of fuel designated by an RTF order as renewable transport fuel.

408. The Renewable Transport Fuel Obligations Order 2007 ("2007 order") was made under existing powers in the Energy Act 2004 on 25th October 2007. The 2007 order set up an RTFO scheme with the first obligation period to commence on 15th April 2008. The 2007 order also established the Office of the Renewable Fuels Agency (a non-departmental public body) ("RFA") and appointed the RFA as Administrator of the scheme.

409. The main changes to the Energy Act 2004 contained in Schedule 5 are explained in the following paragraphs. Some of the changes will enable the RTFO scheme to be altered by order in the future. These include the powers to appoint a new Administrator and transfer functions accordingly (in new section 125C) and the provisions about payments received by the Administrator under the scheme (in section 128 as amended). Other amendments will apply in relation to the scheme as soon as they come into force, such as the duty on the Administrator to promote renewable fuels which have a beneficial environmental effect (in new section 125A), the powers for the Secretary of State to give directions (in new section 125B and section 126 as amended) and the provisions for disclosure of information to the Administrator by Her Majesty's Revenue and Customs (in new sections 131A to 131C).

410. *Paragraph 2* substitutes new sections 125, 125A, 125B and 125C of the Energy Act 2004 for the existing section 125 of that Act.

411. New section 125 deals with the appointment of the first Administrator of the RTFO scheme. The 2007 order appointed the RFA as the Administrator under section 125 as it currently stands. New section 125 replicates the provision currently in section 125 allowing an RTF order to establish a body corporate and to appoint that body as the Administrator. It will preserve the effect of the 2007 order.

412. New section 125A allows an RTFO order to confer or impose functions on the Administrator. It also imposes a new duty on the Administrator to promote the supply of renewable transport fuel which by its production, supply or use, causes or contributes to the reduction of carbon emissions and contributes to sustainable development or to environmental protection or enhancement.

413. New section 125B(1) makes further provision about the functions of the Administrator. Paragraphs (a) and (b) re-enact the provision currently in section 125(3)(a) and (b) of the Energy Act in enabling powers to be conferred on the Administrator to require information from fuel suppliers; paragraph (c) re-enacts the provision currently in section 125(3)(c) of the Energy Act in enabling powers to be conferred on the Administrator to impose charges on fuel suppliers. Subsection (2) creates a new power for the Secretary of State to give written directions to the Administrator about the exercise of his powers conferred by virtue of subsection (1)(a) or (b). The Administrator must comply with any such directions. The power includes power to revoke or vary any directions given. This power may be used for example to direct the Administrator to collect information in a particular form or using a particular methodology to show the carbon savings achieved by renewable transport fuel supplied and certificated under the RTFO scheme.

414. New section 125B(5) replaces the provisions of section 125 of the Energy Act 2004 which set out what the Administrator must do with money that he receives from charges imposed on transport fuel suppliers by an RTF order (although the 2007 order does not impose any such charges). It alters the current requirement that any such charges must be used to meet the Administrator's costs by providing that if the Administrator is the Secretary of State any charges must be paid into the Consolidated Fund.

415. New section 125C creates a new power for the Secretary of State by order to replace an existing Administrator with a new Administrator and to provide for the transfer of functions, staff, property, rights and liabilities from the old to the new Administrator. The new Administrator can be the Secretary of State or an existing statutory body or a body corporate established under this new power.

416. The new power is subject to the negative resolution procedure unless it is used to establish a new body corporate or to modify an Act of Parliament, Act of the Scottish Parliament, Act or Measure of the National Assembly for Wales or an Act of the Northern Ireland Assembly, in which case the affirmative resolution procedure will apply.

417. *Paragraph 3* amends section 126 of the Energy Act 2004 which enables an RTF order to make provision about how amounts of transport fuel may count towards discharging obligations imposed by an RTFO scheme. New section 126(5) means that if a future RTF order makes such provision by reference to a document it may provide for references to the document to have effect as references to it as revised or re-issued from time to time. This will enable reference to be made to international standards for carbon and sustainability without the need to amend the order whenever those standards are revised.

418. Paragraph 3 also amends section 126 of the Energy Act 2004 to create a new power for the Secretary of State to give written directions to the Administrator about the exercise of any of the Administrator's functions in connection with counting or determining amounts of transport fuel for the purpose of the RTFO scheme. The Administrator must comply with any such directions. The power includes power to revoke or vary any directions given. This power may be used for example to direct the Administrator to use a particular methodology if a future RTF order requires amounts of transport fuel to be counted or determined by reference to its effects on carbon emissions or sustainable development.

419. *Paragraph 4* amends the provisions of the Energy Act 2004 which set out what the Administrator must do with money he receives when administering the RTFO scheme from buy-out payments.

420. Currently, the powers in section 128 of the Energy Act 2004 mean that the Administrator may (if an RTF order so provides, as the 2007 order does) receive buy-out payments from transport fuel suppliers who choose to buy-out their obligation rather than supply the specified amount of renewable transport fuel. By section 128(7) such sums must be paid to transport fuel suppliers under a system of allocation specified in the RTF order (subject to first meeting the costs of the Administrator if the RTF order so provides under the power in section 128(6), which the 2007 order does not).

421. As a result of amendments to section 128 by paragraph 4, where the Administrator is the Secretary of State new section 128(6)(a) will require the buy-out payments to be paid into the Consolidated Fund. But new section 128(6)(b) will allow (but not require) the RTF order to provide for the Secretary of State to make payments to transport fuel suppliers under a system of allocation specified in the order. The RTF order must ensure that the total paid out does not at any time exceed the total of the buy-out payments received up to that time (new section 128(7)).

422. If the Administrator is a person other than the Secretary of State, it will be possible for the RTF order to provide instead that the Administrator must use some or all of the

buy-out payments to meet his costs or must pay some or all of the buy-out payments to the Secretary of State (in which case they will be payable by him into the Consolidated Fund) (new section 128(8)). To the extent that the payments are not dealt with in this way, they will have to be paid to transport fuel suppliers under a system of allocation specified in the RTF order (new section 128(9)).

423. *Paragraph 5* amends section 129(7) of the Energy Act 2004 which currently provides that civil penalties received by the Administrator under an RTF order must be paid to the Secretary of State for payment into the Consolidated Fund. The amendment makes it clear that, if the Secretary of State is the Administrator, he is to pay those sums into the Consolidated Fund directly.

424. *Paragraph 6* inserts into the Energy Act 2004 new sections 131A, 131B and 131C which make provision enabling information to be disclosed by Her Majesty's Revenue and Customs ("HMRC") to the Administrator, as well as prohibiting further disclosure of the information. The information in question is restricted to information held in connection with HMRC's functions under or by virtue of the Hydrocarbon Oil Duties Act 1979. This is to limit the information to that which is relevant to the Administrator's functions.

425. New section 131A permits the information to be disclosed to the Administrator or an authorised person (a person who provides services to or acts on behalf of the Administrator and is authorised by the Administrator to receive the information).

426. New section 131B prohibits the disclosure of the information by the Administrator, an authorised person or any other person who obtains it in the course of providing services to or acting on behalf of the Administrator, except in certain specified cases (for example a disclosure required by a court order). The restrictions on further disclosure only apply to information received under new section 131A that has not also been received by the Administrator or an authorised person by another means.

427. Wrongful disclosure contrary to new section 131B is an offence under new section 131C if the information is about a person who is identified in or identifiable from the disclosure. The offence is triable either summarily or on indictment. Section 131C provides that a person convicted on indictment may be imprisoned for up to 2 years or fined or both, and that on summary conviction a person is liable to imprisonment for up to 12 months or to a fine not exceeding the statutory maximum (currently £5000) or both. It also provides that, in England and Wales, the penalty on summary conviction of an offence committed before section 154(1) of the Criminal Justice Act 2003 comes into force will be 6 months' imprisonment. The same penalty will apply in Northern Ireland. A person charged with an offence under new section 131C has a defence if he can prove that he reasonably believed that the disclosure was lawful or that the information was already lawfully in the public domain.

Carbon emissions reduction targets

Section 79 and Schedule 8: Carbon emissions reduction targets

428. This section introduces Schedule 8 to the Act, which makes amendments to the provisions of section 33BC of the Gas Act 1986, section 41A of the Electricity Act 1989 and section 103 of the Utilities Act 2000 which relate to powers of the Secretary of State to set carbon emission reduction targets.

Schedule 8: Carbon emissions reduction targets

429. *Paragraph 1* makes amendments to section 33BC of the Gas Act 1986.

430. Paragraph 1(1) introduces the amendments to section 33BC of the Gas Act 1986. Section 33BC is the enabling power which allows the Secretary of State to impose carbon emissions reduction obligations on those gas companies falling within its scope.

431. Paragraph 1(2) inserts a new subsection (1A) into section 33BC of the Gas Act 1986. Subsection (1A) allows the Secretary of State to exercise the power (to impose carbon emissions reduction obligations) so as to impose more than one obligation on a person in relation to the same period or periods which may overlap.

432. Paragraph 1(3) inserts a new paragraph (ba) into section 33BC(5) of the Gas Act 1986. The new paragraph gives the Secretary of State the power to require the whole or any part of a carbon emissions reduction target to be met by action promoted to persons of a specified description, action promoted in specified areas or a combination of the two.

433. Paragraph 1(4) inserts a definition of "specified" into section 33BC (13). This is necessary as a result of the new paragraph (ba) (introduced by paragraph 1(3)) allowing the Secretary of State to specify persons to whom or areas in which action must be promoted by those under a carbon emissions reduction obligation.

434. *Paragraphs 2 and 3* make amendments to the Electricity Act 1989.

435. Paragraph 2 inserts a definition of "electricity generators" into section 6(9) of the Electricity Act 1989.

436. Paragraph 3(1) introduces amendments to section 41A of the Electricity Act 1989. Section 41A is the enabling power which allows the Secretary of State to impose carbon emissions reduction obligations on those electricity companies falling within its scope.

437. Paragraph 3(2) widens the scope of the enabling power in section 41A(1) so that it includes electricity generators. This is achieved by the insertion of a new paragraph (za) into section 41A(1). As a result of this amendment the Secretary of State may exercise the enabling power so as to impose a carbon emissions reduction obligation on electricity generators, electricity distributors and electricity suppliers. To date, under section 41A, the Secretary of State has only exercised the power in relation to electricity suppliers.

438. Paragraph 3(3) makes a similar amendment to that made by paragraph 1(2).

439. Paragraph 3(4) makes a consequential amendment to section 41A(3) which is necessary as a result of bringing electricity generators within the scope of section 41A(1).

440. Paragraph 3(5) makes consequential amendments to section 41A(4) which are necessary as a result of bringing electricity generators within the scope of section 41A(1).

441. Paragraph 3(6) contains a mixture of consequential amendments to section 41A(5) which are necessary as a result of bringing electricity generators within the scope of section 41A(1) but also introduces a new provision. Paragraph 3(6)(b) introduces a new paragraph (ba) into section 41A(5) which reflects the amendment made by paragraph 1(3).

442. Paragraphs 3(7), 3(8), 3(9), and 3(10) make consequential amendments to sections 41A(6), (7)(d), (8)(d) and (11) respectively. All of these amendments are necessary as a result of bringing electricity generators within the scope of section 41A(1).

443. Paragraph 3(11) inserts a definition of "specified" into section 41A(13). This is necessary as a result of the new paragraph (ba) (introduced by paragraph 3(6)(b) into section 41A(5)) allowing the Secretary of State to specify persons to whom or areas in which action must be promoted by those under a carbon emissions reduction obligation.

444. Paragraph 3(12) amends the heading of section 41A so that it reflects the scope of the provision as a result of electricity generators being brought within its scope.

445. *Paragraph 4* makes amendments to section 42AA of the Electricity Act 1989.

446. Paragraph 4(1) introduces amendments to section 42AA of the Electricity Act 1989. Section 42AA requires the National Consumer Council to publish information on the

standards of performance of electricity suppliers and electricity distributors relating to any carbon emissions reduction obligation imposed on them under section 41A.

447. Paragraphs 4(2) and 4(3) make consequential amendments to section 42AA so as to ensure that electricity generators are within its scope and that the National Consumer Council can publish information relating to their standards of performance relating to any carbon emissions reduction obligation placed upon them in the future.

448. *Paragraph 5* makes a consequential amendment to section 64(1) of the Electricity Act 1989 which is necessary as a result of bringing electricity generators within the scope of the power in section 41A. Paragraph 5 amends the definition of "electricity distributor" and "electricity supplier" in section 64(1) so as to include "electricity generator".

449. *Paragraph 6* makes amendments to section 103 of the Utilities Act 2000.

450. Paragraph 6(1) introduces amendments to section 103 of the Utilities Act 2000. Section 103 contains a power which relates to the exercise of power under section 33BC of the Gas Act 1986 and section 41A of the Electricity Act 1989. Section 103 provides the Secretary of State with the power to set overall carbon emissions reduction targets.

451. Paragraph 6(2) makes a consequential amendment to section 103(1)(b) which is necessary as a result of electricity generators being brought within the scope of the enabling power in section 41A of the Electricity Act 1989.

452. Paragraph 6(3) inserts a new subsection (1A) into section 103 of the Utilities Act 2000. In light of the amendments introduced by paragraphs 1(2) and 3(3) which allow the Secretary of State to impose more than one carbon emissions reduction obligation on those persons falling within the scope of the enabling powers, paragraph 6(3) introduces a new subsection (1A) which allows the Secretary of State to specify more than one overall carbon emissions reduction target in relation to the same period or periods which overlap to any extent.

453. Paragraphs 6(4) and 6(5) introduce consequential amendments which are necessary as a result of electricity generators being brought within the scope of the enabling power in section 41A of the Electricity Act 1989.

Miscellaneous

Section 80: Report on climate change: Wales

454. This section requires the Welsh Ministers to lay before the National Assembly for Wales, from time to time, a report on greenhouse gas emissions and the impacts of climate change on Wales.

455. *Subsection (1)* requires the Welsh Ministers to include in their report their objectives in relation to greenhouse gas emissions and the impacts of climate change in Wales, the action they (and others) have taken to deal with those emissions and impacts and their future priorities for dealing with them.

456. *Subsection (2)* requires the Welsh Ministers to set out how they intend to exercise their power to issue directions to reporting authorities under section 67. *Subsection (3)* provides that this does not affect the Welsh Ministers' general discretion as to how they may exercise their power to issue directions

457. *Subsection (4)* makes it a requirement that the second and subsequent report under this section should include an assessment of the progress made towards implementing the objectives in earlier reports.

458. *Subsection (5)* defines "Wales", for the purpose of this section, by reference to section 158(1) of the Government of Wales Act 2006 (c.32). This definition includes the sea adjacent to Wales out as far as the seaward boundary of the territorial sea.

Section 81: Climate change measures reports in Wales

459. This section devolves to the Welsh Ministers the function under section 3 of the Climate Change and Sustainable Energy Act 2006 (c.19) of preparing an energy measures report in relation to Wales. It also widens the obligation to cover certain other measures and provides that the Secretary of State's consent is required in relation to certain elements of a report.

460. *Subsection (2)* inserts a new section 3A after section 3 of the Climate Change and Sustainable Energy Act 2006 (c.19). New section 3A requires the Welsh Ministers to prepare a "climate change measures report", which is a report containing information for Welsh local authorities in relation to measures which they may take and which would or might have certain effects, including (in contrast to section 3) the effect of addressing the impacts of climate change. Subsection (5) of new section 3A requires the Secretary of State's consent where the report contains information about local authority measures in relation to which the Secretary of State has certain functions, exercisable in relation to Wales (for example, the function of making building regulations).

Section 82: Repeal of previous reporting obligation

461. This section repeals section 2 of the Climate Change and Sustainable Energy Act 2006 (c.19). The reporting requirements under that section are substantially replicated by the reporting requirements in sections 16 and 36 in Parts 1 and 2 of the Act.

Section 83: Guidance on reporting

462. *Subsection (1)* of this section requires the Secretary of State to publish guidance on how greenhouse gas emissions can be measured or calculated by persons responsible for activities which lead to those emissions. The intention behind the guidance is to support businesses wishing to report on their emissions and to improve the consistency of emissions reporting by those businesses, so that the reports can be more easily understood and compared.

463. *Subsection (2)* requires the Secretary of State to publish the guidance by 1st October 2009 and *subsection (3)* allows the Secretary of State to revise the guidance from time to time. *Subsection (4)* places the Secretary of State under an obligation to consult the other national authorities (see section 95) before publishing or revising any guidance and *subsection (5)* allows the Secretary of State to publish the guidance in any manner he considers appropriate.

Section 84: Report on contribution of reporting to climate change objectives

464. *Subsection (1)* of this section requires the Secretary of State to carry out a review of the contribution that reporting of greenhouse gas emissions could make to the UK Government's objectives in relation to climate change, and report the conclusions of the review to Parliament by 1st December 2010 (*subsection (2)*). It is expected that the review will explore the costs and benefits of the reporting of greenhouse gas emissions by businesses, public sector organisations and others.

465. *Subsection (3)* requires the Secretary of State to carry out his review in consultation with the other national authorities (as defined in section 95).

Section 85: Regulations about reporting by companies

466. *Subsection (1)* of this section places a duty on the Secretary of State, by 6th April 2012, either to make regulations under section 416(4) of the Companies Act 2006 (c.46) requiring companies to include in their Directors' Report such information about emissions as the regulations may require, or to lay before Parliament explaining why he has not done so.

467. *Subsection (2)* provides that the duty to make regulations is complied with if they concern any specified type of company or any specified category of emissions. The regulations do not have to apply to all of the emissions of all companies.

Section 86: Report on the civil estate

468. This section places a duty on the Treasury to make an annual report to Parliament on the progress made towards improving the efficiency and contribution to sustainability of buildings which form part of the Government's civil estate.

469. *Subsection (1)* sets out the basic duty to make a report to Parliament in respect of each year, beginning with 2008. *Subsection (2)* provides that the report must contain two specific elements: it must set out the progress made towards reducing the size of the civil estate and progress made towards ensuring that buildings that become part of the civil estate fall within the top quartile of energy performance.

470. *Subsection (3)* places a duty on the Treasury to include in the report a statement explaining why, if a building which has become part of the civil estate does not fall within the top quartile of energy performance, the building has nevertheless become part of the estate.

471. *Subsection (4)* provides that each report must be laid before Parliament by 1st June in the year after the year it relates to. So the report in respect of 2008 must be laid before Parliament by 1st June 2009.

472. *Subsection (5)* provides that the word "building" in this section only applies to buildings which do not use energy for heating or cooling any part of their interior. *Subsection (6)* provides that a building only forms part of the "civil estate" for the purposes of this section if it is used for central government administration (as opposed to operational activities) and, on the date the Act receives Royal Assent, it is of a description of buildings for which the Treasury has responsibilities in relation to efficiency and sustainability.

473. *Subsections (7) and (8)* give the Treasury the power to provide, by affirmative resolution order, that buildings of a specified description are or are not to be considered to form part of the civil estate for the purposes of this section.

Section 87: Power of Ministers and departments to offset greenhouse gas emissions

474. This section authorises any Minister of the Crown or government department, the Scottish Ministers, the Welsh Ministers and any Northern Ireland department to acquire units, or interests in units, representing reductions in emissions of greenhouse gases, removals of greenhouse gases from the atmosphere and units under cap-and-trade trading schemes.

475. This section therefore enables Her Majesty's Government and the devolved administrations to offset emissions through the purchase of units (often referred to as "carbon credits") or interests in units (such as the right to buy units at a fixed price at some point in the future). It also allows central government and the devolved administrations to purchase units or interests in units, by arrangement, for other public bodies which do not have to power to do so of their own accord. Units acquired using this power which meet the requirements of regulations under section 26 (carbon units and carbon accounting) may be used to reduce the level of the net UK carbon account (see section 27).

476. *Subsection (3)* provides that units or interests in units purchased by the Treasury are to be treated as being held by the persons who constitute the Treasury at that time.

Section 88: Fines for offences relating to pollution

477. *Subsection (1)* of this section amends section 105(2) of the Clean Neighbourhoods and Environment Act 2005 (c.16) to enable an increase in the maximum fines on summary conviction that can be provided for under the Pollution Prevention and Control Act 1999 (c.24).

478. This subsection will enable the maximum fines on summary conviction under regulations made under the Pollution Prevention and Control Act 1999 to be brought into line with the equivalent maximum fines under section 33(8) of the Environmental Protection Act 1990 (c.43) in order to ensure consistency in this area of regulation.

479. *Subsection (2)* amends the Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007/3538) so that such a change is made to those Regulations immediately on commencement of the section. This makes the penalties consistent with those which were imposed for offences against the Waste Management Licensing Regulations 1994 (S.I. 1994/1056).